

Examiner's Report

April 2016

Marine Insurance

General comment

Students who scored over 70% demonstrated a very good understanding of the legal topics discussed. Question 5 was the most popular one this year, followed by question 3 and question 7. The least popular question was question 6.

Question 1

Explain the structure of the marine insurance market and discuss the functions and responsibilities of insurance brokers within the market.

Here, the students were expected to display their knowledge with the working of the marine insurance market and the functions and responsibilities of the insurance broker within the market. The students were to present a detailed discussion on the working of the marine insurance market and the role (functions & responsibilities) of the insurance broker in facilitating the process of obtaining an insurance cover. The discussion/arguments were to be well supported by reference (wherever possible and necessary) to the provisions of the Marine Insurance Act 1906.

Question 2

Answer ALL parts of the question with suitable case law to support your answer.

a) What are 'perils of the sea' as per the Marine Insurance Act 1906?

b) State the measure of indemnity, as specified in the Marine Insurance Act, 1906 for damage to the insured ship

- i) where the damage has been repaired**
- ii) where the damage has been partially repaired;**
- iii) where the damage has not been repaired**

The students were expected to show their knowledge of a) perils of the sea b) the measure of indemnity for damage to an insured vessel under the MI Act 1906. They were to carry out a detailed discussion of both part a) and b) of the question. Students were expected to be fully acquainted with the perils of the sea and demonstrate a good understanding of how the measure of indemnity is calculated with differing levels of damage.

Examiner's Report

April 2016

Marine Insurance

Question 3

Answer ALL parts of the question.

A vessel is badly damaged by fire (an insured peril) and the assured, the shipowner, estimates that the cost of repairs will exceed the value of the ship when the repairs have been completed. Discuss:

- a) the options available to the shipowner**
- b) the procedure to be followed to claim under the policy**
- c) the position of the underwriters**

The students were expected to be able to discuss the options available to a shipowner/claimant when the estimated cost of repairs are expected to exceed the value of the ship. The students were to present a detailed discussion on

- i) the options available to the shipowner under the circumstances,**
- ii) the procedures to be followed whilst lodging the claim, and**
- iii) the position of the underwriter. Students should have included/referred to the relevant provisions of the Marine Insurance Act 1906 in the discussion.**

Question 4

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.

Here, the students were expected to be familiar with time and voyage policies in marine insurance practice. They were to carry out a detailed discussion on the use of time and voyage policies in shipping practice, 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.

Question 5

Answer BOTH parts of the question.

Discuss:

- a) The practical application of the doctrine of 'proximate cause' in marine insurance practice, and**
- b) The rights of the insurer under the principle of subrogation in an insurance contract.**

The students were expected to be able to discuss a) the doctrine of 'proximate cause,' and the relevant provisions of the MI Act (s 55(1)) dealing with the loss caused by a proximate cause, and b) subrogation under a marine insurance contract. Students were expected to present a detailed discussion on a) the doctrine of 'proximate cause' and how the common law doctrine assists in determining the actual cause of the loss arising under a marine insurance policy, and b) when and how the insurer steps into the shoes of the insured under the principle of 'subrogation.'

Examiner's Report

April 2016

Marine Insurance

Question 6

What are the legal liabilities which may devolve upon the shipowner where their ship is held entirely responsible for a collision with another ship and explain to what extent these liabilities are recoverable under a policy subject to Institute Time Clauses – Hulls 1/1/1/95.

The students were expected to show their understanding of the legal liabilities that may devolve upon a shipowner from a collision incident, and the Institute Time Clauses – Hulls 1/1/1/95. They were to carry out a detailed discussion on the legal liabilities that may devolve upon a shipowner from a collision incident where the policy is subject to Institute Time Clauses – Hulls 1/1/1/95, and explain/ discuss to what extent some/ or any of these liabilities are recoverable under the policy. This was the least popular question.

Question 7

What is the doctrine of utmost good faith and how does it affect the performance of a marine insurance contract?

Using examples to support your answer, discuss the obligations the above provision imposes upon the prospective assured and the broker, and its importance to the insurer.

The students were expected to show their knowledge with the duty of utmost good faith (*uberrimae fidei*) under a marine insurance contract. They were to carry out a detailed discussion on the legal principles behind the duty of utmost good faith, its uniqueness to insurance contracts, and how it affects the performance of the contract. The answer presented was also to include discussions on the obligations that it imposes upon the prospective assured and the broker, and its importance to the insurer.

Question 8

The assured who claims under the head of sue and labour will have to prove that it is not an expense that was incurred as a general average claim. Using examples, analyse how a claim under sue and labour is different from a general average claim, and how it may be pursued.

Here, the students were expected to be able to describe the legal doctrine of 'sue & labour' in marine insurance practice and the relevant provisions of the Marine Insurance Act 1906. The students were to carry out a detailed discussion on 'sue & labour' under marine insurance contracts, and how the expenses arising from the above head differs from the expenses incurred as general average claim.