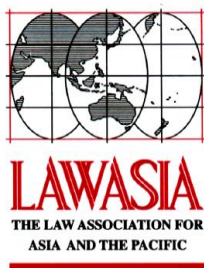




10th LAWASIA International Moot

FURTHER CLARIFICATIONS TO THE MOOT PROBLEM



FURTHER CLARIFICATIONS

PART I:- GENERAL

The Real World: Questions such as "*For the purposes of this moot problem, are Australia or Nepal signatories to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects?*" will not be answered because Australia, Malaysia & Nepal are REAL - not fictional countries - and each is or isn't - **as a matter of FACT**- a signatory to the Convention. Put another way: *For the purposes of this moot problem, the law that applies is the law which would apply if this was an actual legal dispute* - not a moot court competition.

Proper Law a/k/a Choice of Law: It is the responsibility of the advocates to convince the arbitral tribunal as to which law i.e. the law of which country or which Convention should apply. This determination as to the "proper law" [sometimes known as "choice of law"] is a very important element in most international commercial dispute [unless the parties have agreed as to which law shall apply ... **which they have not** in this Moot. The ultimate decision as to which law shall apply is quite likely to significantly affect the ultimate outcome of these proceedings.

PART II SPECIFIC CLARIFICATIONS

A) The Statue

Question:- Did the Chauni Museum loan, give, or sell the statue to the Tribhuvan University or was the statue merely on display in the University?

Answer:- *It was merely "on display" and both parties agreed orally that it would be returned if the Museum wanted it back or the University was unable to properly display it.*

Question:- Assuming the statue was insured (as provided for in the loan agreement), why is the Government of Nepal claiming damages from the Government of Malaysia instead of the appropriate insurer?

Answer:- *The government of Nepal is not covered by the insurance agreement and has no rights under it. The insurance only covers loss or damage to the statue while on loan; the insurer would not be obligated under the policy to pay the insured if it was required to return it to Nepal.*

B) The Parties

Question:- Was Dr. Smith contractually invited to give a speech in the Tribhuvan University?

Answer:- *No. There was no contract - written or oral - merely an invitation and an acceptance. Although there was no agreement, - written or verbal - Dr. Smith expected to receive a gift as he generally does when presenting lectures at other Asia-Pacific countries as is quite customary in such countries. He has frequently received a local artefact as a gift.*

Question:- Was there any correspondences between the Dean and/or/ the University and Smith after Smith left Nepal with the statue?

Answer:- *Yes. The Dean wrote to Dr. Smith thanking him for his visit to the University and expressing the hope that he would return again "very soon."*

Question:- When did the Australian National Museum examine the authenticity of the statue?

Answer:- *An "expert" on the staff examined before deciding to put on display.*

Question:- What is the duration of the loan between the Australian National Museum and the National Museum of Malaysia?

Answer:- *Two years - renewably by agreement of both parties.*

Question:- Was the statue ever officially registered with the regulating bodies of either Nepal or Australia?

Answer:- *Apparently not as no evidence has been submitted of any such registrations.*

Question:- Did the Dean had authority to give the statue to Dr. Smith?

Answer:- *It is not disputed that he had the authority to give a statue belonging to him or possibly one belonging to the Law Faculty to a visiting lecturer ... but he obviously did not have the authority to give away something that belonged to a third party without that party's permission.*

C) The Parties

Question:- Why is the Government of Nepal seeking damages from the Government of Malaysia, who is not a party to the arbitral agreement?

Answer:- *It is undisputed that the statue was damaged after it left Nepal, but "there is no reliable evidence showing **when, where or how it was damaged**. The parties have agreed to appoint an expert to assess the monetary value of the damages after ownership or custody of the statue has been resolved i.e. in a separate proceeding after this arbitration has been concluded.*

Question:- Is Nepal making a claim against Smith as part of these proceedings?

Answer:- *No. But it has indicated that it may do so in the future if it does not succeed in this proceeding.*

Question:- Were both the Australian National Museum and the National Museum of Malaysia aware of the export prohibition of Nepal?

Answer:- *Although the record does not indicate whether they were, it can reasonably be assumed that either the Director or a member of the senior staffs at both museums were or could have very easily been aware of them.*

Question:- Did the Australian National Museum and/or the National Museum of Malaysia seek any official documentation i.e., export certification, re the statue?

Answer:- *Apparently not! No copies of any such "documentation" has been submitted by the parties.*

Question:- Is Nepal seeking recovery of the statue from Australian National Museum or the National Museum (Malaysia)?

Answer:- *It is seeking return of the statue from whoever has current possession of it - in short: It wants it back!!!*

Question:- Was the statue discovered within Nepal's current geographical borders)?

Answer:- *Yes. It was reportedly discovered by Nepalese sheep herders who turned it over to local government officials. There is no documentation indicating how it found its way to the local museum/gallery.*

D) The Arbitration

Question:- Was the arbitration agreement in writing?

Answer:- *Yes. The parties do not dispute that it is valid and binding.*

Question:- Has the government of Nepal made any demands for the return of the statue through diplomatic channels?

Answer:- *No but it has not foreclosed doing so if this proceeding does not result in the prompt return of the statue.*

PART III ADDENDUM

Examples of Clarification Requests deemed inappropriate or irrelevant and therefore were not responded to by the author:

A) Whether, the UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS (1995) is applicable on the parties or if any of the Parties has signed it?

Which countries have actually signed or ratified the Convention is a matter of public record which teams should be able to find themselves. NB The countries are REAL not fictional as common in most moots. NB The application of the Convention may be an important legal issue to be addressed by all teams.

B) The question as to whether the statue was it "stolen" within the meaning of the Convention is not *necessarily dispositive* as Nepal is primarily seeking its return and compensation for any damages done to it. [There seems to be some ambiguity re whether Nepal asserts it was technically stolen; which is clear is that Nepal wants it returned.]