EXAMINER'S REPORT
NOVEMBER 2023

MARINE INSURANCE

Q1. In marine insurance law, it is recognised that loss or damage may be the product of multiple causes. Common law distinguishes those causes which are legally significant from those which are not, for the purposes of determining the actual cause of the loss sustained by the assured. Those causes which are more legally significant are loosely grouped under 'proximate cause'. Explain the practical application of the doctrine of 'proximate cause', supporting your answer with suitable 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.

Q2. Answer BOTH parts of the question with case law examples to support your answers: a) Particular Average Loss, and b) General Average Loss.

A two-part essay type question dealing with **a.** particular average loss, and **b.** general average loss under the MI Act 1906. It was essential that the students were familiar with both 'particular average loss' and 'general average loss', *i.e.,* how particular average losses are losses which are directly sustained the subject matter insured caused by an insured peril (s.56(1) & 64(1), MI Act); and how general average losses are is one where the loss falls initially upon the party who has incurred the loss, but is, ultimately, borne proportionately by all the parties interested in the adventure (S.66, S 66(1) MI Act, Y-A Rules 1994, if incorporated).

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case laws: ***Kingston v Wendt* (1876) 1 QBD 367; *Ruabon Steamship Co Ltd v London Assurance* [1900] AC 6 (HL); *Kemp v Halliday* (1865) 34 LJQB 233.** Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. The Insurance Act 2015 brought about significant changes to English commercial insurance law. Has the Insurance Act 2015, in your opinion, efficiently eliminated the draconian effects of breaching a warranty as provided under the MI Act 1906? Or, has the Act made them more complicated for the market?

An essay type question that brings into focus one of key the changes made to the MI Act 1906 by the passing of the Insurance Act 2015. The students were expected to be familiar with the position of breach of a warranty as introduced under Sections 9, 10, and 11 of the Insurance Act 2015, which brought about changes to the MI Act 1906. The answer presented were to present a detailed discussion on breach of a warranty as introduced under the Insurance Act 2015, and how it has modified the old position that a breach of warranty in a MI contract would have entitled the insurer to avoid all claims under the policy from the date of breach. Importantly, the discussion should highlight how changes brought about by the Insurance Act 2015 lessens the severity of the consequences for the breach of warranty; how the changes apply to even to implied warranties (seaworthiness, legality); and that the changes introduced merely suspends and does not entirely discharge the insurer's liability until the breach is remedied.

Examples cited in the study material/ textbook, as there are currently no case laws under the modified position. Nevertheless, students can use the definition of warranties provided by Lord Mansfield in ***Bean v Stupart* (1778)** to distinguish the current position from the earlier view. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q4. Discuss critically with suitable examples and reference to case law, the circumstances where a shipowner may serve a notice of abandonment.

An essay type question that expects the student to be familiar with the legal principle of 'abandonment' in shipping practice and marine insurance laws; and why/ when a shipowner may issue a notice of abandonment. Students are also expected to be familiar with the sections 60(2)(i) and 62(1) of the Marine Insurance Act 1906. Good answers should contain a detailed discussion on the 'notice of abandonment' of a ship by the shipowner and the consequences that flow from such action. Discussions are to include the circumstances that may lead to the issue of such a notice – *in the case of a constructive total loss (CTL) of the subject matter insured, the shipowner may issue a notice of abandonment*. 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 also cover 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. Bonus marks for anyone citing the most recent decision in ***MV Renos*** **[2018]**.

Q5. The vessel RUBY was insured for a total agreed value of US$8,500,000. Three months prior to taking up the policy the vessel underwent a survey where it was strongly advised that she be dry-docked to address some problems with her hull, besides others relating to her cranes. Although RUBY was dry-docked for 3 weeks, not all problems identified in the survey report were fixed. Later the RUBY was time chartered for a period of 18 months, and it was strongly rumoured that the vessel was to take long journeys between Argentina and China transporting Soya bean. The Owners of the RUBY mentioned the dry-docking of the vessel to the insurance broker but failed to mention the long list of recommendations by the surveyors. The dry-docking was referred to in the conversation. Three months into the time charterparty contract, while carrying a cargo of Soya bean from Argentina, RUBY developed serious engine problems (besides other problems) and was stranded. The RUBY while being towed encountered a hurricane and experienced serious damage to her hull incurring general average costs and some salvage costs. She was dry-docked in South Africa. It is feared that the cost of towage, salvage costs and repairs might far exceed her total value. The owners of the RUBY have put in a claim for 'total loss' or 'constructive total loss'. Discuss the legality of the claim.

A problem question on misrepresentation and non-disclosure of material facts. Students were expected to be familiar with the legal liabilities that may devolve upon a shipowner from misrepresentation / non-disclosure of material facts while entering into a marine insurance contract. A detailed discussion was to be carried out on the legal liabilities that may devolve upon a shipowner for non-disclosure and / or misrepresentation of material facts relating to the subject matter of an insurance policy, when processing a claim based on the marine insurance policy. Particular reference is to be made to the relevant provisions of the MI Act 1906 and the changes brought about under the Insurance Act 2015.

Case laws 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.

Q6. Both Shipowners' Protection & Indemnity Clubs and conventional marine insurers are governed by the provisions of the Marine Insurance Act 1906. Unlike an insurance company, which is answerable to its shareholders, a Mutual P&I Club is the servant only of its members.

Explain 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.

Q7. 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 significant cost to put out the fire, besides the expense for the 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.

Q8. Answer ALL parts of the question: State the measure of indemnity, as specified in the Marine Insurance Act, 1906, for damage to the insured ship a) where the damage has been repaired; b) where the damage has been partially repaired, c) where the damage has not been repaired.

An essay type question, where the students were expected to present a detailed discussion on measure of indemnity as specified in sections 67-78 of the MI Act 1906 for the insured ship to provide indemnity placing the assured in the same position as they were in at the beginning of the risk. It was essential that students mentioned that the ship is to be first repaired, or estimates are procured for repairing her, so as to ascertain the different type of claim that could be claimed under the contract of indemnity. The discussions were to cover **a)** *where the damage has been repaired,* **b)** *where the damage has been partially repaired, and* **c)** *where the damage has not been repaired.* It was also required that the answer referred to the measure of indemnity to be quantified with regards to 'reasonable cost of repairs,' *i.e.,* what would have to be expended to put the ship right.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases laws – ***Aitchison v Lohre*** **[1878];** ***Usher v Noble*** **[1810];** ***The Catariba*** **[1997];** ***The Medina Princess*** **[1965]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.