

**Ist INTERNATIONAL MOOT COURT
COMPETITION, 2021**

From 26th – 28th November 2021

His Highness The Maharajas Government Law College, Park Avenue
Road, Ernakulam, Kerala, India 682011

MOOT PROBLEM

Octa Ltd..... Claimants.

Versus.

Owners & parties interested in MV Moonlight.....Respondents

Kingdom of AEU is a country in Western Asia located at the eastern end of the Arabian Peninsula. It borders Kman and Audi Arabia, and has maritime borders in the Persian Gulf with Qatar and Iran. The AEU's oil and natural gas reserves are the sixth- and seventh-largest in the world, respectively. The AEU's economy is the most diversified of all the members of the Gulf Cooperation Council.

The Claimant is a company named “**Octa Ltd**” incorporated under the laws of Kingdom of AEU, engaged in business of purchase/distribution/supply of various chemical compounds and solvents. For the said purpose, Claimant charters vessels for transportation of chemical compounds to different ports in Indo. In this case, Claimant is the charterer of the Vessel named “**Moonlight**” a sea going vessel flying the flag of Indo. The claimant is also the consignee in the Bill of lading issued on behalf of the vessel. The Vessel is currently lying at Deendayal port within Indo's territorial water and within Admiralty jurisdiction of this honorable court.

The Claimant time-chartered the Vessel for the purpose of transportation of cargo from Kingdom of AEU to West Coast of Indo. A clean fixture was confirmed between the Claimant and Owner for the Vessel on 19 May 2021 through brokers Green and Black Middle East. Pursuant to the confirmation of clean fixture dated 19 May 2021, the Claimant directed the Vessel to sail to Fujirah Port at AEU for bunkering. The Charter party and clean fixture provided that the vessel should sail only between safe ports and shall not enter war zones. However, the Claimant after completion of bunkering instructed the vessel to proceed to BIK, Iran for loading cargo for voyage to West Coast of Indo. There is political unrest at Iran and the military has taken over control of ports owing to which BIK is regarded as unsafe. The Vessel loaded cargo at BIK, Iran and three bills of lading for the cargo were issued:

- a. Bill of lading OTV2020- METH09 dated 2 July 2021 for 1,900.335 MT of Methanol (bulk) from BIK, Lran to Mubai, Indo.
- b. Bill of lading OTV2020- AA09 dated 3 July 2021 for 4,710.670 MT of Acetic Acid (bulk) from BIK, Lran to Mubai, Indo.
- c. Bill of lading OTV2020- OX09 dated 28 June 2021 for 2,715.701 MT of Ortho Xylene (bulk) from BIK, Lran to Mubai, Indo.

The value of the cargo shipped on the Vessel is approximately .USD 3,160,900.

On 8 July 2021, based on the update received from Owner, the brokers informed the Claimant that the Vessel is expected to arrive at Mubai for discharge on 11 July, 2021 at 2100 hours.

On 10 July 2021, the Claimant received an email from Owner informing that the Vessel experienced bad weather and has listed 35 degrees to starboard side and that the master of the Vessel has jettisoned around 500 MT – 600 MT cargo of methanol.

On 11 July 2021, the Claimant provided details of surveyors and loss adjusters appointed by the Claimants's cargo insurance company and requested Owner to share all the details of the incident with them.

When the vessel arrived at the port, the claimants requested for arranging a survey to ascertain the nature of loss suffered. However, the claimants were permitted to board the vessel and carry out necessary survey only after lapse of few days. In the report it was found that the cargo was short delivered to the extent of 650 MT.

In the meanwhile, the claimants apprehending loss of cargo, moved the court and obtained an arrest of the vessel, which was later released upon the owner furnishing security. Thereafter when the claimants demanded release of cargo, the owners refused to discharge the cargo stating that they are bound to provide General Average Security for the GA already declared by the ship owners. Thus, the claimant's cargo insurers provided security for the GA and the cargo was released.

The charter party terms, among other things, provides for arbitration in London for resolving all disputes between the claimants/ charterers and owners. The charter party was entered in NYPE form. Similarly, as per York Antwerp Rules, any dispute regarding General Average has to be settled in arbitration at Lloyds London. The claimants content that the ship was unseaworthy and therefore the demand for GA is unsustainable. On the other hand, owners maintain that once GA is declared, the cargo owners are bound to provide their contribution as determined by the Average Adjuster.

After ascertaining the loss of cargo which was insured, the cargo insured settled the cargo claim with the claimants and obtained a letter of subrogation. The cargo insurance obtained by the claimants is from a company which is included in the SDN List.

Issues raised before the Court.

- a. In view of the arbitration clause in the charter party, whether the exercise of admiralty jurisdiction by the court is valid or not?
- b. Is the declaration of General Average legally sustainable if the vessel is unseaworthy?
- c. Whether the court considering the issue is bound by Sanctions imposed by a third country?
- d. Since the claim for short delivery of cargo is raised before a court, where a counter-claim is also raised by the Owners, demanding GA contribution, whether the court can adjudicate on the rival claims considering the fact that the alleged damage occurred within its territorial waters?
- e. Does the provisions of the Arbitration Act exclude an action in rem from its purview as non-arbitrable?

The Teams shall argue for both the Petitioner and the Respondents

*** Laws of AEU is pari materia to the laws of UAE*

*** Laws of Indo is pari materia to the laws of India*

***Disclaimer:** This Hypothetical problem has been authored by Adv Hari Narayan LL.M (UK) +91 9847055008, Partner **United Maritime Law Chambers Mumbai:** 403, Tardeo AC Market, Mumbai 400034. T +91 22 4970 4208, **Cochin:** 702, 7th Floor, KHCCC, Marine Drive, Cochin 682031. T +91 484 4047308 F +91 484 4049375, **Kolkata:** Block-D, 2nd Floor, Mercantile Building, 9/12 Lalbazar Street, Kolkata 700001.T +91 98301 93031, **Chennai:** No:22/3, Poes Garden, Chennai 600086. T +91 44 48580311