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# 6<sup>th</sup> LAWASIA International Moot

## CORRECTIONS AND CLARIFICATIONS TO THE MOOT PROBLEM

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# CORRECTIONS & CLARIFICATIONS

The following corrections and clarifications have been issued by the Author and have been agreed to by the LAWASIA Moot Standing Committee. They should be considered amended accordingly.

## CORRECTIONS

1. In paragraph 1, at page 10 should be read as “Rolga is a civil law jurisdiction; it generally applies UNIDROIT principles. It has recently enacted a law governing choice of law which is identical to Articles 3 and 4 of the European Community Regulation No 593/2008 on the law applicable to contractual obligations”.
2. In paragraph 2, at page 10 should be read as “Astoria is a common law country; it has adopted the American Law Institute Uniform Commercial Code; it also applies Article 6 of the U.S. Restatement (Second) of Conflict of Laws”.

## CLARIFICATIONS

### A. Questions dealing with the M/S Pinafore & her captain and crew:-

1. Is M/S PINAFORE a general cargo ship or was it specially designed for carrying produce?

*Reply:* It is a general purpose cargo ship, frequently used for carrying produce, including bananas. No information is available regarding whether any problems regarding excessive ripening of produce has occurred in the past.

### B. Questions dealing with the parties: -

1. Has M/S Pinafore been used as a carrier by RFE in the past?

*Reply:* RFE has shipped bananas and other produce on the M/S Pinafore on numerous occasions but uses several other shippers as well.

2. Is John Sparrow a regular employee of Astoria?

*Reply:* No, he is an *independent* Professional Maritime Surveyor. [Professional Maritime Surveyors are often hired by marine insurance companies to give expert opinions on loss and damage to cargo.]. The impartiality and accuracy of his report has not been questioned by the parties.

3. Was the cargo of bananas insured for damage or lost during the voyage?

*Reply:* No.

4. Were there any other instructions specified in the bill of lading other than the special instructions or explanation or further requirement that complement the special instructions?

*Reply:* The only special instruction on the Bill of Lading was the single sentence reproduced on the last line of page 2 of the Problem.

5. Did Mr. Vogel return the signed Bill of Sale by post or electronically?

*Reply:* Electronically as an attachment.

6. Was there an *entire agreement clause* in the Bill of Sale?

*Reply:* No

7. Was there a separate "*Applicable Law*" clause in the Bill of Sale?

*Reply:* No

8. Did RFE instruct the Captain to pack the Bananas in the two different ways as described in the Surveyor's Report?

*Reply:* No

9. Is any information available regarding Astoria's contracts with its customers?

*Reply:* No

### **C. Questions dealing with the bananas**

1. Did John Sparrow's report indicating that the bananas were properly packed in cartons specially designed for the bananas refer to the bananas in both the #1 hold and #2 hold?

*Reply:* Yes, his report indicates that the problem was not with the cartons or boxes in which the bananas were packed but how the bananas were stored in the holds of the ship.

2. Of the 30% of the bananas that were ripe or ripening what is the percentage that can be attributed to each hold?

*Reply:* Mr. Sparrow's report did not indicate the percentage by hold but it can be reasonably assumed that the degree of ripening was substantially greater in the No. 2 hold than in the #1 hold.

3. Are the testing standards used to determine the extent of ripening based on the Astorian domestic regulations or are they international trade standards?

*Reply:* They are generally accepted "standards of the trade." The degree of ripening reported by Mr. Sparrow is not disputed by the parties.

### **D. Questions dealing with the Arbitration**

1. Did Lenore Rocco acknowledge or accept the amended clause sent by Mr. Vogel either verbally or in writing?

*Reply:* No

2. Was RFE explicitly informed that an arbitrator would be appointed on its behalf if it failed to appoint its party appointed arbitrator within the allotted time (30 days)?

*Reply:* No. but a copy of the KLRCA Rules was included with the request for the appointment.

### **E. Other questions**

1. Did the Department of Agriculture exercise "hands-on" supervision or merely monitored the dumping of the bananas?

*Reply:* It monitored the dumping to insure compliance with all local regulations.

## F. Questions regarding the conduct of the Moot

1. Are the six issues identified under the "Hearing Agenda" exhaustive or may teams present other issues in addition?

*Reply:* Other issues or sub issues **directly related and relevant** to the six listed issues may be raised but no other issues may be raised either in the Memorials or at the hearing without specific authorization of the Moot Director.

Thursday, 05 May 2011