

Q1 (a) A contract is an agreement made by 2 or more parties verbally or written, legally binding on all parties. There are 4 elements to a valid contract: offer, acceptance, consideration, and intention to create legal relation. Offer and acceptance form an agreement. In XYZ's case, I do not think XYZ has a case as there was no intention to create legal contract and consideration. Even if an agreement was formed by assuming ABC's promise to buy from XYZ again is the offer, and XYZ accepts, but there was no consideration given, neither did both parties show intention to create legal relations. Hence, this is not a valid contract. Furthermore, this promise by ABC states to purchase from XYZ again, with no time limit and not exclusively. Hence, the promise might not even be considered broken.

Q1 (b) By including this term into the sales contract, it is a contractual term that is legally binding. Both parties can agree on defined breaches and remedies. This means that if the buyer cancels his orders, the seller can sue the buyer for compensation. However, litigation is expensive and the relationship between the parties may turn sour. At the end of the day, the compensation might be used to pay for the legal fees, and the seller may still not benefit. Alternatively, the seller may choose to request for an irrevocable letter of credit as an additional assurance. Even if the buyer cancels the order, as long as the seller produces the goods according to the L/C, the bank will still release payment.

Q2 (a) Transport is responsible for the physical movement of materials between points. Raw materials, products and all types of cargoes are moved by various modes of transportation with sea taking up to over 90% of world trade. Sea transport is relatively low in cost over long distance. This makes international manufacturing possible where lower production costs can be achieved by seeking low wages and land costs in another location. This creates globalization of production and trade, creating more wealth for the economy. Water transport adds value by utility. Time utility adds value by having the item when it is needed. Place utility adds value by having the item available where it is needed.

Q2 (b) Advantages: Can carry large volume, at a lower freight for long distance, which leads to lower cost per unit. Also various ships are built to carry bulky cargoes. Some ships even have special facilities such as refrigerators for the transportation of perishable goods.

Disadvantages: It is relatively slow and inflexible as it is limited from port to port. Some larger ships may even require deep water harbours to be able to dock. Also it requires a change of mode, which leads to double handling, which increases risk of damage and pilferage.

Q2 (c) 1. Rail/Road & Sea (container) – most commonly used. Consists of transport by container with pre-carriage and on-carriage by road vehicle/rail wagon, and sea carriage on container ship. It has worldwide cover, reliable and frequent services, and it can handle any type of commodities, large indivisible loads as well as small packages.

2. Road & Rail – One of the earliest forms of dedicated intermodal transport was the 'lift van', a small container that could be interchanged between road trailer and rail car, primarily used for household removals. The use of 'piggyback' trailers overcomes the environmental objection, while achieving rail movement without the need to handle the goods at the road/rail interface.

Q2 (d) Agents are usually local people who represent shipping companies and give them local presence. They act as intermediaries between distant carrier and local customers, exchange information, arrangement, etc.

Freight forwarders are people who collect relatively small loads, and consolidate them into bigger loads travelling between the same points. For example, combine six or seven smaller loads to get a full container, giving lower unit costs and faster delivery. Freight forwarders also provide all the administration needed to move materials through their journey, such as documentation, customs clearance, insurance, and so on.

Q3 (a) Ocean bill of lading (B/L) act as a receipt for cargo shipped by sea. It evidences the terms of the contract of carriage and is a document of title to the cargo.

Air Waybill is a document acting as a receipt for cargo shipped by air. It contains the terms of the contract of carriage and is a non-negotiable document.

The function of the B/L as a document of title is one of its most important features. This allows the bill to be transferred, pledged as security for credit and entitles the lawful holder of the bill to claim delivery of goods. For the B/L to be negotiable, it must be an 'order or assigns' bill. The term 'negotiable' means that the bill is transferable. If the B/L has only name a consignee, it will be considered a straight B/L and is non-negotiable. Once delivered of the cargo have been made, the right to transfer the B/L will be lost. Person transferring the B/L must have good title in the bill as he cannot pass on a better title than what he has. The B/L is also a mean of securing credit. It can be pledged with a bank to facilitate the opening of the letter of credit for an international sale.

Q3 (b) The carrier acts as a custodian of the cargo. The carrier's main duties under HV Rules are to issue B/L, exercise due diligence to make the ship seaworthy and not to deviate from the agreed route. The carrier must issue a B/L and confirm the receipt of cargo and the apparent condition in which the cargo is received. The B/L must also show the container number or shipping marks for easy identification of the cargo. The B/L furnished by the Master is the prima facie evidence of the receipt of the goods by the carrier.

Ensuring the ship is seaworthy embraces 3 aspects, the physical condition of the ship, efficiency of the crew and equipment, and cargo worthiness of the vessel. The ship should be seaworthy to undertake the proposed voyage, adequately men and suitably equipped. The cargo holds, refrigerators, cold chambers and all other critical parts and equipment of the ship should be in good condition. The ship should be safe to operate and have adequate facilities to safely handle, carry, store and care for the cargo during the voyage. The carrier shall exercise due diligence to make the ship seaworthy 'before and at the beginning of the voyage.' If the ship-owner exercised due diligence before she sails on her voyage, he will not be liable if defects develop on the voyage or during a call at an intermediate port.

Lastly, the carrier should not deviate from the agreed route, unless it is to save life or property at sea or any reasonable deviation.

Q3 (c) No, the "Hague Visby Rules" do not cover all types of cargoes. The Hague-Visby Rules only applies only to contracts of carriage governed by a B/L or any similar document of title, insofar as such document relates to the carriage of goods by sea. "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck.

Q4 (a) Risks covered in ICC-A, but not ICC-B include Piracy, Theft and Pilferage. Risks covered in ICC-A, but not ICC-B are Earthquake, volcano eruption, lightning, entry of water into vessel, washing overboard, total loss of package while loading or discharging,

Q4 (b) Two fundamental requirements drive the system in properly filing a claim for recovery of losses. The first requirement is the timeliness of the filing of the claim, and the second is the submission of proper documentation for the claim. The time limits for notifying of the filing of a claim is 3 days for ocean cargo, 7 days for international air transport, and an estimated 7 days for other forms of transportation.

The claim must be in writing and follow a format that is acceptable to the insurance company. The claim must contain information to identify the shipment, must assert liability against the carrier, and must be for specific or determinable amount. Filing an insurance claim also necessitates collecting and copying a large number of documents. Generally, the following documents should be included the insurance Policy, all Bills of Lading from origin to final destination and invoices, cargo surveyor's report, complete packing lists and manifests, seal numbers and report, any and all documents generated during the voyage of the cargo. Products destroyed or thrown away will need a certificate of destruction, while cargo that can be salvaged at a cost should include salvage bids and receipts

Q5 (a) During the loading operations, the ship-owner's responsibility includes getting ship to a position where it is ready to receive and load the goods, provide free use of the vessel's gear, including crane men or winchmen from the crew to operate the handling gear, and provide charterer with such info.

The charterer has an absolute obligation to provide a full cargo for loading on board as per the amount and type of goods stated in the charter-party (C/P). If there is a shortfall in the amount of cargo provided by the charterer, the ship-owner will be able to recover damages in the form of dead freight. The charterer must also bring the cargo alongside the ship such that it can be loaded on board using the ship tackle. The loading must be completed within the lay-time. If the loading operations exceed the lay-time, the charterer is responsible for demurrage or damages. The charterer is also be liable for repair for loading, stowing, and trimming of the cargo, as well as any damage caused by the stevedores.

During the discharging operations, the ship-owner's responsibility includes getting ship to a position where it is ready to discharge the goods, and to deliver the cargo to the consignee or lawful holder of B/L. If there is no consignee present to take delivery of the goods, the ship-owner must wait a reasonable time before he can warehouse the goods.

The consignee is responsible for being ready to receive the cargo once it is removed from the ship's tackle, and completing discharge operations within the lay-time. Lay-time commences once the ship is an arrived ship. If lay-time is exceeded, the consignee is liable for the demurrage and damages. Goods are shipped on a free in and out basis whereby loading and discharging of the goods is at the consignee's cost. The consignee is also liable to the ship-owner for warehousing expenses incurred.

Q5 (b) Most of the time, an Employment and agency clause will be included, entitling the charterer to have full use of the vessel during the charter and undertaking that the master will comply with the charterer's orders and instructions to this end. Time charter charterer will issue orders to the master of the ship and the master must act in accordance with his decisions. If the vessel sustains physical damage as a result of the charter's order he will be liable to pay damages to the ship-owner. The charterer also has the right to issue B/L. The master will sign these bills on the charterer's instructions, however this would leave the ship-owner liable to any holders of the B/L. To prevent such claims, the charterer will be required to indemnify the ship-owner against any claims brought by third parties.

If the master follows instructions he knows are not within the charterer's authority, e.g. accepts instructions to proceed to a port that is obviously unsafe, or signs a B/L presented by the charterer which is inconsistent with the terms of the C/P, the ship-owner is not entitled to rely on the indemnity. The indemnity will not operate when the chain of causation is broken by some act of negligence on the part of a member of the crew. E.g. A cargo of coal loaded on the charterer's instructions, gave off methane gas which was ignited by a spark emitted during repairs to the vessel.

Q6 (a) A seller who offers credit to an overseas buyer is firstly exposed to risk of not being able to get payment after shipping out goods. Secondly, the seller may face fraudulent claim for loss of good or damaged goods. After the collection of goods, buyer could falsely claim that goods were not received in good condition, in order to seek undeserved compensation from the seller. Sellers can protect their own interests by taking preventive measures during the drafting of sales contract. Proper claim procedure should also be specified in the sales agreement, e.g. sealing up container when defect(s) is/are observed. If the transaction is dominated in foreign currency, the seller is also subjected to foreign exchange risk, whereby his earnings may be affected by the fluctuations in foreign currency.

Q6 (b) FOB refers to free on board. The seller fulfils its delivery obligation when the goods have crossed the "ships trails" in the port of loading named. From then on, buyer will support all costs and risks of loss and waste of the goods. CFR refers to Cost and Freight. The seller fulfils its delivery obligation when the goods cross the ship rail in the port of loading, the risk is taken over by the buyer. However, seller is still obliged to pay the costs and freight necessary to take the goods in the destination port named. Both conditions can only be used for on sea or internal waterway transportation.

If I were the seller, and I am in a stronger bargaining power than the buyer, I will naturally try to opt for FOB, where by the cost and freight of shipping is not paid by me, lowering my expenses. If I am in a weaker position, to make myself more attractive, I may propose CFR, so that the buyer will consider buying from me. Another possibility is if I have the connections, and can profit from taking on the cost of shipping, e.g. can get fee for recommending business to the ship owner, then I will opt for CFR.

Name: ONG WAN JUIN

A handwritten signature in dark ink, appearing to be 'Wan Juin', written in a cursive style.