



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



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

SECOND SET OF CLARIFICATIONS



CLARIFICATIONS

1. Do we have to calculate amount that charterer find payable, for the purpose of arbitration?
Not necessarily. You could use the sum of the amounts given in the invoices, or just use the amount claimed in the legal notices sent by the owners.

2. Is it obvious or implied that responsibility to take permissions for fulfilling the purpose of Charter party is that of Owner/Charterer?
As is the norm with any agreement, inclusive of charter parties, the extent of the rights and obligations of the contracting parties are set out in the document itself.

3. Para. 2 of factsheet states that ‘...but at 0305 hours, tow line broke’. While in deck log, time mentioned is 0358. Does that need correction?
Yes, the correction shall be made to the 2nd paragraph of the factsheet to change the time to ‘0358’.

4. When did first communication between charterer and owner took place?
Please peruse the email communications as well as the factsheet provided.

5. Page 6 of case study states that ‘Vessel was sailing as per UAE law/rules’; is it possible to elaborate on the same.
The vessel was berthed in Ajman, UAE. Thus, when it leaves the port, it shall comply with the laws, rules and regulations of the country. Once it reaches the destination port, it’ll obviously comply with their laws/rules.

6. As mentioned in log, separately, ‘Tow line’ and ‘broken wire’ have same meaning, if not what is the difference?
Tow line/wire refer to the same thing. The rope/wire/line used to tow the rig from one place to another.

7. On 5/5/16, at 1503-1530, deck log states that ‘port clearance was given’, could you please elaborate as in what clearances were given, or by which authorities and who was responsible to issue clearances from authorized body?
The location as provided in the deck log is Jafarabad, India, thus the authorities are the appropriate Indian statutory authorities who shall give the required clearances. In this case as seen by later entries in the deck log, it is clearance to leave for Ajman. As for the issue of who bears responsibility to obtain the required clearances, that should be inferred or understood from the charter party.



8. Case study talks about under water inspection, could you please mention that under-water-inspection is needed to be performed at which location?

The rig MARINE FORTUNE is used to conduct underwater inspection of sea bed cables, oil pipelines etc. The charter party was in regards to hiring a vessel to tow the rig to different locations near Pipavav and Jafarabad for such use.

9. In alignment to Clause 6 of Charter party, could you please elaborate on term or state meaning of term 'Area of Operation'.

Area of Operations means the places where the vessel may be used. Please peruse box 16 of the Charter party.

10. Why was the vessel not working when it was idle at the Pipavav port and what was the reason behind the same?

Once a vessel is under hire it shall be used under instructions of the Charterers. Unless the Master receives instructions from the Charterers, they are required to be on stand-by.

11. Under Paragraph 9 of the fact sheet, it is stated that "The Charterers claimed that they had never agreed for adjudication of disputes at a foreign land". Here, does "foreign land" mean the seat of the arbitration or venue of arbitration?

Seat of the arbitration or venue of arbitration are the same. And the foreign land does mean the seat of arbitration.

12. Which substantial statutory law shall be applicable from the Charterer's side as they have alleged that the agreement is null and void? Under which provision of a Statute or an Act did the Charterers approach the Delhi High Court?

The Charterers have chosen to allege that they never agreed to the arbitration clause even though the same is part of the charterparty. They chose to challenge the same before an Indian Court of law under Indian civil law. Whether the court proceeding has any bearing on the arbitration is for the Charterers side to establish.

13. Is Steaming up and down a defect of the vessel?

No. Steaming up and down means that the vessel kept moving.



14. In page 50 of the case study... Companies Act 1956 is mentioned.... Are the teams required to refer the act of 2013 or 1956?
Page 50 is part of the Charterers reply notice and only mentions Companies Act. That part is left open-ended on purpose, for use of the participants.
15. Whether insurance act needs to be referred?
Marine insurance law shall be applicable.
16. Will any law related to UAE needs to be referred?
The arbitration shall be conducted in accordance with the arbitration clause in the time charter party.
17. For arbitration procedures, can we restrict our arguments to LMAA procedures only?
The arbitration shall be conducted in accordance with the arbitration clause in the time charter party.
18. Whether the late payment Commercial Debts Act 1998 or 2018 is to be referred?
If the participants can find a way to incorporate and justify the same in their arguments, they can use whatever means they find necessary.
19. Which are the two invoices the charterers have already paid partially?
Please refer to page 20 of the case study.
20. Whether the vessel is ISPS complied?
If the participants can find a way to incorporate and justify the same in their arguments, they can use whatever means they find necessary.
21. According to the deck log on 5.5.2016 at Jafarabad, time 1503-1530, the port clearance was granted?
The location as provided in the deck log is Jafarabad, India, thus the authorities are the appropriate Indian statutory authorities who shall give the required clearances. In this case as seen by later entries in the deck log, it is clearance to leave for Ajman. As for the issue of who bears responsibility to obtain the required clearances, that should be inferred or understood from the charter party.
22. The date of redelivery to the owners- 5th May or 12th May?
12th May as is stated in the deck log.



23. Was the NDA certificate issued by the owners as requested by the charterers?

Please make use of all vaguely worded facts to support contentions you wish to raise. Go through the moot scenario to find if there is any mention of the same.

24. Did the owner initiate winding up proceedings?

No.

25. Are the Hague/Visby Rules applicable in the present case?

Please make use of all vaguely worded facts to support contentions you wish to raise. The arbitration shall be conducted in accordance with the various clauses in the time charter party.

26. Was the Charter Party negotiable by charterers or a standard formatted agreement that was put forth by the owners?

The negotiations took place in regards to the vessel which was to be hired, as seen in the email communications. The charter party is based on the BIMCO SUPPLYTIME 2005 format, with added clauses (as well as struck off clauses).

27. While the vessel remained at the anchor, did the master initiate a method to receive instructions from the charterers?

The instructions are provided either via email or radio/phone channels. The Charterers initiate communication as soon as the vessel is on-hire.

28. Was the mode of receiving instructions functioning properly from 21st April until 5th May?

Unless states otherwise, then yes. However, unless specifically mentioned or denied, please make use of all vaguely worded facts to support contentions you wish to raise. If you can find a supportive case law or fact which shows otherwise make use of the same to establish your case.

29. What caused the tow line breakage?

That part is left open-ended on purpose, for use of the participants. Unless specifically mentioned or denied, please make use of all vaguely worded facts to support contentions you wish to raise.

30. Why was the vessel instructed to cease towing on 21st April at 1515 hours?

As stated in the deck logs, the vessel chose to drop anchor while awaiting further instructions.



31. Were the owners informed by the charterers before extending the hire period?
Yes.
32. On page 18, what does “being cost of complements given to customs in India” refer to?
Excess unspecified charges that were paid to Indian customs officers.
33. Box No. 22 (iii) of Charter Party agreement reads as follows: “(iii) State to whom to be issued if addressee other than stated in Box 3. As per Box No. 2” Shouldn’t it be “As per Box No. 3”?
Yes it should be “As per Box No.3”
34. According to the paragraph 9 of the Factsheet, Charterers have also filed a counter/reply. Have the Charterers filed a counterclaim or simply a reply before the arbitral tribunal?
It is for the participants to file what they think is the most beneficial to their clients (the Charterers).
35. Since there are only three invoices, paragraph 5 of the Factsheet would stand modified. Kindly inform the manner in which it would appear now.
This was clarified in the 1st set. The invoices provided in the moot scenario are the only ones that need be considered.
36. Pg 41 Case Study, Email dt. 13 May 2016 10:55 AM provides “Please find attached off-hire ROB Report...” Please provide for the same if not already provided.
Onboard Vessel Quantity Surveys (ROB) provided as part of the moot scenario pages 21 – 23.
37. Pg 40 Case Study, Email dt. May 05, 2016 8:00 PM, the email states “Our agent did already handover PC to you tug master, “Is "PC” a typographical error for “CP””.
Yes.
38. The Owners sent an email from ‘ABC’ to the Charterers at yadavY120@yahoo.in on the 9th of April, 2016 (given on page number 38 of the Case Study), wherein they attached a copy of BIMCO 'St 2005' CP for the Charterers to sign/stamp and forward a copy back through email. The Owners also requested the Charterers in the same email to send a hard copy of the same via courier later. However, the Case Study is silent on whether the Charterers signed/stamped the CP and sent it back via email or not. Did the Charterers send an acknowledgement of the said email at all?



That part is left open-ended on purpose, for use of the participants. Unless specifically mentioned or denied, please make use of all vaguely worded facts to support contentions you wish to raise.

Go through the moot scenario to find any mention of the Charterparty being signed and returned to the Owners or their agents.
