

DOCUMENT No. 384

December 1, 1954

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

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**QUESTIONNAIRE ON ARBITRATION**

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**Purpose of the Questionnaire**

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For the information and assistance of this Association's Committee on Arbitration in connection with the pending legislation for amendment of Title 9, United States Code (Arbitration), the members of the Association who have had experience in arbitration matters are urgently requested to answer the questionnaire attached hereto as Schedule A. Replies are requested to be made on the form attached hereto as Schedule B and to be sent to Clement C. Rinehart, Chairman, Committee on Arbitration, 120 Broadway, New York 5, N. Y., before December 31, 1954.

Every member who has had experience in arbitration is requested to return Schedule B with replies to as many questions as may be practicable. Any member finding that, because of lack of time or available records, he is unable to make full and complete replies to any of the few questions asking for detailed information, is urged not to fail to return the questionnaire with his answers to all questions to which the member *can give substantially correct replies without undue effort or delay.*

Members of the Association received as Document No. 381, dated May 21, 1954, a copy of the Report and the proposed bill which the Committee on Arbitration submitted to the Association at its annual meeting on May 14, 1954, and which was later approved by the Executive Committee. The proposed bill was introduced in the House of Representatives on July 22, 1954, as H. R. 10010 and referred to the Judiciary Committee of the House. Copy of H. R. 10010 is attached hereto as Schedule C.

No action was taken on the bill by the 83rd Congress before its adjournment. The bill is expected to be reintroduced in the 84th Congress next January, however, with such corrections or amendments, if any, as may be found desirable as a result of consideration of the present bill by committees of the American Arbitration Association and other interested groups.

The answers to the questionnaire are needed as data which can be submitted by the Committee on Arbitration in support of the bill when it comes up for consideration by the Judiciary Committees of the House of Representatives and Senate.

The information sought by the questionnaire bears principally on the desirability of permitting judicial review of questions of law arising in arbitration proceedings, the importance of which is discussed in the Committee's Report. Section 7 of the bill provides for such review. Resort to a questionnaire has been necessary because few arbitrations are reported and there are no other convenient sources of information regarding the results of decisions of questions of law by commercial men acting as arbitrators.

*Any additional information or comments which members may submit on other points covered by the bill or as to the text of the bill would also be welcomed by the Committee.*

All answers will be regarded by the Committee as confidential in respect of names of persons signing answers and the names of parties or arbitrators or other identifying particulars of any unreported cases described in the answers.

Respectfully submitted,

THE COMMITTEE ON ARBITRATION,

NORMAN M. BARRON

JOHN T. CARPENTER

THOMAS F. DALY

JOHN C. MOORE

NICHOLAS J. HEALY, III

WALTER T. HUGHES, JR.

CLEMENT C. RINEHART, *Chairman*

## THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

## SCHEDULE A—(Attached to Document No. 384)

## QUESTIONNAIRE ON ARBITRATION

*(Please use Schedule B for replies)***Preliminary Question**

Have you personally handled or participated as counsel or as arbitrator or in any other capacity in any arbitration proceedings since the United States Arbitration Act (Title 9, United States Code) became effective on January 1, 1926?

Yes No 

Members answering "Yes" to the foregoing question are requested to answer the following additional questions on the basis of their experience *in connection with arbitration proceedings which have been carried on to the point of the issuance of an award*:

1. Please answer either (a) or (b):

(a) In approximately how many arbitration proceedings have you participated—

(i) as counsel?

(ii) as arbitrator?

(iii) in any other capacity, such as general supervision over others directly handling the arbitration proceeding or by consultation with such others?

(b) Has your participation in arbitration proceedings been (check one)—

(i) on only one occasion?

(ii) on from two to ten occasions?

(iii) on more than ten occasions?

2. Have most of the proceedings involved disputes arising out of "maritime transactions" as defined in Section 1, Title 9, United States Code? Yes  No  ("Maritime transactions" are defined in the Code as "charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions or any other matters in foreign commerce

which, if the subject of controversy, would be embraced within admiralty jurisdiction.”)

3. In about what proportion of the proceedings were the arbitrators or the majority of them commercial men (check one)—

- (a) Majority of cases?
- (b) Minority of cases?
- (c) About half and half?

4. Have most of the arbitration proceedings in which you have participated been held pursuant to (check one)—

- (a) Arbitration clauses in agreements made between the parties *before* the dispute arose?
- (b) Agreements to arbitrate made *after* the dispute arose?

5. Were most of the arbitrations held pursuant to (check one)—

- (a) Arbitration clauses contained in *standard forms* of charter parties or other commercial contracts?
- (b) Arbitration clauses appearing in *non-standard* contracts specially drafted for and adopted by the parties for a particular transaction?

6. Have the disputes in the arbitration proceedings in which you have participated consisted principally of (check one)—

- (a) Questions of law?
- (b) Mixed questions of law and of fact?
- (c) Questions of fact?

7. Have the questions of law consisted principally of (check one)—

- (a) Interpretations of written contracts (such as charter parties, insurance policies, bills of lading or other contracts) and determination of the rights or duties of the parties thereunder?
- (b) Other questions?

(Please attach a statement of the nature of some of the principal other questions of law involved in the proceedings.)

8. Have the questions of law included any of the following (please answer "yes" or "no" to each question)—

(a) The correct interpretation of case law as it appears in judicial decisions?

(b) The correct application of case law to the facts of the particular case in dispute?

(c) The correct interpretation of federal or state statutory law?

(d) The correct interpretation of foreign statutes, codes or regulations covering merchant shipping?

(e) The correct application of statutory law to the facts of the particular case in dispute?

9. If you have answered "yes" to any of the sub-questions in question 8, indicate below the frequency with which the various types of question have arisen (check one or more of the letters after each question)—

(a) Usually—(a), (b), (c), (d) or (e).

(b) Often—(a), (b), (c), (d) or (e).

(c) Occasionally—(a), (b), (c), (d) or (e).

(d) Seldom—(a), (b), (c), (d) or (e).

10. In order to get an indication of the possible effect of the decision in *Wilko v. Swan*, 346 U. S. 427, on the enforceability of arbitration clauses in the maritime field, please state whether the disputes involved in the arbitration proceedings in which you have participated have included any questions of law as to the rights or obligations of any of the parties under (please answer "yes" or "no" to each question)—

(a) The Carriage of Goods by Sea Act?

(b) The Harter Act?

(c) The Bill of Lading Act?

(d) The Interstate Commerce Act?

(e) The Shipping Act, 1916?

(f) The Merchant Marine Acts?

- (g) The Load Line Acts? ...
- (h) The laws relating to inspection of vessels?
- (i) The customs or immigration laws?
- (j) The rules to prevent collisions?
- (k) Other statutes of the United States?

11. In advising clients as to the probable decision of questions of law involved in a dispute, have you found that (check one)—

- (a) It is more difficult to give a reasonably reliable opinion as to the probable decision of arbitrators than as to the probable decision of a court?
- (b) There is not much difference in the difficulty?
- (c) It is less difficult?
- (d) Arbitrators' decisions of questions of law are so unpredictable that it is impracticable to give a reliable opinion?

12. In cases where the interpretation and application of contracts have been involved in arbitrations, has it been your experience that commercial men acting as arbitrators generally (check one)—

- (a) Are not qualified by training or knowledge of applicable judicial principles of interpretation, properly to construe contracts?
- (b) Are sufficiently qualified to arrive at substantially correct decisions?

13. In your experience, have you found that, in general, commercial arbitrators (check one)—

- (a) Lack the qualifications properly to understand and apply reported judicial decisions to the determination of questions of law involved in arbitration proceedings?
- (b) Have sufficient qualifications to arrive at substantially correct decisions?
- (c) Apparently do not consider judicial precedents when determining questions of law?

14. In arbitration cases involving questions as to the interpretations of statutes and the statutory rights or duties of the parties, has

it been your experience that commercial arbitrators have generally (check one)—

(a) Adopted a construction of the statute conforming substantially to its clear meaning or the judicial construction of the statute?

(b) Made decisions which were irreconcilable with such a construction?

(c) Apparently do not consider the judicial construction of statutes when determining questions of law?

15. Have any instances occurred to your knowledge where conflicting decisions of questions of law by arbitrators have produced irreconcilable awards or results in the same case or in similar cases between the same parties or in different arbitrations involving the same facts?

Yes

No

16. Statements of the principal facts of any specific instances illustrating your answers to questions 12, 13, 14 and 15 are very much desired by the Committee and it would, accordingly, be appreciated if you would attach such statements to your answers to the questionnaire. It is unnecessary, of course, to state the names of the parties or the arbitrators involved, except that if the result of the arbitration was reported, the Committee would like to have the citation of the report.

17. Please attach a statement of any specific or general comment or suggestions you may care to make regarding H. R. 10010 or *any* of its provisions.

## THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

**SCHEDULE B—(Attached to Document No. 384)****Replies to Questionnaire on Arbitration**

Preliminary Question (check one): Yes  No

1. (a) (Check one): (i).....; (ii).....; (iii).....

(b) (Check one): (i).....; (ii).....; (iii).....

2. (Check one): Yes  No .

3. (Check one): (a).....; (b).....; (c).....

4. (Check one): (a).....; (b).....

5. (Check one): (a).....; (b).....

6. (Check one): (a).....; (b).....; (c).....

7. (Check one): (a).....; (b).....

(If you have any further replies to make to question 7,  
please attach them on a separate sheet.)

8. (Check "Yes" or "No" after each letter): (a) Yes , No ;

(b) Yes , No ; (c) Yes , No ; (d) Yes , No ;

(e) Yes , No .

9. (a)  (Check one) or more: (a).....; (b).....; (c).....; (d).....; (e).....

(b)  (Check one) or more: (a).....; (b).....; (c).....; (d).....; (e).....

(c)  (Check one) or more: (a).....; (b).....; (c).....; (d).....; (e).....

(d)  (Check one) or more: (a).....; (b).....; (c).....; (d).....; (e).....

10. (Check "Yes" or "No" after each letter): (a) Yes , No ;

(b) Yes , No ; (c) Yes , No ; (d) Yes , No ;

(e) Yes , No ; (f) Yes , No ; (g) Yes , No ;

(h)  Yes, No ; (i) Yes , No ; (j) Yes , No ;

(k) Yes , No .



11. (Check one): (a).....; (b).....; (c).....; (d).....
12. (Check one): (a).....; (b).....
13. (Check one): (a).....; (b).....; (c).....
14. (Check one): (a).....; (b).....; (c).....
15. (Check one): Yes  No .
16. Please attach statements on a separate sheet or sheets.
17. Please attach statements on a separate sheet or sheets.

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(Signature of Member)

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

**SCHEDULE C—(Attached to Document No. 384)**

**H. R. 10010**

83D CONGRESS  
2d Session

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IN THE HOUSE OF REPRESENTATIVES  
July 22, 1954

Mr. Garmatz introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL.

To amend title 9, United States Code, entitled "Arbitration", so as to provide for correction of defects and omissions in the present law regulating arbitration, for judicial review of questions of law arising in arbitration proceedings, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title 9, United States Code (Public Law 282, Eightieth Congress, approved July 30, 1947, ch. 392, sec. 1; 61 Stat. 669), hereinafter called the "title," is hereby amended in the manner set forth in the following sections.

Sec. 2. Section 2 of the title is amended by inserting "(a)" immediately before the present text of section 2 and by adding the two following subsections at the end thereof:

"(b) If such a provision or agreement shall specify a place in the United States at which the arbitration is to be held, such specific provision or agreement shall be deemed a consent of the parties thereto to the jurisdiction of the United States district court in and for the district in which such specified place is located, to enforce such provision or agreement in the manner provided in this title, and to enter judgment on any award made pursuant thereto in the manner provided in section 9 of this title.

"(c) No claim shall be enforced by arbitration proceedings subject to this title, when such claim would have been barred by lapse

of time if asserted in a civil action or suit in admiralty brought in the United States district court for the district in which the arbitration is held or is properly sought to be held, at the same time as the arbitration proceeding was commenced by demand for arbitration. Any such defense of lapse of time shall be deemed waived, however, unless duly asserted prior to or at the arbitration hearing."

Sec. 3. The present second and third sentences of section 4 of the title are repealed and the following sentences are substituted therefor: "At least five days' notice in writing of such application shall be served upon each party in default, unless the agreement specifies a different time, in which case notice shall be given accordingly. Such notice shall be served on each party in default in the manner provided in the agreement or, if the manner of service is not so provided, then in the manner provided for the service of a summons by the rules of civil procedure for the district courts, except that if a place in the United States at which the arbitration is to be held has been specified in the agreement or provision referred to in section 2 of this title, and if any such party is not an inhabitant of the district within which such place is situated or is not found within the territorial limits of effective service of process of the district court for such district as provided by said rules, the court may order the notice to be served on such party by the United States marshal of any district of the United States or of its Territories or possessions or by an appropriate consular officer of the United States or by registered mail. When such an order is made, the court shall also prescribe the length of notice and proof of service thereof which the court may consider appropriate."

Sec. 4. Section 5 of the title is hereby amended to read as follows:

"(a) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to provide (i) that the arbitrator or arbitrators shall be impartial persons, (ii) for arbitration by a single arbitrator, (iii) if the agreement provides that each party is to select an arbitrator, it shall also be deemed to provide that the two arbitrators shall appoint a third arbitrator immediately after they themselves are appointed, and (iv) in cases where the reference is to three or more arbitrators, the decision or award of a majority of the arbitrators shall be binding.

“(b) On application of any party to an agreement, the district court shall designate and appoint an arbitrator or arbitrators, as the circumstances may require, who shall act with the same force and effect as if he or they had been specifically named in such agreement in any of the following cases:

“(i) Where no method for the selection of the arbitrator or arbitrators is provided in the agreement and any party or the arbitrators chosen by the parties shall have failed to select, within a reasonable time after being requested to do so, an arbitrator or the successor to any arbitrator who resigns or is disqualified or refuses or fails to act or becomes incapable of doing so;

“(ii) Where the agreement provides a method for the selection of the arbitrator or arbitrators, but any party thereto or the arbitrators chosen by the parties shall have failed, within a reasonable time after being requested to do so, to select an arbitrator in accordance with such method; or

“(iii) Where for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or in filling a vacancy.

“(c) Where an arbitrator has misconducted himself or the proceeding or other good cause is shown, the district court may, on application of any party to the agreement, set aside the appointment of any arbitrator and may set aside or make such other order regarding any hearings or proceedings theretofore had as may be appropriate to bring about a just award.”

Sec. 5. Section 6 of the title is amended to read as follows:

“(a) All applications provided for in this title shall be made to the United States district court in and for the district within which (according to the agreement of the parties or to the direction of a court made pursuant to section 3, 4, or 8 of this title), the arbitration hearings and proceedings would be or have been held, except—

“(i) insofar as application to a different court may be necessary or appropriate to give effect to the provisions of section 3 or 8 of this title; or

“(ii) where the agreement of the parties specifies that the arbitration is to be held at a place outside the United States, in which case the United States district court shall have only the jurisdiction provided by sections 3 and 8 of this title.

“(b) Except as may be otherwise expressly provided in this title, any application authorized by this title to be made to a district court shall be made and heard in the manner provided by law for the hearing of a motion. Notice of each such application shall be served upon the adverse party either in the manner, if any, provided in the agreement or in the manner provided by section 4 of this title or upon the attorney, if any, representing such party for the purposes of the arbitration proceedings.”

Sec. 6. Section 7 of the title is amended by inserting “(b)” immediately before the present words of section 7 and by inserting prior thereto a new subsection reading as follows:

“(a) Unless the taking of an oath is waived in writing by all the parties to the arbitration, the arbitrator or arbitrators shall, before receiving any statement, testimony, writing, or other evidence, take an oath substantially in the following form:

“I solemnly swear (or affirm) that I will faithfully hear and examine the matters in controversy which have been submitted to me pursuant to the agreement of the parties to this arbitration and that I will make a just award according to the best of my understanding; and that I have not received and will not receive any statement, testimony, writing, or other evidence whatever relating to the matters in controversy, except according to the regular course of proceeding upon the hearing or hearings attended by all the parties or their representatives or of which any absent party has had due notice.”

Sec. 7. Section 9 of the title is amended by inserting “(d)” immediately before the present words in section 9 and by adding three new subsections “(a)”, “(b)”, and “(c)” immediately before the present words of section 9, such new subsections to read as follows:

“(a) Unless the hearing provided by this subsection is waived in writing by the parties, no final award shall be issued until after the arbitrator or arbitrators shall have submitted to the parties a statement in writing of his or their proposed award and shall also have afforded the parties a reasonable opportunity to specify and to be heard in respect of any omissions, ambiguities or errors which they may claim to exist in the terms of the proposed award.

“(b) At any time before the final award is issued, the arbitrator or arbitrators (or a majority of them) shall, if so directed by order of the district court, and may, upon the application of any party

to the arbitration agreement or upon their own motion, state, for decision of the district court—

“(i) any question of law arising in the course of the arbitration; or

“(ii) the award or a part thereof, in the form of a special case.

Each such statement of a question of law or of a special case shall contain a statement of the nature of the controversy, of the findings of fact by the arbitrator or arbitrators on which the question or questions of law arise, and a special case shall also state alternative awards to be made depending upon the decision of the court on the question or questions of law stated therein. If in any such case the district court shall consider that the findings of fact are insufficient to enable the court to determine the question or questions of law, the court may remit the matter to the arbitrators for such further finding or findings of fact as the court may direct.

“(c) Any party to the arbitration agreement may apply to the district court for an order directing the arbitrator or arbitrators to state a question of law or to state a special case as provided in subsection (b). After decision of any question submitted to the district court in accordance with subsection (b), the court may remit the matter to the arbitrator or arbitrators with such instructions as may be appropriate, and after decision of a special case, judgment (as in the case of confirmation of an award in accordance with section 13 of this title) may be entered in the district court upon whichever of the alternative awards the court has decided to be correct. The district court is also authorized, on such terms as it may consider necessary or appropriate, to provide at any time for a stay of the arbitration proceedings, for securing the amount in dispute, or for the detention or preservation or interim custody or sale of any goods which are the subject matter of the reference.”

Sec. 8. Section 11 of the title is amended by adding the following provision immediately prior to the final paragraph of present section 11:

“(d) Where the fee of the arbitrator or arbitrators specified in the award exceeds a reasonable amount.”

Sec. 9. Section 12 of the title is amended by inserting "(a)" before the present words of section 12 and by adding a new subsection reading as follows:

"(b) The court may award to the prevailing party its reasonable disbursements and costs of the application, in such amount as the court may consider reasonable under all the circumstances, in the case of an application to the district court for an order or judgment (i) staying an action or suit pursuant to section 3 or 8 of this title, (ii) directing the parties to proceed to arbitration in accordance with section 4 of this title, or (iii) removing or appointing an arbitrator or arbitrators pursuant to section 5 of this title; or for an order determining questions of law pursuant to section 9 of this title; or for an order confirming, vacating, or modifying an award as provided in sections 9, 10 and 11 of this title."

Sec. 10. This title is amended by adding a new section reading as follows:

"15. In addition to the jurisdiction provided by sections 1291 and 1292 of title 28, United States Code, the courts of appeals shall have jurisdiction of appeals from interlocutory orders of the district courts staying or refusing to stay the trial of an action as provided in section 3 or section 8 of this title, from orders pursuant to section 4 of this title directing or refusing to direct the parties to proceed to arbitration, from orders deciding or denying an application to decide a question of law or special case as provided in section 9 of this title, and from orders confirming, vacating, or modifying or refusing to confirm, vacate, or modify an award pursuant to sections 9, 10 and 11 of this title."