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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

Program: B.A. L.L.B. Hons. (Energy Laws)

Semester – VIII

Subject (Course): Maritime Law

Course Code : LLBD 211

No. of page/s: 4

Max. Marks : 100

Duration : 3 Hrs

SECTION A (10 Marks)

Each question carries a value of 2 marks.

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

- Attachment is one of the alternatives to arrest.
- South Korea is the leader in the shipping industry.
- The *Medicaments* case pertains to international commercial arbitration.
- Under the Admiralty (Jurisdiction And Settlement of Maritime Claims) Act, 2017 Gujarat High Court has jurisdiction over maritime claims.
- Malaysia complies with its domestic law as well as Hague Rules.

SECTION B (20 MARKS)

Question 2. What were the weaknesses in Hague Rules? Explain. (10 marks)

Question 3. 'All that glitters is not gold.' Discuss this statement in the context of international commercial arbitration. Support your argument with case law. (10 Marks)

SECTION C (20 MARKS)

Question 4. Explain and critically analyse Mareva injunction. (10 marks)

Question 5. As per the Hague-Visby rules, are the shipper and the carrier on an equal footing? Explain and analyse with the help of case law. (10 marks)

SECTION D (50 Marks)

Question 6. Ms Cassandra Minucci is an interior decorator based in Milan. She enters into an agreement with a Finnish wooden goods supplying company Koksien. She buys furniture amounting to \$1 million and furnishes an entire building which is owned by A & G Management Consulting. She is paid \$1.5 million from them for her services. The furniture breaks in two years resulting in huge loss to A & G Management Consulting. It also suffers a loss to its reputation and sues Ms Minucci. Ms Minucci wants Koksien to be a party to the dispute. Italy as well as Finland are signatories to the CISG.

(A) List down the arguments for Ms Minucci, Koksien and A & G Management Consulting.

(20 marks)

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

Question 7. Critically analyse Sideridraulic Systems SpA and Anr v. BBC Chartering & Logistic GmbH & Co KG, The BBC GREENLAND [2011] EWHC 3106 case. (20 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.

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Program	:	B.A. L.L.B. Hons. (Energy Laws)					
Semester	:	VIIIth					
Name of the Subject (Course)	:	Maritime Law					
Course Code	:	LLBD211					
Name of Question Paper Setter	:	Devyani Tewari					
Employee Code	:	40001694					
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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) Neutrality is one of the advantages as well as disadvantages of international commercial arbitration.
- b) There is only one alternative to arrest.
- c) Indian shipbreaking industry duly complies with labour law.
- d) The *Medicaments* case pertains to international commercial arbitration.
- e) Rotterdam Rules are the latest Rules.

SECTION B (20 Marks)

Each question carries a value of 10 marks.

2. Critically analyse 'Into the Graveyard'.

3. When do the benefits of international commercial arbitration become its very lacunae? Explain.

SECTION C (20 Marks)

Each question carries a value of 10 marks.

4. Explain the new Indian regime with respect to maritime law.
5. To what extent are Hague-Visby Rules a major improvement upon Hague Rules? Explain.

SECTION D (50 Marks)

Each question carries a value of 25 marks.

6. Critically analyse the *Pamesa Ceramica v. Yisrael Mendelson Ltd* 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.

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:

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(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

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(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.

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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.

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(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.

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(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.

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