

## **COST AND TIME SAVING TECHNIQUES USING THE SCOTT SCHEDULE: BEDROCK TO PREDICT RESOLUTION BASE IN ARBITRATION**

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### **Abstract**

*The expeditious and cost effective nature of arbitration has made it to be largely patronized to the extent that litigation will sooner or later fall into the shadows. In the bid of ensuring that arbitration proceedings are not subjected to the same problems as litigation, arbitrators makes use of certain sophisticated techniques in saving time and reducing cost in arbitration. This article undertakes the Scott schedule as a viable tool in accelerating the arbitral process and saving cost at the same time. This article reveals that the Scott schedule was initially applicable to building disputes but has in recent times being applied to complex disputes in arbitration. It concludes that the basic objective of the Scott schedule is to present the issues contentious between the disputants as clearly as possible and make it resolved without rancor.*

**Keywords: Arbitration, Scott schedule, Litigation, Cost, Time.**

### **Introduction**

It is imperative to assert that arbitration is an indispensable tool in resolving disputes. For the purpose of meeting the demands of its users, it must be cost and time effective. Efficiency is one of the reasons cited as to why parties choose to arbitrate, as arbitration supposedly provides faster decisions and lower costs as compared to litigation.<sup>1</sup> In the course of an arbitration proceeding, arbitrators use certain techniques to expedite the process thereby saving time and costs.

In the bid of reducing the overall cost of arbitration, attention must be given to the manner in which parties shall present their case. Proper identification of contentious issues, brevity of claims, and separation of most significant issues from trivial issues will save costs and time in arbitration. In achieving this, the 'Scott Schedule' is used. This paper takes one of the numerous techniques employed by an arbitrator in saving time and cost by stating its importance and

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<sup>1</sup> Gary Born: (2012): International Arbitration: Law and Practice, Netherlands: Wolters Kluwer International p. 14

usefulness of Scott schedule in predicting even before an award is made a resolution for a dispute before an arbitral tribunal.

**Scott Schedule**

The Scott schedule was held to be invented by *Mr. George Alexander Scott* who was a surveyor and official referee<sup>2</sup>. It is a formal document sometimes used in litigation or arbitration, which sets out the issues in dispute in tabular form.<sup>3</sup> Before the application of this method to arbitration, the Scott schedule was typically used in building disputes. The Technology and Construction Court Guide<sup>4</sup> describes the Scott schedule as:

*‘...a table, often in landscape format, in which the claimant’s case on liability and quantum is set out item by item in the first few columns and the Defendant’s response is set out in the adjacent columns.’*

In arbitral proceedings pleadings are made which contains points of claims, points of defence, witness to be called, documentary evidence to be relied on etc. In the absence of the parties contractually stipulating that pleadings will be delivered there is no hard and fast rule that an arbitrator must follow a pleading regime<sup>5</sup>. They would only follow the general pleading regime like in litigation only if the dispute in issue is complex. Arbitrators however employs the Scott schedule so as to more conveniently compartmentalize what may otherwise be a complex technical dispute so as to facilitate the effective identification of real issues in dispute devoid of legal technicality and formality<sup>6</sup>.

The Scott schedule is not limited to a particular format as the nature of the case will determine a format best suited for it. The basic objective behind the usage of the Scott schedule in arbitration is to present the issues before the arbitral tribunal as crystal clear as possible. It would only increase the time and cost of the proceedings if the arbitrators have to go through numerous issues and claims that are intertwined. A typical Scott schedule is composed of a number of columns for the issues involved, claimant’s position, quantum claimed, respondent’s response and columns left for the arbitrator(s) to set out the decision reached on each issue. In addition either the tribunal or disputants will specify the column headings.

Serial No.	Description of defect	Claimant			Defendant		Arbitrator’s Columns	
		Term of contract and specification breached	Remedial work done/ required	Cost of remedial work	Replies/commence on breach of contract	Replies/comments on remedial work and cost	Comments	Price

<sup>2</sup> Keating Chamber Barristers: History of Chambers <http://www.keatingchambers.co.uk/about/history/default.aspx> accessed August 5 2014

<sup>3</sup> David Chappell et al (2009): Building Law Encyclopedia United Kingdom: John Wiley & Sons Ltd

<sup>4</sup>HM Courts & Tribunal Service: The Technology and Construction Court Guide 2<sup>nd</sup> Ed. <https://www.justice.gov.uk/downloads/courts/tech-court/tec-con-court-guide.pdf> accessed August 5, 2014

<sup>5</sup> Imperial Leatherware Co. Pty. Ltd. v Macri & Marcellino Pty. Ltd. (1991) 22 NSWLR at 661

<sup>6</sup> Michael Roberts Greens List Barristers, The Agreement to Arbitrate – Pitfalls and Benefits <http://www.greenslist.com.au/michael-roberts.html> accessed August 6 2014

1								
2								

Source: <http://www.rcsolicitors.co.uk/uploads/resources/Scott%20schedule.pdf> accessed August 5 2014

It has being suggested that the Scott schedule is suitable for claims involving final account or numerous alleged defects or items of disrepair and that even where all the damage has been caused by one event, such as a fire, it can be helpful for the individual item of loss and damage to be set out in a Scott schedule<sup>7</sup>.

Notably the arbitral tribunal and the disputants must first before using the Scott schedule inquire whether it will genuinely save cost and time or result into a wastage of costs and efforts. The International Bar Association Rules<sup>8</sup> on the taking of evidence in international commercial arbitration has accepted the use of Scott schedule in the collection of evidence form party appointed experts. The expert report to be submitted by parties in disputes containing the following below shall be summarized in a tabular form. The expert report<sup>9</sup> shall contain:

- a. *The full name and address of the Party –appointed Expert, a statement regarding his or present and past relationship (if any) with any of the Parties, their legal advisors and the Arbitral Tribunal, and a description of his or background, qualifications, training and experience;*
- b. *A description of the instruction pursuant to which he or she is providing his her opinions and conclusions;*
- c. *A statement of his or her independence from the parties, their legal advisors and the Arbitral Tribunal;*
- d. *A statement of the facts on which he or she is basing his or expert opinions and conclusions;*
- e. *His or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided;*
- f. *If the Expert Report has been translated, a statement as to the language in which it was originally prepared, and the language in which the Party-Appointed Expert anticipates giving testimony at the Evidentiary Hearing;*
- g. *An affirmation of his or her genuine belief in the opinions expressed in the Expert Report;*
- h. *The signature of the Party Appointed Expert and its date and place; and*
- i. *If the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.*

### **Benefits of Scott Schedule**

The use of the Scott schedule reduces the time and cost involved both at the hearing and decision stage of an arbitral proceedings. It enables arbitrators to identify facts in issues and issues that are not contentious between the parties. Where issues are clearly outlined, one is able to know beforehand the possible outcome of a dispute. Rather than for an arbitrator to constantly refer to a vast volume of pleadings, the Scott schedule technique makes it relatively easier to focus on contested issues.

<sup>7</sup> Ibid TCC Court guide

<sup>8</sup> IBA Rules on the Taking of Evidence in International Arbitration

<http://www.ibanet.org/Document/Default.aspx?DocumentUid=68336C49-4106-46BF-A1C6-A8F0880444DC>.

Accessed August 5, 2014

<sup>9</sup> Article 5 IBA Rules

In addition the Scott schedule is not only beneficial to the arbitrator(s), it makes it possible for parties in dispute to see areas in the disagreement that is not worth arbitrating thus settling them amicably. Also the Scott schedule is beneficial based on the following:

1. Identification of calculations, assumptions, and factors that are agreed between the parties.<sup>10</sup>
2. Quantum proof can be conveniently set out in tabular format
3. Assists with identification of global claims and claims that do not clearly establish a cause-effect relationship between entitlement issues and damage amounts.

### **Conclusion**

One of the basic features of arbitration is its expeditious and cost effective nature. These features are true in principle and theory but may differ in practice. In practice, parties bring numerous claims and issues which make the arbitral proceedings appear like litigation. In the bid of avoiding this, arbitrators explore for techniques in make the arbitral proceedings appear like an arbitral proceeding in principle. One of such techniques is the use of the Scott schedule.

The Scott schedule is essentially a table with inputs from both the claimant and respondent. The claimant sets out their argument first, and then the schedule is passed to the respondent to set out their responses. Typically, the basic objective behind the usage of the Scott schedule is for the issues in disputes to be presented as clearly as possible, thus saving time, reducing cost and conserving efforts. When issues are clearly spelt out, an arbitrator would be able to predict the possible resolution for the dispute as well as accelerate the arbitral process.

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<sup>10</sup> Conference on International arbitration Panel 4: Reducing time and saving cost; Use of the ‘Scott Schedule’ to expedite Resolution of Quantum Issues

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