NOTE:

1. This is an open book exam. Students are allowed to bring the following materials to the exam: the MacDougall text, cases and notes.

2. This exam has ONE (1) QUESTION WORTH 100 MARKS.
NaviVan is the owner of the vessel “LAW II”. On June 9, 2010, the “Allard Law Sailing Club” (“ALSC” or “the Charterer”) entered into a five-year charter party agreement (“charter party”) with NaviVan to charter the vessel Law II. Under clause 30 of the charter party, ALSC had an option to purchase the LAW II at the end of the five-year period. The relevant clauses of the charter party are:

Hire
10. The Charterer shall pay to the Owner for the use of the vessel a rate of $85,000 Canadian currency per year for each year commencing on and from the day of delivery or August 10, 2010, whichever is the later; hire to continue until the date of redelivery. If the vessel is lost, the hire payable for the year of the loss being calculated pro rata of the number of days the vessel was available of 208 days. Should the vessel be lost after December 1st of any operating year (which concludes on January 3rd of the following calendar year) the annual Charter of that operating year is payable in full.

Annual Schedule Payments
11. The annual Charter hire shall be payable in seven (7) monthly instalments each and every year of the Charter in accordance with the following schedule.
1. August 10th $12,142.85
2. September 10th $12,142.85
3. October 10th $12,142.85
4. November 10th $12,142.85
5. December 10th $12,142.85
6. January 10th $12,142.85
7. February 10th $12,142.90
Should any one of the payments not be deposited as set forth herein, the Owner may forthwith withdraw the vessel from the service/or the Charterer without prejudice to any claim which the Owner may have against the Charterer pursuant to this Charter.

Option to Purchase
30. Subject to full performance of all its obligations in this Charter Party including but not limited to payments being made promptly and in accordance with the schedule of Clause 10 throughout this Agreement, the Charterer shall have an option to purchase the vessel after the five (5) year period of this Charter for the sum of Two Hundred Thousand Dollars ($200,000.00) cash if the Charterer notifies the Owner in writing of its intention to purchase by no later than March 31, 2015. This option shall be enforceable only for a period of fifteen (15) days from the time the Charterer’s notice is sent to the Owner and is subject to cash payment.

The accepted practice between the parties was for the ALSC to submit seven post-dated, uncertified cheques to NaviVan at the beginning of each operating season. While there were no problems with the cheques for the first four years, the cheque for the first payment in the fifth year was returned by reason of insufficient funds. The bank’s refusal to honour the ALSC’s
cheque was due to an error by a bank employee. NaviVan wrote to ALSC informing it that the option to purchase was void and of no further effect because of the ALSC’s failure to make the payment as required. In this same letter, NaviVan gave ALSC instructions on how it could remedy its late payment. ALSC promptly made the payment with interest in accordance with NaviVan’s instructions. All subsequent payments were made on time. On October 1, 2014, ALSC wrote to NaviVan expressing its view that the option to purchase remained effective. ALSC noted that the default had been due to a bank error and that the error had been promptly remedied in accordance with NaviVan’s instructions. NaviVan did not respond to this letter.

Section 261(1) of the Canada Shipping Act, R.S.C., 1985, c. S-9, states: “261. (1) An official log shall be kept in every foreign-going ship and every home-trade ship of or over fifty tons register tonnage registered in Canada in the appropriate form for that ship approved by the Minister.” According to the charter party, the LAW II is a “home-trade ship” falling within the scope of section 261(1). Under clause 25 of the charter party, NaviVan had the right to be supplied with the vessel’s deck and engine room logs upon request. Prior to the August 2014 late payment, NaviVan had made no such requests; its first request under clause 25 was contained in a letter to ALSC dated September 13, 2014. NaviVan alleges that ALSC had breached clause 25 by failing to provide all copies of the logs as requested.

In December 2014, ALSC had the opportunity to purchase a vessel similar to the Law II from Cruising Canada Inc; the vessel was one year newer and the same price as the option price under the charter party with NaviVan. After a meeting of the ALSC membership, at which there was an expression of strong affection for the Law II, the ALSC decided to forgo the opportunity and stick with its option to purchase the Law II at the end of its lease.

On January 5, 2015, ALSC gave NaviVan notice of its intention to exercise the option to purchase the Law II and on January 17, 2015, ALSC tendered the sum of $200,000 to NaviVan. NaviVan refused to execute a bill of sale on the basis that ALSC had breached several clauses of the charter party, thereby rendering the option void.

Question: Please advise ALSC.