TUESDAY 25th November 2014 – AFTERNOON

LEGAL PRINCIPLES IN SHIPPING BUSINESS

Time allowed – three hours

Answer any FIVE questions – all questions carry equal marks

Please read the questions carefully before answering

1. Using appropriate case law, discuss whether in the absence of a valid Notice of Readiness, laytime cannot start and shipowners could not therefore be in a position to earn any demurrage.

2. Explain vicarious liability in the context of the Himalaya clause.

3. The vessel Loot is hired by Charterers Ltd. for one year, hire payable in advance on 15th day of each calendar month. The charter party further provides among other things as follows:

   a) If hire is not received on the due date of each calendar month, the shipowner is to give the charterer 48 hours notice, Saturday, Sunday and Holidays excluded, and will not withdraw the vessel if hire is paid within these 48 hours.
   b) Off-hire: Hire ceases to be payable if the vessel is dry-docked.

The Loot was dry-docked from Monday 14th April to Tuesday 22nd April. On Wednesday 16th of April, owners notified Charterers Ltd. that the Loot will return to service on Wednesday 23rd April, and also that hire was not paid – thereby giving 48 hours notice under the anti-technicality clause (a) above.
Charterers Ltd. in fact paid the hire in owners’ bank account on Tuesday 22\textsuperscript{nd} April. The vessel returned to service on Wednesday 23\textsuperscript{rd} April. However, shipowners withdrew the \textit{Loot} on the basis that on Wednesday 16\textsuperscript{th} April they had notified Charterers Ltd. of the non-payment, but Charterers Ltd. did not make good the non-payment of hire within the 48 hours, as provided by clause (a). Discuss the position of the parties with respect to off-hire.

4. David, a shipbroker, is in negotiations with X-Tankers Ltd., a newly incorporated ship-owning company, with a view to reaching an agreement for fixing their fleet of five vessels. Whilst trading and before concluding this agreement with X-Tankers Ltd., David finds an attractive fixture for one of X-Tankers Ltd.’s ships, and proceeds to fix it.

Consider and explain whether:

a) X-Tankers Ltd. can refuse to proceed with David’s contract/fixture and, if so, what would the consequences be for David?
b) X-Tankers Ltd. can proceed and use David’s advantageous contract/fixture?

5. The vessel \textit{Dimple} encounters a hurricane. In the height of the storm, the Master decides to release some cargo, since the ship’s violent sway endangered her stability. Following the jettison, and having suffered some damage, the \textit{Dimple} sails to a port of refuge as she needs some necessary repairs for the safe continuation of the voyage.

Having completed necessary repairs the \textit{Dimple} continues on her voyage to Singapore, but before she reaches her destination, she grounds and is lost with all her cargo.

Consider the above scenario, addressing in particular the following issues:

a) the ship’s Master was not an agent of the cargo owners. Did he have authority to jettison cargo?
b) following the jettison of cargo, and in order to legitimise his action, does the Master need the approval/ratification of anyone, e.g. shipowner, cargo owners, or charterers?
c) could the \textit{Dimple’s} owners and/or cargo owners maintain a claim for general average contribution, for the jettisoned cargo and the ship’s extraordinary repair expenses?
6. Bloggs enters into a contract with a carrier, X-Ships Ltd., for the carriage of his goods from London to Singapore. A bill of lading is issued to Bloggs in London. Bloggs transfers by endorsement the bill of lading to Adam. Although not mentioned in the bill of lading, the goods were actually carried on the ship’s deck, and on her way to Singapore the ship encountered heavy weather and some of the goods suffered damage.

Discuss and consider the position of the three parties with respect to the Hague-Visby Rules.

7. Discuss the advantages and disadvantages associated with arbitration outside the court system.

8. It is frequently said that equitable estoppel ‘is a shield rather than a spear’. Explain how this legal doctrine may in practice apply to the law of contract. Use appropriate case law and examples in your answer.