

EKSAMEN I JURIDISKE VALGEMNER

VÅR 2014

Dato: tirsdag 6. mai 2014

Tid: Kl. 10:00 – 14:00

JUS5401 – Maritime Law: Contracts

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

Part I

The Norwegian fishing vessel m/s Breeze, owned by the Norwegian company Norfish AS, was fishing in the Barents Sea (north of Norway), outside of Norwegian territorial waters. Fishing was good but bunkers (fuel/diesel) was getting short. To avoid interrupting a profitable catch by sailing to shore to bunker, Norfish decided to have bunkers transported out to the fishing field from Kirkenes (a port in northern Norway), and entered into a freight agreement with a local company, Norfreight AS, which had a suitable tanker, m/s Storm.

The freight agreement was informally made, confirmed by e-mail exchange, stating: "Confirm agreement to transport 110.000 litres of diesel [=100 tons diesel] from Kirkenes to [geographical position]. Loading to take place immediately. Freight NOK 80.000."

From prior contact between the parties it transpired that m/s Storm made a cruising speed of about 15 knots. Based on the distance to the field of about 300 nautical miles this meant that the vessel would reach the field in about 24 hours. It further transpired that m/s Storm had a loading capacity – divided among separate tanks – well beyond the 100 tons of diesel, however, the freight of NOK 80.000 made it profitable for Norfreight to have the vessel sail only part-loaded.

The diesel was loaded immediately. However, the master of m/s Storm became concerned when hearing the weather forecast with a gale warning out at the fishing field. He believed that a ship-to-ship transfer of diesel in the open sea in such weather entailed a safety risk, and decided to await departure until the gale had abated. This took two days, so that m/s Storm reached its destination two days later than expected. Subsequently it turned out that the master of m/s Storm had misjudged the situation; m/s Breeze was equipped with a system for shooting lines between vessels (enabling flexible hoses to be pulled) so that transfer of the diesel would have been feasible, also in bad weather. Norfreight conceded that this misjudgment by the master amounted to negligence. The master had, however, no history of similar mistake.



The delay caused m/s Breeze to cease fishing for one day, in order not to risk running out of diesel. The ceased fishing caused a loss of catch amounting to NOK 150.000. This amount of loss was in itself undisputed. Norfish claimed this loss as damages against Norfreight by reason of delayed transport of the bunkers.

Norfreight disputed liability, and argued that there was no basis for claiming for delayed transport when no express time of delivery was agreed. In any event Norfreight claimed that it was exempted from liability by reason of nautical fault by the master.

Norfish disagreed that liability for delay required express agreement of the time of delivery. Norfish further disputed any exception from liability by nautical fault since it was here a situation of initial unseaworthiness. Furthermore, Norfish claimed that the entire discussion concerning nautical fault was inapplicable since the transport entailed a carriage of general cargo, including the rules relating to domestic trade in Norway; from a Norwegian port to a Norwegian vessel and with no connection to any foreign country.

Norfreight disagreed, firstly, that the case involved domestic trade in Norway under the rules relating to carriage of general cargo, and, secondly, that the rules relating to carriage of general cargo were at all applicable; rather Norfreight claimed that the case concerned voyage chartering which meant that exception from liability through nautical fault did apply.

Q 1: Is Norfreight liable and, if so, on what legal basis? (you are not here asked to discuss the measure of damages)

Norfreight claimed that even if it was liable in principle, Norfish' claim could not succeed since the nature of the losses suffered – indirect losses: loss of catch – were not recoverable under the system of the Maritime Code. Alternatively, Norfreight submitted that it had the right to limit its liability according to the amount of freight, viz. NOK 80.000.

Norfish disagreed and submitted that the loss of catch was as such recoverable under the system of the Code. Furthermore, Norfish did recognize Norfreight's right of limitation but claimed that such right of limitation did not come into play since the limitation must be assessed at 2 SDR per kilogram of the goods (=100.000 kg diesel), something which exceeded the losses claimed. (1 SDR=NOK 10)

Q 2: Assuming liability on Norfreight's part, what is the correct measure of damages?

Part II (these questions are to be answered briefly)

Q 3: What do we understand by laytime?

Q 4: What do we understand by off-hire?

JUS5403 – Sjørett: Kontrakter

Del I

Det norske fiskefartøyet m/s Bris, eid av rederiet Norfisk AS, lå og fisket i Barentshavet, utenfor norsk territorialgrense. Fisket var godt men fartøyets bunkersbeholdning (diesel) begynte å minke. For å unngå å avbryte fisket ved å gå til havn og bunkre, besluttet Norfisk å få bunkers fraktet ut til feltet fra Kirkenes, og inngikk fraktavtale med det lokale rederiet, Norfrakt AS, som hadde en egnet tankbåt, m/s Storm.

Fraktavtalen ble gjort formløst, med ordrebekreftelse pr. e-post som lød: «Bekrefter avtale om transport av 110.000 liter diesel [=100 tonn diesel] fra Kirkenes til [geografisk posisjon]. Lasting skjer umiddelbart. Frakt kr. 80.000.»

Av forutgående kontakt mellom partene framkom at m/s Storm gjorde ca 15 knop. Basert på distansen til feltet på ca 300 nautiske mil tilsa det en reise på ca et døgn. Det framkom videre at m/s Storm hadde lastekapasitet – fordelt på separate tanker – langt utover de 100 tonn diesel, men med en frakt på kr 80.000 var det var lønnsomt for Norfrakt å gå med slik dellast.

Dieselen ble lastet umiddelbart. Kapteinen på m/s Storm ble imidlertid bekymret over kulingvarselet som var meldt ute på feltet. Han tenkte at skip-til-skip overføring av diesel i åpent hav i slikt vær utgjorde en sikkerhetsrisiko, og besluttet å avvente avgang til været var løyet. Dette tok to døgn slik at m/s Storm var fremme to døgn senere enn forventet. I ettertid viste det seg at kapteinen på m/s Storm hadde feilvurdert; m/s Bris hadde system for å skyte liner mellom fartøyene (for så å trekke fleksible slanger), slik at overførsel fint hadde latt seg gjøre, selv i dårlig vær. Norfrakt erkjente at denne feilvurderingen på kapteinens side måtte anses som uaktsom. Kapteinen hadde imidlertid ingen historikk av lignende tilfeller.

Forsinkelsen førte til at m/s Bris måtte innstille fisket i ett døgn, for ikke å risikere å gå tom for bunkers. Det innstilte fisket medførte kr 150.000 i fangsttap. Tapsbeløpet var som sådan ubestridt. Norfisk krevde dette tapet erstattet av Norfrakt som følge av forsinket transport av bunkersen.

Norfrakt bestred ansvar, og mente at det ikke var grunnlag for forsinkelsesansvar når ingen uttrykkelig leveringsfrist var avtalt. Norfrakt mente videre at det uansett forelå ansvarsfritak i form av nautisk feil hos kapteinen.

Norfisk var uenig i at forsinkelsesansvar betinget uttrykkelig leveringsfrist. Norfisk mente videre at ansvarsfritak gjennom nautisk feil ikke kom på tale siden det her forelå opprinnelig usjødyktighet. Dessuten mente Norfisk at hele problematikken rundt nautisk feil var uanvendelig siden transporten måtte anses som stykkgodsbefordring i innenriks fart; fra norsk havn til norsk fartøy, uten noe fremmed lands tilknytning til transporten.

Norfrakt bestred at det her var tale om stykkgodsbefordring i innenriks fart, og at det var tale om stykkgodsbefordring overhodet; det dreide seg etter Norfrakts syn om reisebefraktning og hvor nautisk feil unntaket fikk anvendelse.

Spørsmål 1: Er Norfrakt ansvarlig, og i så fall på hvilket grunnlag? (erstatningsutmåling skal her ikke behandles)

Norfrakt hevdet at selv om ansvarsgrunnlag forelå, kunne ikke Norfisks krav føre fram fordi det her var tale om et indirekte tap (fangsttap) som ikke var erstatningsrettslig vernet etter sjølovens regler. Subsidiært mente Norfrakt at det forelå rett til ansvarsbegrensning, tilsvarende fraktens størrelse med kr. 80.000.

Etter Norfisks syn var fangsttapet erstatningsrettslig vernet. Norfisk erkjente Norfrakts rett til ansvarsbegrensning men mente at slik begrensingsrett her ikke slo inn; etter Norfisks syn utgjorde begrensningen 2 SDR pr. kg last, noe som overskred kravbeløpet. (1 SDR = 10 kr.)

Spørsmål 2: Forutsatt ansvarsgrunnlag for Norfrakt, hva blir størrelsen på Norfisks krav?

Del II (spørsmålene besvares kortfattet)

Spørsmål 3: Hva forstår vi med liggetid?

Spørsmål 4: Hva forstår vi med off-hire?

Sensuren faller tirsdag 27. mai klokken 15.00. Kontroller på StudWeb eller ta kontakt med Infosenteret på 22 85 95 00.

Kandidatene har rett til en redegjørelse for sensurvedtaket ved henvendelse til sensorene innen en uke etter sensur. Kontaktinformasjon for sensorer finnes på Fakultetets nettsider. Du kan også ta kontakt med infosenteret. Klagefristen er tre uker etter sensur.

The result of the exams will be announced on Tuesday 27 May, at 15.00 hours. You can check the results in the StudWeb, or by contacting the Information Centre, phone 22 85 95 00.

After the exam results are announced, candidates have the right to be informed of the grounds for the result as long as a request is made within one week of the announcement. The names and contact information of the examiners can be found on the Faculty's website, or by contacting the Information Centre. The deadline for appeal is three weeks after the announcement of the results.

Oslo, 06.05.2014