



**THE NATIONAL UNIVERSITY OF ADVANCED
LEGAL STUDIES, KOCHI**



**THE 6TH NUALS INTERNATIONAL MARITIME LAW
ARBITRATION COMPETITION 2019**

FIRST SET OF CLARIFICATIONS



CLARIFICATIONS

1. How is Jurisdiction an issue since the Jurisdiction clause is quite clear with no dispute at all?

The charterers are said to have disputed the agreement and the arbitration clause as being null and void, and an inoperative document as being manipulated by the Owners. The Charterers claimed that they had never agreed for adjudication of disputes at a foreign land.
2. There are factual discrepancies in the moot proposition. The year in the dates in paragraph no. 6 and 7 seem incorrect. In the fact-sheet paragraph 5 it is mentioned that 4 invoices were sent but the details of only three are provided. Can a clarity with regard to it be provided?

The correct date in paragraph 6 on page 2 of the Case Study is 21/09/2017. The correct date in paragraph 7 on page 2 of the Case Study is 03/02/2018. There are only 3 invoices.
3. With regard to Contention B, will the Indian customs laws be used or referred to for the same?

Yes, since the vessel has to be used in Indian waters. Clearances from the Indian authorities will have to be obtained.
4. Is the 'bunker on hire/off hire sounding' the 'Bunker Survey report' mentioned in box 19(i)? If not, where is the bunker survey report?

Pages 21, 22 & 23 form part of the report.
5. At 1200 hours, the Vessel resumed steaming up and down at Pipavav location with M/V. MARINE FORTUNE in tow, until 21st April at 1515 hours, when the Vessel was instructed to cease towing and to drop anchor. Kindly specify as to for what purpose did the Vessel remain at Pipavav Port till 21st April. The reason as to which the Vessel did not start off for Ajman Port immediately after completion of tugging is unclear.

The vessel was under hire and thus would proceed only in accordance with instructions from the Charterer. Unless the charterers give the go-ahead, the vessel will remain where it is.
6. The Vessel remained at anchor at M/V. MARINE FORTUNE location awaiting instructions from 21st April until 5th May 2016, during which period, on two occasions, strong currents caused the Vessel to drag her anchor. At 2100 hours on 5th May 2016, instructions were received from Charterers for the Vessel to return to Ajman. What are the details regarding the communication between the parties during this period?



The vessel was under hire and thus would proceed only in accordance with instructions from the Charterer. Unless the charterers give the go-ahead, the vessel will remain where it is. *“At 2100 hours on 5th May 2016, instructions were received from Charterers for the Vessel to return to Ajman.”* The pertinent communications between the owners and charterers are provided.

7. Are the issues given in the factsheet absolute and rigid or can they be merged and presented in a way which will aid the participants with their oral submissions?

No, the case study is open to interpretation. However, do ensure that there is logic and sequence in the oral submissions.

8. The invoices from 8-04-2016 to 23-04-2016 were not being given.

Since the invoice is not present and an amount is not added towards the final claim, it is assumed to have been paid by the charterer.

9. JKL contacted ABC Ltd. at 12:34 and the charter period starts from 12P.M. Is the charter period correct?

The Owners were contacted on 07/04/2016 and the tug was arranged. It was thus on-hire since 1200 hours on 08/04/2016. Thus the 1st line of the Case Study, page 1, paragraph 1, is corrected to “On 07th April, 2016, the Charterers..”

10. What is the time at which the vessel was delivered to the agent of the charterer on 8th April '16? As the time mentioned is 12:00 hrs whereas the charterers contacted the owners at 12:34 hrs.

Refer to Clarification Number 9.

11. “The owners place the charterers a notice through their lawyers on 28-07-2018 barring which the owners would have to invoke the arbitration clause.....Lastly, in February 2019, charterers filed a suit seeking declaration, damages before Civil Court at Delhi.” After looking at the timeline, is there a discrepancy in the same? Further what is the exact date on which the Charterers filed a civil suit in Delhi?

The owners kept sending notices requesting payment, but finally were constrained to initiate legal proceedings. The exact date of filing civil suit is not required. It is assumed that it was done after the notices were sent. Further, refer to Clarification Number 2.

12. On page 6 of the case study, it talks about Ship Outward Clearance, which says that the clearance of the vessel is going to UAE. So, is the ship clearance only for UAE territories and not for India or for both?

Correction on page 6 – Going to: India.



13. On page 3 of the case study the document for Insurance is dated as “14/04/15”. Is that date for the document correct?

The date of the document is correct. The insurance was taken out on 14/04/2015 for an insurance for the period of 10/06/2015 to 10/06/2016.

14. What was the exact purpose of hiring M/V OCEAN CRYSTAL-XVI?

It's a tug. It helps move rigs from one area to another.

15. What is meant by the phrase “steaming up and down” given in the fact sheet?

Just moving up and down the area where the rig is, instead of staying idle or moving with the current.

16. Did the Charterers or the boat incur any losses or suffer damages on account of dragging of anchor two times as mentioned in the fact sheet?

The anchor dragging happens when the water current/winds are strong enough to move a vessel even when it is anchored. In this particular instance, no damage was suffered to the tug.

17. Were all other clearances mandated under law and general practice of marine law available on board of the rig and the vessel at all times of the voyage, from beginning till the end?

Please go through the charter party and find out who is supposed to obtain clearances. It forms part of the Case Study.

18. Were all the invoices issued in one go? Further, did the Charterers dispute the amount of the invoices when they were issued by the Owners initially?

The invoices were issued on the dates provided on them. If no objections are provided in the case study, then there are none. The case study is open to interpretation. However, refrain from making baseless facts.

19. Did the Owners have any role in issuing instructions to the Master?

Not during the period when the vessel is on hire.

20. Did the Charterers sign all parts of the Charter Party Agreement including the arbitration clause expressly or impliedly?

Yes.

21. Have the Charterers disputed the whole agreement/ or the arbitration clause/ or both?



The case study is open to interpretation.

22. Did the parties appoint an independent surveyor and if yes, then was the vessel fit according to the report?

The vessel was physically fit.

23. Were the proper documents required to enter and leave Pipavav Port present on the vessel? (As there is no given document related to Pipavav Port i.e. Inward or Outward Clearance)

The case study is open to interpretation. Facts are left open-ended at some points so as to not make the case study one-sided.

24. Was the Vessel authorised to be at Jafarabad Port as mentioned in the deck log?

Yes. Again, the case study is open to interpretation. The facts are left open-ended at some points for the express reason to not make the problem one-sided.

25. What is NDA Certificate and is Tug agreement same as Charter Party? Please Explain the mail Dated 9th April 2016 sent at 10:32 A.M.

Yes, the 'tug agreement' mentioned in the email is the Charter party. NDA is the clearance obtained from the UAE port before sailing out.

26. The Proposition talks about 4 invoices but the annexures contain only 3 invoices. Can we get the details of the 4th Invoice?

Refer to Clarification Numbers 2 and 8.

27. What is the forum before which the matter is being tried or the case is argued before?

A civil suit is initiated in Delhi by the Charterers disputing the agreement and the arbitration clause as being null and void, and an inoperative document as being manipulated by the Owners. However, that suit remains pending, while the forum for this matter is an Arbitral Tribunal in accordance with the Charter Party. In this context, the following modifications shall be affected in the case study as well as Issues.

- Case Study, page 2, paragraph 9 shall be changed to - "Thereafter, in February 2019, the Charterers filed a suit seeking declaration, injunction, and damages before a civil court at Delhi, claiming that the Owners were liable to pay damages on account of deficiency of service. The Charterers disputed the agreement and the arbitration clause as being null and void, and an inoperative document as being manipulated by the Owners. The Charterers claimed that they



had never agreed for adjudication of disputes at a foreign land. However, reserving their right to move their case before a civil authority, the Charterers also filed a counter /reply submissions on 10th February 2019 before the arbitral tribunal, having appointed an arbitrator of their own.”

- Issue ‘E’ on page 2 shall be changed to – “Can the Charterers file a counter/ reply submissions before the arbitral tribunal, while simultaneously raising a claim for damages before a civil court?”

28. What is the Second Tug boat, mentioned in only one mail dated 21st April 2016?

There is only one tug boat. Ignore any mention of another.

29. What is the date when the civil suit got initiated by the charterers?

Refer to Clarification Number 11.

30. The communication seems to be incomplete as the reply to the notice of appointing arbitrator cannot be found anywhere. Please clarify that if possible.

Refer to Clarification Number 27.

31. The proposition mentions about the agreement being manipulated by the owners as well as null and void and inoperative. If possible, please clarify more on these points.

The case study is open to interpretation. The facts are left open-ended at some points for the express reason to not make the problem one-sided.
