



Moot  
COURT SOCIETY



# The XVI NLSTIAM

National Law School Trilegal International Arbitration Moot

CLARIFICATIONS

18<sup>TH</sup> – 21<sup>TH</sup> MAY, 2023

# XVI NLSTIAM CLARIFICATIONS RECEIVED

1. When was the Speculative Contracts Act enacted in 2014 and does it have retrospective effect?

No clarification required.

2. Is there any other relevant paragraph for insurance contracts in the Act?

No.

3. Insurance contracts – except as excluded therein means what? Is there an exclusion clause?

No clarification required.

4. In Para 14 of the moot proposition, 265 million is the amount of the entire Loss or just Losses from Aug 2018–Nov 2019? Does this also include cost of reconstruction?

It does not include the cost of construction.

5. How effective were the backup systems and how did they function?

Irrelevant.

6. Was a survey/ inspection conducted by either insurer after the Hurricane to survey the damages and whether all precautions were taken by Adornia? If yes, what were the findings?

Irrelevant.

7. What did the ancillary installations which were also destroyed consist of?

Irrelevant.

8. Please clarify whether Adornia is the claimant and Exchequer the respondent?

Yes.

9. On what basis did Adornia's counsel advise Adornia that despite the 2014 Act, insurance contracts would not be void in the Marshall Islands?

Irrelevant.

10. Does Marshall Islands as mentioned in the case study correspond to the actual geographical Marshall Islands located in Oceania and are the laws pari-materia to Marshall Islands?

No.

11. Whether the Marshall Law Islands is a real country or not? If yes, can the team bring in other laws of the Marshall Law Islands?

No.

12. Whether the properties of Exchequer are located in India?

Irrelevant.

13. What are the provisions of the agreement of confidentiality between Syndicate 41 and Exchequer?

Irrelevant.

14. What are the contents of the Syndicate 41 Arbitral Award?

Irrelevant.

15. Were the insurers (Syndicate 41 and Exchequer Insurance Pvt. Ltd.) aware of the Speculative Contracts (Restrictions) Act, 2014?

Irrelevant.

16. Are the laws of Marshall Islands pari materia to the laws of any country in the world?

No, but it is a common law jurisdiction.

17. It is given in paragraph 5 of the moot problem that Speculative Contracts (Restrictions) Act, 2014 was a recent Legislation. Was there a previous Legislation in respect of the same governing the validity of insurance contracts in Marshall Islands?

Irrelevant.

18. What is meant by on balance in the third sentence of paragraph 6 of the moot problem? Was there any reasoning given by the Lawyers for the same?

On balance means more likely than not. There was, as one would expect, extensive reasoning in support of the conclusions to which Adornia's Lawyers came, but that is not reproduced or summarised in the moot proposition because it is not relevant.

19. What is the date of enforcement of the Speculative Contracts (Restrictions) Act, 2014? Is there any other relevant paragraph for insurance contracts in the Act?

Irrelevant.

20. What was the exact date of the judgement of the Supreme Court in the case of Zebra Plastics Ltd. as given in paragraph 24 of the moot problem?

Irrelevant.

21. How is Exchequer Insurance Ltd. the Claimant (Annexure 5) when the application for lifting of the stay was filed by Adornia Ltd.?

Adornia is the Claimant, Exchequer is the Respondent (the statement to the contrary in the title page is a typographical error).

22. What is the scope of generally accepted view in the third line of paragraph 24?

Irrelevant.



23. Was there any other judgement of any other court of Marshall Islands regarding the validity of Insurance Contracts under the Speculative Contracts (Restrictions) Act, 2014?

Irrelevant.

24. What was the industry practice regarding insurance contracts in Marshall Islands? Irrelevant Were the companies actively entering into insurance contracts despite the 2014 Act?

Irrelevant.

25. Did Exchequer Insurance Pvt Ltd enter into any other insurance contract with an entity incorporated in Marshall Islands?

Irrelevant.

26. Did the Supreme Court mention anything about the validity of insurance contracts entered into between parties prior to the date of the 2014 judgement?

Irrelevant.

27. Is Marshall Islands a signatory to Rome I Regulation and/or the Hague Convention Choice of Court Agreements?

No.

28. What is the division of Loss of profit as mentioned in paragraph 14 of the moot problem?

Irrelevant.

29. When did Adornia islands officially begin operations?

Irrelevant.

30. When did Adornia serve notices of Arbitration to the Syndicate 41 Insurers and the Exchequer?

Irrelevant.

31. When did Adornia apply to the Tribunal under Rule 20.5 for permission to amend its pleadings in the Exchequer arbitration to advance a different case?

Irrelevant.

32. Whether the judgement Zebra Plastics Ltd stated in Para 24 have a retrospective effect or not from the enactment of the Law in 2014?

No clarification required.

33. Whether Adornia has made a public disclosure of the findings of the tribunals along with the award as stated in Para 21?

No clarification required.

34. When was the first warning regarding the approaching hurricane issued?

Irrelevant.

35. Whether Claimant can be considered as a party to the Syndicate 41's arbitration on the basis that Respondent did not object to Claimant sitting in arbitration proceedings of Syndicate & Adornia, as stated in Para 19?

No clarification required.

36. Whether Claimant also received the findings/reasons of the tribunal with the copy of the award as stated in Para 21?

No clarification required.

37. Is there any other express contract between Syndicate 41 and Respondents (Adornia) implying the terms of confidentiality?

No.

38. Whether consent was taken from Syndicate before public disclosure of the award by Respondents (Adornia)? If so, did Syndicate 41 consent to publication expressly or impliedly?

No.

39. Does the Arbitration Act, 1996 given on Page 2 of the Moot Problem refer to the Arbitration Act, 1996 of the UK, or the Arbitration and Conciliation Act, 1996 of India or some other Legislation?

It refers to the UK Arbitration Act 1996.

40. Where was PHL incorporated?

Irrelevant.

41. How much stake does PHL have in Adornia? Does Adornia have any other shareholders?

Irrelevant.

42. Have the parties agreed on a Lex Fori to enforce the arbitral award?

Irrelevant.

43. What was the reason behind the generally accepted view (Paragraph 29, Moot Proposition) about section 9 of the 2014 Act?

Irrelevant.

44. As per paragraph 74 of the Moot Proposition, 265 Million is the cost of construction along with profit or solely profit? What is the basis for calculation of 265 Million?

It is a reference to Lost profit alone.

45. What is the exception mentioned in the paragraph 6 and 7 of the Moot Proposition and is it the same as mentioned in the insurance clauses of Syndicate 41 and Exchequer contract?

Irrelevant.

46. The issues 3 and 4 are to be dealt individually or are they to be dealt with reference to the conclusion of the first two issues i.e., if the contract is proven void, then only the issue 3 is to be solved and if proven not void, only issue 4 is to be solved with the perspective of the claimants and respondents? Or are we required to deal with Issue 3 and 4, both irrespective of the answer to Issue 2?

No clarification required.

47. On what date were the warnings regarding the intensity of hurricane Indra issued?

Irrelevant.

48. For how many weeks did parts of Mumbai and the outskirts of Mumbai become inhabitable because of the hurricane Indra?

Irrelevant.

49. On what date did the government order compulsory evacuation of all affected areas because of Hurricane Indra?

No clarification required.

50. On what date did the government enforce strict laws prohibiting construction or other activity in affected areas including Adornia Island?

No clarification required.

51. Which are the Indian authorities being referred to in Paragraph 11 of the Case Study?

Irrelevant.

52. On what date did the state government initially prohibit the entry of visitors to the area around Adornia Island?

No clarification required.



53. On what date did the state government start strictly regulating the entry of visitors to the area around Adornia Island?

No clarification required.

54. Which Marshall Islands Law required disclosure of matters like award made and amount awarded in arbitration?

Irrelevant.

55. As it is mentioned in the case study that 265 million was the loss of profits and the total cover was 300 million pounds, what is the total cost breakup that Syndicate 41 and Exchequer were willing to pay for both the claims (construction costs and loss of profits)?

No clarification required.

56. Who evacuated people from Adornia Island (Adornia Ltd. or the government), after which Adornia Island was closed to the public on 15th August 2018?

No clarification required.

57. What exclusions are being referred to in Clause 11 (Insuring Clause) of Annexure 3 as the clause mentions except as excluded herein?

Irrelevant.

58. What exclusions are being referred to in Clause 14 (Insuring Clause) of Annexure 2 as the clause mentions except as excluded herein?

Irrelevant.

59. What regulatory approvals did Adornia obtain before it became operational in 2015 as referred to in Paragraph 3 of the Case Study?

Irrelevant.

60. On what date did the Speculative Contracts (Restrictions) Act 2014 come into force?

Irrelevant.

61. On what date was Adornia Ltd. incorporated as a subsidiary of PHL in the Marshall Islands?

Irrelevant.

62. What is the difference between being physically and infrastructurally connected as referred to in Paragraph 4 of the case study?

Irrelevant.

63. In what capacity did Ms. Karnik personally intervene to persuade Exchequer Insurance Private Ltd. to enter into an insurance contract with Adornia Ltd.?

Irrelevant.

64. What is the status with respect to the enforcement of the award given in favour of Adornia Ltd. in the already concluded Syndicate 41 arbitration?

No clarification required.

65. Did Adornia publicly disclose in whose favor the award was made, under the Marshall Islands Law requiring compulsory disclosure?

No clarification required (the answer to this question is clear from para 21 of the moot proposition).

66. Did BLT LLP inform Syndicate 41 before sharing the copy of the Syndicate 41 award?

Irrelevant.

67. What degree of control did PHL exercise on Adornia?

Irrelevant.

68. What was the date of recording Devika Ghosh's witness statement?

Irrelevant.

69. Was there any performance by Exchequer as per the terms of the contract, before it was declared void? If yes, were any expenses incurred by Exchequer in the performance of its contract with Adornia?

Irrelevant.

70. Where were the contracts signed? Where was the contract formed?

Irrelevant.

71. What was the amount of reconstruction and repair of the property apart from Loss of profit from government restrictions?

Irrelevant.

72. How was Adornia functioning in India? Registered as a Foreign Company?

Irrelevant.

73. How was PHL and Adornia functioning in India as an Listed Entity or Unlisted Entity?

Irrelevant.

74. How was Taxation on Insurance Contracts entered by Adornia covered in the present case?

Irrelevant.

75. When was the PHL Board consulted on the rebuilding of the Adornia Island?

Irrelevant.

76. Are Syndicate 41 Insurers and Exchequer related party in the case? How are related party transactions regulated in the present case?

Irrelevant.

77. How are syndicate H1 arbitration and exchequer arbitration independent of each other?

Irrelevant.

78. What was the fee of the solicitors and counsels accepted by insurers?

Irrelevant.

79. The decisions of the Arbitral Tribunal is based on SIAC Rules or UK Common Laws?

No clarification required.

80. Does the Marshall Island Supreme Court Judgment affect the Arbitral Tribunal Proceedings of Exchequer on a retrospective basis?

No clarification required.

81. How does representation of Syndicate H1 and Exchequer by the same Legal team doesn't attract conflict of interest?

Irrelevant.

82. The first and second issue raised mention identification and application of conflict of Laws rules. Here what does the conflict of Laws refers to?

No clarification required.

A. the conflict between the applicability of the Marshall Legislation that is Speculative Contracts Act enacted by the Marshall Island Legislature, and the governing Law of the policy that is India, or

B. the conflict between the Legislation and the subsequent judgement by the Marshall Island Supreme Court.

83. Whether the exception mentioned in para 6 and 7 refers to the insurance cover provided by Exchequer being a single insurer in contrast to the Syndicate H1 being a group of insurers?



Irrelevant.

84. With reference to Para 24 pleading 2, the claimants have claimed 75 million pounds when the contract is not void and not the whole amount covered under the Contract i.e 50 Million pound cover? Is there a particular reason?

No clarification required.

85. We refer to Para 6, Line 3- Adornia was on balance entitled to enter into insurance\_\_\_\_\_. Can you specify what advice was given by the counsels and why did the Legal consultants think that the contract was valid?

No clarification (beyond the response above to a similar question).

86. What type of damages is covered under Speculative Contract Act? (Artificial or Natural ) wrt. Annexure 1.

Irrelevant.

87. Who is referred to as entity in paragraph number 5?

No clarification required.

88. Whether Ms. Priti Karnik was chairman of both Adornia and PHL? ( Para 7 )

Irrelevant.

89. What type of damages will be indemnified under contract of Insurance (wrt. Annexure 2 and Annexure 3 )

No clarification required.

90. Whether SC of Marshal Island is in Pari Materia with Indian Supreme court.

No.

91. Is Marshall Island part of India?

No.

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