



EXAMINER'S REPORT

MAY 2018

MARINE INSURANCE

Q1. A Vessel was carrying general cargo on board, when a fire broke out in its engine room. 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 are also eager to know if they would have to make any contribution under general average.

Discuss and advise the cargo owners with suitable examples to support your answer.

A case study question, which expects the student to be familiar with sue & labour and general average; the options available to the shipowner under the circumstances, and the procedures to be followed whilst lodging a claim.

The students are expected to carry out a detailed analysis of the scenario presented, discussing **i)** the options available to the shipowner under the circumstances, **ii)** the procedures to be followed whilst lodging the claim, and **iii)** the rights of the cargo interests. Students are also to include/refer to the relevant provisions of the Marine Insurance Act 1906 in the discussion.

A student is also expected to use case laws and examples cited in the study material/ text book in the discussions. Additional marks will be awarded for use of student's own choice of relevant case laws; and answers that are well structured, dealing with the issues individually and critically.

Q2 Answer BOTH parts of the question:

a) Sec 55(1) of Marine Insurance Act 1906 provides that only '*the immediate, not the remote, cause is to be considered*'. Discuss this statement with examples.

b) If a marine hull policy provides that a risk of fire is an insured peril, but after investigations the insurer came to know that the assured deliberately set the vessel on fire, will the assured be successful in their insurance claim for total loss?

A two-part question where the students are expected to be a) familiar with the provisions of the MI Act 1906, and in particular section 55(1) which deals with the causation and remoteness, and b)

whether a willful act leading to the destruction of the property will be covered under the policy.

The students are to discuss in detail **a)** causation and remoteness, how the immediate cause that caused the damage is to be considered to that of a remote cause, the underlying principle of MI law that the remote cause of a loss is as a general rule irrelevant, and **b)** how a willful act of arson will not be covered by a contract of indemnity.

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. Examples: *Trinder, Anderson & CO v Thames & Mercy Marine* [1898] 2 QB 114

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. 'The Assured under a contract of marine insurance policy is under an obligation to avert or minimize the loss'.

Analyse the implications of this statement for an assured in a marine insurance policy.

This question brings into focus one of key principles of the marine insurance, *i.e.*, 'sue & labour,' as contained in section 78 of the MI Act 1906. The students are expected to be familiar with the obligation of the assured under 'sue & labour' as found in section 78 of the MI Act 1906.

The students are to carry out a detailed discussion on 'sue & labour' under marine insurance contracts, and how it differs from the expenses incurred as general average claim, demonstrating a clear understanding of the principles.

The students are 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.

Q4. Answer BOTH parts of the question:

a) A ship owner decides to mortgage his ship. Is it possible for a mortgagee to get a marine insurance cover from the market?

b) Discuss the difference between the concepts of 'total loss' and 'constructive total loss' in relation to both the hull and the cargo policies.

This question has two parts to it, with part **a)** requiring the student to discuss the principles of insurable interest of a mortgagee, and part **b)** requiring the student to discuss the differences between a 'total loss' and 'constructive total loss'. To answer the question, the student is expected to be familiar with a) the principles of insurable interest of a mortgagee, and b) the differences between

a 'total loss' and 'constructive total loss'.

The student is to carry out a discussion on a) the principles of insurable interest of a mortgagee under marine insurance laws, and b) the difference between the concepts of 'total loss' and 'constructive total loss' in relation to both the hull and the cargo policies. Students are expected to be aware relevant provisions of the MI Act 1906 relating to insurable interest and the application of the principles.

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.

Q5. What is the duty of 'fair presentation' introduced under the Insurance Act 2015, and how has it modified the duty of 'good faith' which underpins a marine insurance contract?

This question brings into focus one of the key changes made to the MI Act 1906 by the passing of the Insurance Act 2015. The students are expected to be familiar with the duty of 'fair presentation' introduced under Section 3 of the Insurance Act 2015.

The students are to carry out a detailed discussion on the duty of 'fair presentation' introduced under the Insurance Act 2015, and how it has modified the duty of 'good faith' which underpins a contract of indemnity in marine insurance laws. Students are expected to be aware relevant provisions of the Insurance Act 2015.

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. The right of subrogation is important to insurers, and it is a common practice for insurers to include subrogation provisions in a policy. This doctrine is statutorily recognised by the Marine Insurance Act 1906, and its application occurs at the expense of the insured.

Explain the rights of a subrogated insurer. Use 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. Specify the legal liabilities which may devolve upon the 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.

Q8. Both Shipowners' Protection & Indemnity Clubs and conventional marine insurance are governed by the provisions of the Marine Insurance Act 1906, as they mostly incorporate English law as the applicable law. Unlike an insurance company, which is answerable to its shareholders, a P&I Club is the servant only of its members.

Explain the purpose and function of a Shipowners' Protection & Indemnity Club.

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. Students are also to discuss how P&I clubs benefit the shipowners (club letters etc.) and how it is governed by the Marine Insurance Act 1906. 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.

Students are to use both case laws and examples – the cited in the study material/ text book and student's own choice. Case Laws: *De Vaux v Salvador* (1836); *Western Hope case*. 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.).