

BUS361

## A Class Debate

By **Benzir Shaon**

The word "Class Debate" is a most enjoyable word to many ear as well as it appears as black cloud to many faces those who afraid of public speaking. The class debate is a very effective and important part for some courses specially the course like BUS361, the course of Legal Environment in Business. The absence of this course makes BBA an incomplete business degree and the absence of Class Debate in that course makes this course incomplete. So, I think dear reader can get a slight touch about the importance of class debate here. Debate and Law is very close friend if we look to its professional and application area where Law is ruling his kingdom with the 'blind' sword.

These are very literary hard words, now let's come to the formal part of the text. This writing is basically not a part of my assignment and you will surprise to learn that, while I am writing these words, I don't need to think of my grade of this course because the result has already been published. This is for those friends who are going to take this course and afraid to speak out. I hope this will give a primary idea on Class Debate during the course.

In class debate (particularly for this course BUS361) what happens is, a case given to two groups of students and some times (it may days) given to them to prepare themselves to make arguments and present in-front of the class. We know each case has two parties: defendant & plaintiff. The each group plays for any party (decided by the instructor) and try to win the case by showing relevant reference (reference of sections of particular law or cases). This is a very enjoyable session in the class during the debate.

There are 3 parts.

1. Fact of The Case: This is the 1<sup>st</sup> part and perhaps the easiest part where the speaker says about what the case is about and what happened. This is about the same for both parties. The speaker says what the wants for both parties. But the tip is the group should not show any point from the case that goes against their own client or part.
2. Arguments: This part is the main part where both speakers from both party present the arguments and try to prove why judge should give his judgment to their part. In that part of the presentation speakers uses the references of relevant sections of particular law or case references.
3. Counter Arguments: The last and hard part is this one because the last speaker extends the arguments told by the last speaker from their group and gives the replies of opposition party's arguments.

These lots of word may make the whole thing complex. But hopefully if an example is shown it may come to a visible and understandable shape. The example given here is collected from my own debate that I presented in the class. Here is the Question given below on which we make our debate.

And later, the solution that made upon this also given below that.

## QUESTION

### **Name of the suit:**

John & Co. Ltd. V Taylor Brothers Pvt. Ltd.

### **Plaintiff:**

Taylor Brothers Pvt. Ltd.

### **Defendant:**

John & Co. Ltd.

### **Facts of the suit:**

The facts as disclosed by the parties in their written documents submitted to the Court and evidences were as follows:

(Please note that these facts are admitted by the plaintiff and defendant and hence are deemed to be proved before the Court).

1. By a contract in writing dated Hamburg, October 4, 1956, between John & Co. Ltd. of UK as sellers, and the Taylor Brothers Pvt. Ltd. of Hamburg as buyers, the sellers agreed to sell and the buyers to buy a certain quantity of Sudanese groundnuts.

2. The major terms of the contract were as under:

- a. Name of products: Sudanese groundnuts
- b. Total quantity: 300 tons.
- c. Price: At £50 per 1,000 kilos
- d. Shipment time: November/December, 1956
- e. Port of shipment: Port Sudan (a port of West Africa).
- f. Force majeure clause: In case of prohibition of import or export, blockade or war, epidemic or strike and in all cases of force majeure preventing the shipment within the time fixed, or the delivery, the period allowed for shipment or delivery shall be extended by not exceeding two months. After that, if the case of force majeure be still operating, the contract shall be cancelled.

3. The customary route for a sea going vessel to arrive at Hamburg from a West African port was through the Suez Canal. But there was an alternative route for a ship to navigate via the Cape of Good Hope
4. On October 29 1956, the Israelis invaded Egypt. On November 1 Britain and France commenced military operations, and on November 2 the Suez Canal was blocked to shipping and remained blocked until April 9 1957.
5. No goods were shipped under the contract by the seller. The sellers claimed that they were prevented from doing so by events which had occurred in the Middle East, in particular, the closure of the Suez Canal.
6. When the contract of October 4, 1956, was entered into the usual and normal route for the shipment of Sudanese groundnuts from Port Sudan to Hamburg was via the Suez Canal. After the closing of the Canal the shortest and a practicable route to Hamburg was via the Cape of Good Hope. The sea route via Suez to Hamburg was approximately 4,386 miles, and via the Cape 11,137 miles.
7. From November 10, 1956, a 25 per cent. Freight surcharge was placed on goods shipped on vessels proceeding via the Cape of Good Hope and this was increased to 100 per cent. on December 13, 1956.
8. The sellers' claim that the contract was at an end because of the closure of the Suez Canal was not accepted by the buyers; rather they demanded supply of the goods through the alternative route.

Prayer of the parties before the Court:

The plaintiff sought a judgment awarding compensation to be paid by the defendant to recover the loss sustained by the plaintiff and this loss was suffered by them due to the non-supply (breach of contract) of stipulated quantity of Sudanese groundnuts by the defendant.

The defendant prayed that the Court should dismissed the suit of the plaintiff as the contract was discharged because of “supervening impossibility” and they are not bound to give any compensation as prayed for by the plaintiff.

**Things to be done by the participant groups:**

Now suppose, you are as a lawyer representing either the plaintiff or the defendant.

Please put forward your argument to support the case of your client and to convince the Court to pronounce judgment in favor of your client.

## **SOLUTION**

Now the solution part. We played for the DEFEDENT or the seller. What I did is, I just noted these topics on some pieces of small papers so that I don't forget to tell any point. But one thing that I request to my dear friends, please don't make it a reading session. Make a presentation, without just having a good (!) reading habit. Hopefully this writing would help to those upcoming BUS361 friends.

## **The Notes**

### **Page # 1**

#### Fact of the case

Name of the suit: John & Company Ltd & Taylor Brothers (Pvt.) Ltd

Defendant: John & Company Ltd (Seller, UK)

Plaintiff: Taylor Brothers (Pvt.) Ltd (Buyer, Hamburg)

Contract (6 points defined in the sheet)

01. A contract signed where said John & Company Ltd will sell a certain quantity of SUDANESE GROUNDNUTS in a certain amount

02. Shipment Time: Nov - Dec 1956

03. Port of Shipment: Port Sudan

04. For any problem the shipment time will not be extended more than 2 months.

And if not possible to deliver & the problem still there the contract will be cancelled.

Contract signed Oct 4, 1956

### **Page # 2**

#### Facts out of contract

01. The customary route was Suez Canal (4,386 miles)

02. The canal blocked for different political turmoil (occurrences from Oct 29 - Apr 9, 1956)

03. In another route Cape of Good Hope Nov 10, freight surcharge imposed on goods shipped 25%. And increased 100% on Dec 13

04. Because of these consequences seller couldn't send product to place/destination

### **Page # 3**

#### Facts of disputes

01. The buyer says because of non-supply the company faced loss & for that they are claiming the compensation

02. The seller says the contract was at the end because of supervening impossibility

## **Page # 4**

### Arguments & Definition

#### 01. Breach & Why Not...

- a > "the contract has not performed intentionally" (s39 of Contract Act)  
But it was not intentional because to perform the job the seller contracted 4 vessels in Port Sudan from Nov 10 - Dec 26  
Finally shipping company cancelled it (this info has collected from main case sheet)
- b > As seller is a businessman & the profit will come from sell

#### 02. Supervening Impossibility & How...

- a > The definition has given in s56 of Contract Act
- b > During the contract it was assumed that, this shipment will use Suez Canal. So the contract can be brought under s56 while the Suez Canal was closed up to April

## **Page # 5**

### Arguments & Definition (Cont...)

- c > There was another route Cape of Good Hope which is commercially & fundamentally a different route
- d > As the freight surcharge raised to 25% and later to 100% it was impossible to go for shipment based on contract signed on Oct 4, 1956. Because it was too expensive to perform the contract
- e > As the 2 months & extended 2 months passed & there was supervening impossibility & according to the language of the contract the contract has cancelled.

## **Page # 6**

### Grounds against compensation

- 01. As it's a commercial contract there must be a matter of money.
- 02. In the contract there was no provision for compensation on non-supply or post-supply compensation
- 03. So the seller didn't go for the risk of claiming post shipment compensation & so should done by buyer
- 04. Finally the buyer has the provision in contract to cancel it by 4 months. After the time it would be cancelled. So that he can recover inventory to cover any loss. So, no question of loss.

**Page # 7**

Finally at end

So My Lord, I expect the real & true judgment in that suit  
It is hoped the true judgment would come to our part

**Page # 8**

Counter Argument

What ever the opposite party says to prove the case for their part simply stand still on your points you said before.

*It's better if you have any creative points to reply your opposition.*

## **SUPPLIMENT**

**The Basic Argument That Took the Judgment to the Plaintiff in Reality**

*"Commercial hardship is not a ground to invoke the doctrine"*

**Written on**

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**Written For**

Students of East West University, Dhaka and the site [www.EWUeducation.Net.Tc](http://www.EWUeducation.Net.Tc)

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Mohammad Abdur Razzak, Senior Lecturer (& Course Instructor during the course BUS361)

Department of Business Administration, East West University, Dhaka