

International Maritime Law - FEUPT03-N

Case Study Ever Given – Maritime Law Teaching Notes: Questions and Answers

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Case Study Ever Given

Introduction

The case study is about the grounding of the Ever Given in the Suez Canal. The exercise focuses on the legal consequences of the disruptive event from the perspective of the shipowner of the Ever given. As a student, have the role as the maritime lawyer of the firm named William Fisher. Your task is to inform and advice about the legal consequences regarding the grounding of the Ever Given. Initially, you are going to read a short introduction about William Fisher. Then you are going through the narrative and answer the questions to provide the shipowner with information and recommendations.



Photographed by Bart Kuipers

Maritime Lawyer – William Fisher

William Fisher is a maritime lawyer. He is the expert when it comes to chartering contracts, cargo damages, bills of lading and casualties. The grounding of the Ever Given in the Suez Canal has disrupted the supply chain by blocking the entire width of the Suez Canal. The Japanese shipowner is facing many claims from different maritime parties, such as salvors, other vessel owners and the Suez Canal authority. The Taiwanese time charterer Evergreen is facing all sorts of claims from the cargo owners. The task of William Fisher is to figure out whether these claims are realistic and ensure that no one goes bankrupt.

Narrative

In the morning of the 23rd of March one of the largest container vessels in the world the *Ever Given* – with an approximate capacity of 20,000 TEU – was scheduled to sail through the Suez Canal. The vessel was waiting for the journey to begin at the south bank of the Suez Canal. While the vessel was waiting, strong winds with 40 knots per hour were raging around the vessel and the air was filled with dust. The other vessels in the convoy were barely visible due to the weather conditions. The first two large vessels in the convoy would be guided by a tugboat during the transit of the Suez Canal. However, the *Ever Given* would not be escorted by a tugboat. The captain and the two pilots started to have a fierce discussion whether the ship should enter the Suez Canal under these conditions. Nevertheless, the captain decided that the ship should be able to transit the Suez Canal considering that visibility was not a point of concern with all the modern navigation equipment on board.

The vessel entered the Suez Canal at 07:18 AM. The speed of the *Ever Given* had been gradually increasing. The pilots had disagreed with each other about the speed of the vessel and gave ambiguous advices. At 07:22 AM the vessel passed the 8-6 knot limit which is set by the SCA. The vessel accelerated speed and was travelling 13.7 knots at 07:29 AM. The *Ever Given* maneuvered towards the west bank of the canal, probably due to the winds which gradually pushed the ship towards the east bank. After the maneuver the *Ever Given* was again sailing parallel with the canal, but the ship was now located close to the edge of the west bank. At 07:40 the stern of the *Ever Given* moved suddenly westward with the consequence that the bow moved eastward. The only logical navigational option was to turn the ship westward...

Nevertheless, the *Ever Given* ran aground and blocked one of the most important transit canals in the world. The first salvage efforts by the local tugboats did not refloat the *Ever Given* and there was no prospect when the *Ever Given* would refloat again. The blockage caused a traffic jam of vessels on both sides of the Suez Canal. The expert salvage team of Boskalis subsidiary SMIT salvage was asked to assist in the salvage operation. After moving 30.000 cubic meters of sand and a six-day salvage operation the grounded vessel finally refloated in the Suez Canal. On the 29th of March the vessel sailed to the Great Bitter Lake for inspection.

On the 13th of April, William Fisher got an urgent phone call from the CEO of the shipowner company about the legal consequences regarding the grounding of the *Ever Given*. He was told that Suez Canal Authority (SCA) demanded a \$900 million dollars claim as compensation for the costs incurred by the vessel's blockage of the canal, which included \$300 million salvage bonus, \$300 million for loss reputation and other costs. This did not even include the professional salvor's claim for their salvage services. The payments of the claim were addressed to the owners of the ship and the liability insurance provider UK P&I Club in London. The day before (12th of April) a carefully considered offer was made to the SCA. However, no consensus was reached between the shipowners and SCA during that meeting. As a consequence, the SCA arrested the vessel and was impounded in the Great Bitter lake until the \$900 million dollars claim is paid. Besides the unrealistic claim from the SCA, the shipowner expect thousands legal claims from individual cargo owners and to be sued by the charter party Evergreen. William Fisher has the difficult task to advice the shipowner about the legal consequences.

Questions

Imagine yourself being the maritime lawyer of the shipowner company and ask yourself the following questions.

Questions and Answers

Dr. Michiel Spanjaart has developed the questions and answers in cooperation with Erasmus UPT for the study case. He is an expert in international maritime law. He executed the study case during his course International Maritime Law from the study abroad programme of the Nanyang Technological University. The questions are aligned with his course material.

Part 1: Carriage of Goods

Please take a look at the sample reverse of the Evergreen bill of lading. You may assume that this B/L covered the shipment of a container with highly fashionable bikinis. The consignee had intended to sell these at the Saint Tropez bikini fair on 20 July 2021. Obviously, as a result of the incident the bikinis never made to the fair. In fact, they could not be sold this summer anymore and have become outdated and commercially worthless.

Question 1

- Which legal regime governs the contract of carriage of these bikinis?

Answer: This question relates to the application of the Hague Rules (HR) and Hague Visby Rules (HVR). It is a contract covered by a bill of lading in the sense of I (b), and the incident clearly occurred in the tackle-to-tackle period. The problem is art. X HVR. The voyage starts in Tanjung Pelepas. Malaysia is not a party though the HVR, and neither is Taiwan. That still leaves option X (c) HVR, but now look at the wording of the definitions and clause 5 (A) of the b/l.

(7) "Hague Rules" as used herein refers to the provisions of the International Convention for the Unification of Certain Rules Relating to Bills of Lading signed at Brussels on 25th August 1924 and includes any amendments thereto including the Hague Visby Amendments, 1968.

5. Clause Paramount and Responsibility of Carrier.

(A) Clause Paramount - as far as this Bill covers the carriage of Goods by sea either by the Carrier or its Sub-contractor, the contract evidenced in this Bill shall have effect subject to the Hague Rules, if and as enacted in the country of shipment, and any Legislation including COGSA which make those rules compulsory, applicable or effective. The Hague Rules and said Legislation shall be deemed contractually incorporated herein and made a part of this Contract regardless of whether it or they would otherwise be compulsorily applicable, and nothing herein contained shall be deemed a surrender by the Carrier or its Sub-contractor of any of its rights and immunities or any increase of any of its responsibilities under said Rules and Act. Notwithstanding anything to

the contrary, if the carriage called for in this Bill is a shipment to or from the United States, the liability of the Carrier or its Sub-contractor shall be exclusively determined pursuant to COGSA which is contractually incorporated into this Bill. The provisions cited in the Hague Rules and COGSA (except as may be otherwise specifically provided herein) shall also govern before the Goods are loaded on and after they are discharged from the Ship provided, however, that the Goods at said times are in the actual custody of the Carrier or any Sub-contractor. When no such enactment is in force in the country of shipment, the Hague Rules will apply. If any terms of this Bill are repugnant to the Hague Rules or any other compulsorily applicable International Convention or National Law which cannot be departed from by private contract, then such provision shall be null and void to the extent of such invalidity without invalidating the remaining provisions hereof. The Carrier or its Sub-contractor shall not be liable in any capacity whatsoever for any delay, non-delivery or mis delivery, or loss of or damage to the Goods howsoever caused occurring while the Goods are not in the actual custody of the Carrier.

Malaysia has enacted the HR in its legislation, so the HR apply compulsory. Assuming for argument's sake that Malaysia had not enacted the HR in its legislation, then the HR would still apply, but then as incorporated contractual provisions.

Question 2:

- Would your answer have been the same if this bill of lading had in fact been issued in Rotterdam?

Answer: Yes, art. X (a) HVR...

Question 3:

- Either way, how do rate the consignee's chances in a procedure against Evergreen?

Answer: Very poor, art. IV (2) a HR/HVR is a clear dealbreaker.

But also look at the provisions of the b/l, in particular clause 7.1:

7. Amount of Compensation and Limitation of Liability.

(1) All claims for which the Carrier may be liable shall be adjusted and settled on the basis of the net invoice value of the Goods plus freight and insurance.

Notwithstanding the foregoing it is agreed that in no event shall this clause operate to increase the extent of the Carrier's liability beyond the applicable market value at the port of discharge or place of delivery if that be less than the net invoice value plus freight and insurance. In no event shall the Carrier be liable for any loss of profit or any consequential loss.

Part 2: Casualties

Question 1:

- The Ever Given ran aground in the Suez Canal. Could you qualify the incident as a collision?

Answer: Here you need to look at the scope/definition of the collision convention. Art. 1: ships colliding with each other. Art. 13: damages to another ship or the goods/persons on board without a collision.

But how about that question if Dutch law were to apply?

The you would apply the collision rules by analogy, see art. 8: 541 DCC: '(...) the rules of this section about collision equally apply to damage caused by a sea-going ship without there being physical contact between ships.'

Question 2:

- The vessel blocked the canal for several other vessels. Do you think these vessels can sue the owners of the Ever Given for their losses, and if so, on which legal basis?

Answer: Again, it is not a collision, see above, but still, it does not seem right that one ship can block a canal to an extent that other ships need to sail around the Cape of Good Hope. Tort? Requirements (under Dutch law): an unlawful act, damages, causation, reasonable foreseeability, and relativity.

Question 3:

- Do you think it is fair that innocent cargo owners, for instance of a container with bikini's, have to contribute in general average?

Answer: Hardly a legal question, so you cannot go wrong. Still, this is a 3000-year-old rule and still in place. And besides, it is a mathematical exercise, and an initial contribution does not bar you from proceeding in court to get your money back, Rule D and Quo Vadis!

Question 4:

- It is safe to say that the salvage operations were successful. Please describe the key factors that you think should determine the quantum of Smit's salvage award.

Answer: Here you have to look at art. 13 of the Salvage Convention!

A question though: was the vessel really in danger? Frio Alaska!

Question 5:

- The owners of the vessel have constituted a fund in London. Do you think Evergreen can rely on that fund as well?

Answer: Absolutely, Evergreen is a charterer in the sense of art. 1 LLMC, and the see art. 9 LLMC and the MSC Napoli!

Question 6:

- Do you think the owners will be able to limit their liability for Smit's salvage claim?

Answer: Certainly not, the LLMC lists the circle of people entitled to limit and also the claims subject to limitation, but art. 3 LLMC strikes claims for salvage from the scope of application.

Why? The incentive for salvors!

Teaching note

Lecture plan International Maritime Law example (Zoom session)

Time	Zoom	Teacher role	Student role	Teaching assistant role
09:00-09:05	Main Zoom	<p><i>Providing explanation of the set-up of the session</i></p> <p>Learning aim <i>Understanding the effect of disruptive events from Maritime Law perspective</i></p> <p>Set up</p> <ul style="list-style-type: none"> • Make the study case about the Ever given (in two parts) • Discussion and providing answers of the case study. 	<i>Listening and asking questions</i>	<i>Starting zoom</i>
09:05-09:10	Main Zoom	<p><i>Elaboration about the case study from a maritime law perspective</i></p> <p>Topics we are going to discuss: Carriage of goods and casualties. Introducing the first part of the breakout session.</p> <p>Instructions Questions Answering the first three questions (carriage of goods)</p> <ul style="list-style-type: none"> • You have 30 minutes. We will give a heads up when there is 5 minutes left. • Come back to the main zoom. I will ask if someone wants to present the answers. 	<i>Listening to the instructions and reading the introduction and narrative of the case study</i>	<i>Preparing breakout rooms (12 rooms: 6/7 students per group)</i>
09:10-09:40	Breakout rooms	<p><i>Standing by for questions by students.</i></p> <p>In the meantime, the teacher can go to different breakout rooms.</p>	<i>Providing answers to the first three questions with the group.</i>	<i>Assigning everyone to a group and send notification when 5min left</i>

Case study – Ever Given

Maritime Law

09:40-10:00	Main Zoom	<p><i>Discussing the answers of the first part (carriage of goods)</i></p> <p>Ask per group what their answers are. When nobody unmutes him/herself, ask personally. The TA has a list of names per group.</p>	<p><i>Participating by providing possible answers and learn from the correct answers. Asking questions when something was unclear</i></p>	<p><i>End breakout room and move everyone to main zoom.</i></p>
10:00-10:10	Main Zoom	<i>Break</i>	<i>Break</i>	<i>Break</i>
10:10-10:15	Main Zoom	<p><i>Providing instructions for the second part of the study case.</i></p> <p><i>Second breakout session: Casualties</i> Same instructions</p> <ul style="list-style-type: none"> • 30 minutes • Post answers on canvas (discussion board) 	<i>Listening to the instructions</i>	<p><i>Preparing breakout rooms (12 rooms: 6/7 students per group) everyone is back from the break</i></p>
10:15-10:45	Breakout room	<p><i>Standing by for questions by students.</i></p> <p>In the meantime, the teacher can go to different breakout rooms.</p>	<p><i>Providing answers to the first three questions with the group.</i></p>	<p><i>Assigning everyone to a group and send notification when 5min left</i></p>
10:45-11:15	Main Zoom	<p><i>Discussing the answers of the first part (carriage of goods)</i></p> <p>Ask per group what their answers are. When nobody unmutes him/herself, ask personally. The TA has a list of names per group.</p>	<p><i>Participating by providing possible answers and learn from the correct answers.</i></p> <p><i>Asking questions when something was unclear</i></p>	<p><i>End breakout room and move everyone to main zoom.</i></p>
11:15-11:30	Main Zoom	<i>Wrapping up</i>		

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Colophon

The study materials are made in July-October by:

Erasmus Universiteit Rotterdam | UPT

Authors: Michiel Spanjaart
 Maurice Jansen
 Rosanne van Houwelingen

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For more information you can contact Maurice Jansen (m.jansen@eur.nl)