INSTRUCTIONS:

1. All questions are compulsory.

2. All answers must be thoroughly supported by appropriate legal precedent.

3. It is in your interest to write legibly as all illegible hand writing will be disregarded.
QUESTION 1

In the *Junior K* case [*Star Steamship Society v Beogradska Plovidba (“The Junior K”) [1988] 2 Lloyd’s Rep. 583*] the court held that there was in fact no fixed or concluded charterparty agreement. Discuss the reasons for this decision and discuss whether or not the court would have possibly come to a different conclusion had all the terms been agreed to. In your answer consider the strict adherence to shipping contract negotiations in the English jurisdictions and contrast this critically with the more flexible commercial approach of the American jurisdictions.

[Total Q1:30 marks]

QUESTION 2

The port of Durban is a compulsory pilotage harbour. The Port Authority in Durban is the sole public authority that lawfully operates tugs within the port with the result that every ship entering, leaving or moving in the harbour is required to be navigated by a pilot who is an employee of the Port Authority. The Port Authority exercises control over the port and earns revenue from the services provided by it pursuant to the charges set out in the tariff book. A fee is charged for all towage, pilotage and salvage operations conducted within the port.

The “MV Neptune” vessel (hereafter referred to as the vessel) arrived in the port on the 14th October 2012, and was berthed and loaded at the side bulk-ore loading terminal. The vessel completed loading the cargo at about 3am on the 16th October, and a sailing pilot was requested for 4am on the same day. At approximately 03.54am the pilot Mr Sazi Khumalo, an employee of the Port Authority acting in the course and scope of his employment, boarded the vessel and piloted the vessel. In terms of the rules of the Port Authority it was the responsibility of the pilot to determine the number of tugs required for pilotage in consultation with the port captain.
At about 4am the vessel commenced casting of the last of her mooring lines. The Port Authority’s tug ‘Umvoti’ made fast to the starboard bow of the vessel. At about 4.20am the tug cast off from the vessel before she had reached the channel for departing ships. This was normal operating procedure. At 4.40am, and within the limits of the port, the vessel experienced a catastrophic power failure which resulted in the stoppage of her main engines and prevented her from dropping anchor. When that happened the pilot Khumalo [who was still on board the vessel at the time] requested tug assistance from the Port Authority.

The vessel drifted without power in a south-westerly direction towards shallow water and Salisbury Island which is located within the port. At about 6.20am the tug ‘Umvoti’ again came alongside and commenced pushing the vessel’s port bow. Twenty minutes later a second pilot, Captain Pillay, boarded the vessel. Within the next half hour a second tug operated by the Port Authority, the ‘Umsunduzi’, also came alongside and was made fast to the vessel, which was then towed to a place of safety within the port.

On the same day the Port Authority caused the MV Neptune and her cargo to be arrested in terms of the provisions of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Act), thereby instituting an action in rem for payment of a total of R12 million. The claim was in respect of salvage services rendered to the ship and its cargo in the port of Durban.

The owners of the MV Neptune furnished security for the Port Authority’s claims, and the vessel and her cargo were released from arrest. The arrests were, however, deemed to continue in terms of s3 (10) (a) (i) of the Act. Although security for the claim has been furnished the salvage claim has been strongly defended by the owners of the vessel and the cargo as they deny that the Port Authority is entitled to a salvage claim as they claim that the Port Authority had not acted voluntarily in relation to providing salvage services to the vessel but rather in compliance with a statutory duty to provide such services.
You have now been approached by the Port Authority for advice. Answer the following questions:

2.1 What are the common law requirements for a valid salvage claim?  

[4 marks]

2.2 The owners of the MV Neptune refuse to pay a salvage award as they claim that the Port Authority merely fulfilled its statutory obligation to render assistance and therefore is not entitled to a salvage award. With reference to precedent, advise the Port Authority on whether it is entitled to a salvage award.  

[20 marks]

[TOTAL Q2: 24 marks]

QUESTION 3  
What does the abbreviation ‘CIF’ stand for in the phrase ‘CIF Incoterms 2010’? What advantages and disadvantages does a sale on CIF Incoterms 2010 hold for the seller and purchaser respectively? You should refer to relevant case law in your answer.

[Total Q3: 10 marks]

QUESTION 4  
Discuss the differences between a time and a voyage policy for the purposes of marine insurance

[Total Q4: 6 marks]

[TOTAL FOR PAPER: 70 MARKS]