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## UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

Program: B.A. L.L.B. Hons. (Energy Laws), B.COM.,LLB. (Hons.) Taxation Laws, BBA, LL.B. (Hons.) Corporate Laws

Semester – VI

Subject (Course): Maritime Law

Course Code : LLBD 311

Max. Marks : 100

Duration : 3 Hrs

No. of page/s: 6

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### SECTION A (10 Marks)

Each question carries a value of 2 marks.

Question 1. Mark true/false for the following statements:

- a) Slavery is one of the issues dealt by 'Amistad'.
- b) The primary issue in *Happy Ranger* case is whether Hague Rules or Hague-Visby Rules be applied.
- c) 'Into the Graveyard' pertains to disability rights.
- d) Mareva injunction is the sole alternative to arrest.
- e) Malaysia complies with Rotterdam Rules.

### SECTION B (20 MARKS)

Question 2. In many situations arrest is not possible. What recourse would you suggest to the aggrieved parties? Explain. (10 marks)

Question 3. 'Sometimes the very advantages of international commercial arbitration become its flaws.' Discuss. Support your argument with case law. (10 Marks)

### SECTION C (20 MARKS)

Question 4. Critically analyse 'Amistad' on the grounds of race, human rights and refugee rights. (10 marks)

Question 5. In the context of international trade, have Hague-Visby Rules removed all the disadvantages caused to the shipper due to the presence of Hague Rules? Explain. (10 marks)

#### SECTION D (50 Marks)

Question 6. Ms Veronique July is a fashion designer based in Paris. She enters into an agreement with US fashion retail giant Macy's. As per the agreement she has to supply 2 million spring dresses to Macy's for which she will be paid \$10,000. To supply her consignment to Macy's registered office in New York, she hires the services of Mr Edward Brown who owns a ship named 'La Gabrielle'. The registered office of La Gabrielle is in New York. During the journey, most of the consignments were lost and the rest were damaged. Ms July had declared the value of the goods in Paris at the time of loading. United States as well as France are signatories to the Hague-Visby Rules.

Evidence before you:

The bill of lading included the following terms:

“3. Liability under the contract.

(a) Unless otherwise provided herein, the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated Brussels the 25 August 1924 as enacted in the country of shipment shall apply to this contract .... In trades where [the Hague-Visby Rules] apply compulsorily, the provisions of the respective legislation shall be considered incorporated in this Bill of Lading. .... Unless otherwise provided herein, the Carrier shall in no case be responsible for loss of or damage to deck cargo and/or live animals...

4. Law and Jurisdiction.

Except as provided elsewhere herein, any dispute arising under or in connection with this Bill of Lading shall be referred for litigation in London.

5. Hague-Visby Rules shall govern any dispute arising under or in connection with this Bill of Lading. However, at the same time Carriage of Goods by Sea Act of the United States of America 1936 (US COGSA) shall be considered.”

“Master's Remarks

All Cargo Loaded From Open Storage Area

All Cargo Carried On Deck At Shippers/Charterers/Receivers Risk As To Any Perils Inherent In Such Carriage, Any Warranty Of Seaworthiness Of The Vessel Expressly Waived By The Shipper/Charterer/Receiver.

And In All Other Respects Subject To Provisions Of The United States Carriage Of Goods By Sea Act 1936”.

(A) List down the arguments for Ms July and Mr Brown. (20 marks)

(B) What should be the judicial opinion? (10 marks)

Legal provisions:

The relevant provisions of the Hague-Visby Rules are as follows:

Art. I (b) “Contract of Carriage” applies only to Contracts of Carriage governed by a bill of lading or any similar documents of title, insofar as such document relates to the Carriage of Goods by Sea, including any bill of lading or any similar documents as aforesaid issued under or pursuant to a Charterparty from the moment at which such bill of lading or similar document of title regulates the relations between a Carrier and a holder of the same.

(c) “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 and is so carried.

Article 5 (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 666.67 units of account per package or unit or units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

COGSA 1936:

§ 1304 Rights and immunities of carrier and ship.

[5] Amount of liability; Valuation of cargo.

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

Question 7. Critically analyse *Pamesa Ceramica v. Yisrael Mendelson Ltd* case. (20 marks)

Legal Provisions of CISG:

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence

of such principles, in conformity with the law applicable by virtue of the rules of private international law.

#### Article 38

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

#### Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

#### Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

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### SECTION A (10 Marks)

Each question carries a value of 2 marks.

1. Mark true/false for the following statements:

- a) Mareva injunction prevents a defendant from dissipating or disposing of those of its assets.
- b) Shipbreaking industry is not related to reasonable accommodation of the disabled.
- c) Maritime claims include damage to goods.
- d) The *Medicaments* case pertains to international commercial arbitration.
- e) In 'Amistad' people were not treated as cargo.

### SECTION B (20 Marks)

Each question carries a value of 10 marks.

2. Discuss the concept of maritime claims.
3. Critically analyse international commercial arbitration.

## SECTION C (20 Marks)

Each question carries a value of 10 marks.

4. What are the alternatives to arrest? Explain.
5. What were the lacunae in Hague Rules? Discuss.

## SECTION D (50 Marks)

Each question carries a value of 25 marks.

6. Critically analyse the Happy Ranger case. (25 Marks)
7. Critically analyse the Medical Marketing International, Inc. v. Internazionale Medico Scientifica, S.r.l. case. (25 Marks)

NOTE: Relevant provisions of the United Nations Convention on International Sale of Goods are as follows:

### Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- (a) when the States are Contracting States; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

### Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

#### Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

#### Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

(a) are fit for the purposes for which goods of the same description would ordinarily be used;

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.



## Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

## Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.