



# EXAMINER'S REPORT

## MAY 2017

### MARINE INSURANCE

**Q1. Discuss how insurable interest governs both the legal right to insure and a requirement to claim under a policy. Explain the application of this principle in relation to marine insurance. Use suitable examples to support your answer.**

The question expects the student to be familiar with the basic principles of insurable interest in marine insurance generally, and list the parties who could potentially have an insurance interest in a marine adventure.

In order to pass, the student is required to present a detailed discussion on insurable interest in marine insurance, and the legal right to insure. This means the student is expected to be aware of the provisions of the MI Act 1906, in relation to insurable interest, and the application of the principles to a marine adventure, and how one must have an insurable interest at the time the claim arises. The student is required to be aware of various interests – including, that of shipowner, mortgagee, cargo interests, etc.

A student is also expected to use case laws and examples cited in the study material/ text book in the discussions. Examples: *Lucena v Craufurd (1806)*; *Moonacre [1991]*. Additional marks will be awarded for use of student's own choice of relevant case laws (not identified above); and answers that are well structured, dealing with the issues individually and critically.

**Q2. What is 'abandonment' and under what circumstances may a shipowner give notice of 'abandonment' of his insured ship? Explain the provisions governing such notice and the consequences they have for both insurers and the assured. Use suitable examples to support your answer.**

The question expects the students to have a good knowledge of the notion of 'abandonment' in marine insurance laws / shipping practice, as it forms the foundation for a claim arising

from total loss/constructive total loss. Students are expected to be familiar with the Sec 62 of the Marine Insurance Act 1906.

For a good pass, the student is required to engage in a detailed discussion of the notion of 'abandonment' of a ship by the shipowner and the consequences that flow from the same, especially in a situation where the claim is based on a total loss, or constructive total loss. The answer is also to include a clear discussion on when a shipowner may give a notice of 'abandonment' of his insured ship, in what manner (written/oral), whether the insurer should accept such notice or 'abandonment', and the consequences of such acceptance of the notice of abandonment on both the assured and insurer.

The question requires students to use appropriate illustrations, both case laws and examples – the ones cited in the study material/ text book and student's own choice. Additional marks are awarded for good quality answers (structure and analysis), and for those dealing with issues individually and critically using relevant case laws and references.

**Q3. Explain the purpose and function of a Shipowners' Protection & Indemnity Club, and how it benefits the shipowners.**

This question requires the student to be well versed in the role played by the P&I Clubs in the shipping industry – especially in terms of providing cover where it is not available from underwriters.

In the main body of the answer, the student is required to carry out a detailed discussion on the purpose and function of the shipowners' P&I clubs in the shipping industry. This is, probably, one of the questions where students are expected to do well, as it is relatively easier than engaging in a lengthy discussion of legal principles. A good answer will include an overview of the role of P&I clubs, how the clubs came to be established, not-for-profit nature, the types of cover provided by the clubs, etc., and how it benefits the shipowner (club letters etc.).

The discussions were expected to include examples and case laws cited in the study material/ text book and student's own choice. Case Laws: ***De Vaux v Salvador (1836)***; ***Western Hope case***. Additional marks are awarded for well-structured answers, dealing with the issues individually and critically using relevant case laws and references.

**Q4. With reference to suitable examples and to the provisions of the Marine Insurance Act 1906, discuss the principles of insurance relating to time AND voyage insurances.**

In addition to demonstrating a good legal knowledge, this question was also testing a student's knowledge and application of the use of time and voyage policies in practice in the shipping industry – a very hands-on question. The student is to discuss in detail the use of time and voyage policies in shipping (both time and voyage CP), 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.

A good answer is expected to have good quality illustrations – both case laws and examples (from study material/ text book and student's own choice). Additional marks are awarded for well-structured answers, dealing with the issues individually and critically using relevant case laws and references.

Can be viewed as a question where students will do well.

**Q5. Answer BOTH parts of the question.**

**a) Define a general average act and state the essential features which must exist in order for it to be justified.**

**b) In a general average adjustment the amounts made good in respect of general average sacrifice also contribute to the loss. Explain why this is necessary, supporting your answer with examples using your own data.**

This question is in two parts, and the student is to attempt both parts. The student is expected to have a good understanding of 'general average' (GA) and its place in marine insurance practice/shipping practice.

The first part of the answer is to contain a general definition, followed by a detailed discussion of 'general average' in marine insurance contracts; some of the essential features that must exist in order for it to be justified. The discussions of part **(b)** should also include the necessity for such a practice and how in a general average adjustment the amounts made good in respect of the 'sacrifice' also contribute to the loss.

The student is to use case laws, and examples from both study material/ and their own choice. Additional marks are awarded for well-structured answers, dealing with the issues individually and critically using relevant case laws and references.

**Q6. Explain the rights of a subrogated insurer. Use suitable examples to support your answer.**

To answer the question the student should be familiar with the doctrine of subrogation in marine insurance contracts, as it is one of the key principles of insurance practice. As the doctrine gives rise to fresh/new rights followed by suitable legal action by the insurer, we were looking to establish if/what the student knows about such rights of a subrogated insurer.

Clearly, this is a legal question, as opposed to a practical question, and hence the answer is expected to contain a detailed discussion on the doctrine of subrogation in insurance contracts, as covered under the MI Act 1906. The discussion should focus on how important the doctrine is to the insurer; how it works through the substitution of the insurer to the rights of the insured, and as a normal incident of indemnity.

A student is also expected to use case laws and examples cited in the study material/ text book in the discussions. Case laws: ***Burnard v Rodocanachi (1882)***; ***Simpson v Thomson (1877)***; ***Yorkshire Insurance Co v Nisbet Shipping Co Ltd [1961] 1 Lloyd's Rep 479***. Additional marks are awarded for use of student's own choice of relevant case laws (not identified above); and answers that are well structured, dealing with the issues individually and critically.

**Q7. Answer BOTH parts of the question.**

**Discuss**

- a) a floating policy under S.29 of the Marine Insurance Act 1906,**
- b) an open cover under the Marine Insurance Act 1906.**

This question has two parts to it, with part **a)** requiring the student to discuss a floating policy under s.29 of the MI Act, and part **b)** requiring the student to discuss an 'open policy' under the MI Act. To answer the question, the student is expected to be familiar with the practice of 'facultative cargo insurance,' and the use of 'floating policy' and an 'open cover' under the MI Act 1906.

The student is to carry out a detailed discussion on floating policies, as contained under s.29 of the MI Act, how it is effected for a sum insured covering a number of assured's shipments over an unspecified period of time, and the use of 'open cover' under the MI Act 1906. Again, both a legal and technical question, where the students could showcase their legal awareness and their knowledge gained through practice.

As in all law questions, a student is expected to refer to case laws and examples in the discussions. Additional marks to be awarded for well-structured answers, dealing with legal issues individually and critically using relevant case laws and references.

**Q8. With suitable case laws, discuss the legal liabilities which may devolve upon a shipowner where his 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 1/11/95.**

This question requires the student to discuss the liabilities of a shipowner, in a collision situation where his ship is found entirely responsible for the collision with another ship. The question also requires that students discuss/explain what is recoverable under a policy that is subject to Institute Time Clauses – Hull (1/11/95). The question requires that the student is familiar with both Institute Time Clauses – Hulls, and the legal liabilities of the shipowner in a collision situation with another ship.

The student is to present a detailed answer with discussions on the legal liabilities of the shipowner in a collision situation where his ship is held *entirely responsible* for the collision, and to what extent these legal liabilities are recoverable under a marine policy which is subject to *Institute Time Clauses – Hulls 1/11/95*. Not an easy question to answer.

Being a law question, a student is also expected to use case laws and examples cited in the study material/ text book in the discussions. Additional marks to be awarded for well-structured answers, dealing with legal issues individually and critically using relevant case laws and references.