



EXAMINER'S REPORT

Nov 2022

MARINE INSURANCE

Q1. A fire broke out on board a vessel carrying general cargo. Efforts were made to put out the fire, resulting in a third of the cargo being jettisoned at sea. The vessel called into the nearest port to undergo emergency repairs, deviating from her contractual course. She resumed her service after a delay of two weeks, when she arrived at the discharge port. The shipowner claims that it had incurred a huge bill to put out the fire, besides the bill for emergency repairs. The shipowner intends putting in a claim under General Average and/or Sue and Labour. The cargo owners need to know if they would have to make any contribution under General Average. Discuss the possible claims arising under particular average and general average under the circumstances with suitable case laws to support your answer.

A problem question dealing with a scenario where a fire breaks on board a vessel carrying general cargo. Here, the students are required to carry out a detailed discussion on whether under the circumstances, the losses arising will fall under particular average loss, or a GA loss – in the case of a particular average loss, there is no question of contribution as it is entirely upon the person who actually suffered the loss, as opposed to a GA which is voluntarily incurred for the common good; the options available to the shipowner; the procedures to be followed whilst lodging any claim, and the rights of the cargo interests.

Quality of illustrations, both case laws (*Hingston v Wendt* [1864]; *Societe Nouvelle D'Armement v Spillers & Bakers* [1917]) and examples – the cited in the study material/textbook and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q2 Using suitable case law to support your answer, discuss, what is the doctrine of subrogation and what are the rights of a subrogated insurer.

An essay type question on the doctrine of subrogation, and its application. The students are expected to be familiar with the doctrine of subrogation which is considered as a necessary incident of a contract of indemnity in marine insurance contracts. The doctrine of subrogation is widely viewed as a corollary to the principles of indemnity in insurance contracts and covered under the MI Act 1906. The discussion is to be clear and set out the fundamental principle that once indemnified *an assured is not permitted to be compensated twice*, which

is contained in section 79 of the MI Act 1906, with 79(1) covering total loss and 79(2) covering partial loss. The discussion should also outline the importance of the doctrine to the insurers, how it works through the substitution of the insurer to the rights of the insured, and as a normal incident of indemnity.

Cases laws and quality of illustrations to include – *Castellian v Preston* [1882]; *Burnard v Rodocanachi* [1882]; *Simpson v Thomson* [1877]; *Yorkshire Insurance Co v Nisbet Shipping Co Ltd* [1961], and examples cited in the study material/ textbook and student's own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. Explain the practical application of the doctrine of 'proximate cause', supporting your answer with suitable case law examples.

An essay type question on the practical application of the doctrine of 'proximate cause' in MI practice. The students are expected to be familiar with the relevant provisions of the MI Act 1906 and present a detailed discussion on the doctrine of 'proximate cause' which clearly states that it is the immediate, and not the remote cause that is to be considered (*cause proxima, non remota, spectatur*). The discussions are to include reference to section 55(1) of the MI Act 1906, which declares that the insurer is liable only for those losses proximately caused by a peril insured against; and how the House of Lords in *Leyland Shipping* case conclusively settled the law of causation. Discussions should include reference to case laws.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases laws – *Leyland Shipping Co v Norwich Union Fire Insurance Society* [1918]; *Whiting v New Zealand Insurance Co* [1932]; *Wayne Tank & Pump Co v Employers Liability Assurance Ltd* [1946]. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q4. Answer BOTH parts of the question. The responsibilities and liabilities of the assured and insurer are clearly set out in the Marine Insurance Act 1906. With suitable case law examples, discuss BOTH of the following: a) Insurable Interest; b) Duty of fair presentation, as set out in the Insurance Act 2015

A two-part essay type question on **a)** insurable interest, and **b)** duty of fair presentation introduced under Section 3 of the Insurance Act 2015, and their application. The students are expected to be familiar with **a)** insurable interest, and **b)** the duty of 'fair presentation' introduced under Section 3 of the Insurance Act 2015, which brought about changes to the MI Act 1906, and how it may apply to the facts presented. The students are to present a detailed discussion on **a)** insurable interest with reference to the provisions of the MI Act 1906 [(s. 5, s. 7, s.14(3), etc.)], and who can be identified as having an insurable interest (*shipowners; cargo interests; mortgagor & mortgagees, insurer, etc.*) and when interest must

attach, and **b)** the duty of 'fair presentation' introduced under the Insurance Act 2015, and how it has modified the duty of 'utmost good faith' which underpins a contract of indemnity in marine insurance laws. Importantly, students are to mention the new system of remedies introduced under the Insurance Act 2015, *i.e.*, that the remedy of avoidance for a breach of the duty of utmost good faith is abolished and is only available where material non-disclosure/ misrepresentation; and a proportionate remedy is introduced.

Examples cited in the study material/ textbook, as there are currently no case laws on the issue. (***Lucena v Craufurd (1806)***; ***Moonacre [1991]***) Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q5. Analyse the difference between 'total loss' and 'constructive total loss' in relation to both the hull and the cargo policies.

An essay type question on a topic which finds more application in day-to-day shipping practice, and hence an important area in MI practice. This question requires the students to be familiar with – i) the differences between a 'total loss' and 'constructive total loss'; ii) the relevant provisions of the MI Act 1906; and iii) the procedures to be followed, and the relevant case laws. Students are expected to be aware of the relevant provisions of the MI Act 1906 relating to total loss and constructive total loss. A detailed discussion on the difference between the concepts of 'total loss' and 'constructive total loss' in relation to both the hull and the cargo policies' is expected to be present. In a situation where the cost of repairs would exceed the value of the ship it would be considered a constructive total loss. A constructive total loss is defined under s.60 Marine Insurance Act 1906 as deprivation of the ship, or goods due to an insured peril, or the cost of damage exceeding their value once repaired or recovered.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases laws – ***Sheppard v Henderson (1881) 7 App. Cas. 49***; ***The Lavington Court [1945] 2 All ER 357*** (economic test); ***Irving v Manning (1847) 1 HL Cas 287***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q6. A marine insurance policy may be effected to cover the subject matter insured for a period of time (time policy), or from one place to another (voyage policy). With reference to the provisions of the Marine Insurance Act 1906, discuss the principles of insurance relating to a time policy and a voyage policy.

An essay type question on time and voyage policies which are widely used in the shipping industry. The students are to be familiar with the two types of policies and are to carry out a detailed discussion on the use of time and voyage policies in shipping in both time and voyage charters, and how it is usual to look upon time policies as being hull and/or shipowner's risks, and voyage policies as cargo risks, although a vessel may be insured on a voyage basis.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q7. The vessel 'A' collided with a barge while leaving the port and sank. Initial investigations revealed that the 18-year-old ship had sustained extensive damages to its hull, including the big hole. Also, the collision had severely damaged the barge. The shipowner (of the single-ship company) is of the view that the cost of repairs together with settling the claims of the barge owners could far outweigh any gains made from repairing the vessel. The shipowner is facing a huge bill and is in talks with the banks and other financiers. The shipowner requests your legal advice and would like to know if they would be justified in issuing a notice of abandonment under the MI Act 1906, and if yes, what procedures are to be followed. Support your answers with suitable case law reference.

A problem question revolving around the legal liabilities of the shipowner in a collision situation with another ship/object; why/when a shipowner may issue a notice of abandonment and its effect on both the Hull and P&I policy. Students are expected to be familiar with the sections 60(2)(i) and 62(1) of the Marine Insurance Act 1906, and the application of the above laws to the facts presented.

Good answers should contain a detailed discussion of the facts presented, and on 'notice of abandonment' of a ship by the shipowner. Discussions are to include, when may such a notice be issued, and under the given circumstances – constructive total loss (CTL) of the subject matter insured, etc. It should be noted in the event no notice of abandonment is given, the loss will be treated as a partial loss, and the right to claim a CTL may be lost. The answer should include a clear discussion on the consequences of such a notice on both insurer and the assured with reference to case laws and the provisions of the MI Act 1906.

Quality of illustrations, both case laws (*Royal Boskalis Westminster NV v Mountain [1997]*; *Robertson v Nomikos [1939]*; *Knight v Faith [1850]*) and examples – the cited in the study material/ textbook and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q8. Describe the purpose and function of a Shipowners' Protection & Indemnity Club, and how it benefits the shipowners.

This essay type question on P&I Clubs requires the student to be fully aware of the origins of the P&I Clubs and the important role played by them in the shipping industry. The question is of importance as it is necessary for MI practitioner to be fully aware of the covers offered by the P&I club outside of the Insurance industry. A detailed discussion is to be carried out by the student about the purpose and function of the shipowner's P&I clubs in the shipping industry. Students are to discuss how P&I clubs benefit the shipowners (club letters etc.) and how they are governed by the Marine Insurance Act 1906. The answer is to clearly detail the cover offered under P&I clubs to its members.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Laws: ***De Vaux v Salvador (1836)***; ***Western Hope case***. General structure and quality of answers – dealing with the issues individually and critically using relevant case laws and references.