**CCLG145 Maritime Arbitration**

Introduction to Topic 7: Challenging and Appealing Awards

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In this topic and the next one we shall be looking at what may come after an award is made by a maritime arbitral tribunal.

The successful party in whose favour the award is made may need to enforce it. This will be the case where the party against whom it was made refuses to comply with it voluntarily. We shall be looking at the difficulties of enforcement under the next topic. First however, we shall be looking at the routes open to the unsuccessful party for challenging or appealing an award made against it.

An award may be challenged on one of two grounds. The first ground is the tribunal’s lack of substantive jurisdiction (AA 1996 s 67). You will remember from our discussion of earlier topics (Topic 2: the Agreement to Arbitrate I and Topic 3: The Agreement to Arbitrate II), that only the parties’ consent, expressed through an arbitration agreement, can give the Tribunal jurisdiction to decide the issues put to it. Further, the Tribunal must be properly constituted (see Topic 4: The Maritime Arbitral Process). We shall see that a challenge under s 67 results in a complete rehearing of the jurisdictional issue: it is not merely a review of the tribunal’s decision. This means that new evidence may be adduced, where permitted by the court.

The second ground upon which the award may be challenged is a serious irregularity in the conduct of the arbitral proceedings (AA 1996, s 68). We discussed the practicalities of the arbitral process under the last topic (Topic 6: How does a maritime arbitral tribunal decide?), and this ground of challenge is closely linked to how the arbitral proceedings were conducted. Unlike a s 67 challenge, a s 68 challenge is merely a review of how the proceedings were conducted (i.e. of *how* the tribunal made its decision): the court does not interfere in the merits of the tribunal’s decision (i.e. whether it agrees with the decision or not).

The unsuccessful party may also, in very restricted circumstances, appeal against the tribunal’s decision on a point of law. The circumstances are restricted in line with the principle of finality of awards (see AA 1996 s 1(c)). In this respect, the approach of English arbitral law is quite distinct from that of other jurisdictions, which might be one of the features which make it more attractive than others to the maritime community, although there is little empirical data enabling this to be verified. In the [2018 QMUL Arbitration Survey](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF), while 16% of respondents indicated that the principle of finality of awards was one of the three most valuable characteristics of international arbitration (see Chart 3 on p.7), 14% of respondents indicated that they found a lack of an appeal mechanism on the merits one of the worst characteristics of international arbitration (see Chart 4 on p.8). However it is not reported from what sector these respondents came (or even whether a majority of them came from a single sector). We shall be examining carefully what the unsuccessful party must show in order to acquire permission to appeal on a point of law.