



EXAMINER'S REPORT NOVEMBER 2018

MARINE INSURANCE

1. Under what circumstances may a shipowner give notice of 'abandonment' of their insured ship? Explain the provisions governing such notice and the consequences they have for both insurers and the assured.

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 the 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/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

2. The Insurance Act 2015 brought about changes to the Marine Insurance Act 1906, and one of the key effects was the introduction of the duty of 'fair presentation'. Discuss what the duty of 'fair presentation' is and how it has modified the duty of 'utmost good faith' which underpins a marine insurance contract?

Another 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 are expected to be familiar with the duty of 'fair presentation' introduced under Section 3 of the Insurance Act 2015, which brought about changes to the MI Act 1906.

The provisions of the Insurance Act 2015 introduced the doctrine of 'fair presentation,' and the students are to present a detailed discussion on the above duty of 'fair presentation,' and how this has modified the pre-existing duty of 'utmost good faith' which underpins a contract of indemnity in marine insurance laws. The discussion should include the criteria that is to be met under the doctrine, namely, disclosure of every material circumstance which the insured knows or ought to know, disclosure in a manner that would be reasonably clear to a prudent insurer, and ever material representation as to a matter of fact is substantially current. 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 nondisclosure/misrepresentation; and a proportionate remedy is introduced.

Examples cited in the study material/ text book, as there are currently no case laws on the issue. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

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

The question expects the student to be familiar with 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 on whether under the circumstances, **i)** the losses arising will fall under particular average loss, or **ii)** 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*; **iii)** the options available to the shipowner; **iv)** the procedures to be followed whilst lodging any claim, and the rights of the cargo interests. Facts presented, indicate that there is a strong case for GA, and or sue & labour, as opposed to particular average loss. Students are to include/refer to the relevant provisions of the Marine Insurance Act 1906 in the discussion with reference to case laws.

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/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

4. Answer ALL parts of the question.

Using appropriate examples, 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;**
- d) Does the indemnity in the above cases get amended by the provisions of the Institutes Time Clauses?**

An essay type question focusing on the measure of indemnity as specified in the MI Act 1906 for the

insured ship under different heads. The students are 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.

Good answers should contain a detailed discussion on the measure of indemnity as contained in section 67-78 of the MI Act 1906. It is essential that students mention 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 discussion should cover **a)** where the damage has been repaired, **b)** where the damage has been partially repaired, **c)** where the damage has not been repaired, and **d)** whether the indemnity in the above cases gets amended by the provisions of the Institute Time Clauses. The answer should also refer to the measure of indemnity to be quantified with reference to 'reasonable cost of repairs,' i.e., what would have to be expended to put the ship right.

Quality of illustrations, both case laws (*Aitchison v Lohre* [1878]; *Usher v Noble* [1810]; *The Catariba* [1997]; *The Medina Princess* [1965]) and examples – the cited in the study material/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

5. Answer ALL parts of the question.

The Marine Insurance Act, 1906 provides that the marine insurance policy is assignable unless it contains terms expressly prohibiting assignment. Explain:

- a) What is meant by 'assignment of the policy'**
- b) Why the marine cargo policy is invariably assignable**
- c) The rights of the assignee under an assigned policy**
- d) The protection afforded to the assignee by effecting the insurance on a 'lost or not lost' basis**
- e) The provisions of the Institute Time Clauses – Hulls regarding assignment of the marine insurance hull policy**

An essay type question on assignment of a marine policy requiring the students to carry out a discussion on assignment of marine policy as laid out in the MI Act 1906, and the rights of assignees.

Answers should contain a detailed discussion on the provisions of the MI Act 1906 relating to assignment of the marine policy, namely, section 50. A good answer would include an outline of **a)** what is meant by assignment – i.e., the right of the assured to clearly convey their insurable interest to another party for consideration; **b)** why a marine policy is invariably assignable – under English Law a marine policy is assignable under the MI Act 1906, in equity, or under the Law of Property Act 1952. Section 5(2) provides that the whole interest must be assigned; **c)** the rights of the assignee under the policy (as per s. 5(2)) gains all the beneficial interest in the policy, besides being entitled to sue in their own name; **d)** how the protection afforded to the assignee is on a 'lost or no lost' basis to ensure any claims brought by the assignee will not be defeated ; and **e)** the provisions of the CI 5 of the ITCH clearly states that unless a notice of assignment of marine policy is issued signed by both the assignor & assignee is given, such assignments will not be binding on the underwriters. Reference to case laws is to be made in the discussions.

Quality of illustrations, both case laws (*The Mount* [2001]; *The Evelpidis Era* [1981]) and examples – the cited in the study material/ text book and student's own choice. General structure and quality of

answers - dealing with the issues individually and critically using relevant case laws and references.

6. Answer BOTH parts of the question.

Using your own figures explain:

- a) How the contributory value of the ship is calculated in a General Average adjustment.**
- b) How the underwriters' liability for their assured's General Average contribution is calculated.**

This question has two parts to it, with part **a)** requiring a discussion on how general average adjustments are arrived at following the declaration of GA by the shipowner, and part **b)** requiring students be aware of the factors to be considered while processing a general average claim, especially the provisions of the York-Antwerp Rules 1994.

An important area of MI practice, any answers presented should contain a detailed discussion on **a)** how the average adjuster is to make necessary calculations of contributory value using information available to them following Rule E, and Rule XVII of the York-Antwerp Rules – which states that the value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time CPs to which the ship may be committed; and **b)** how the underwriters' liability for their assured's GA contribution is calculated following the York-Antwerp Rules 1994.

Quality of illustrations, both case laws (*Simonds v White [1824]*; *Brandeis Goldschmidt & Co v Economic Insurance [1924]*) and examples – the cited in the study material/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

7. Explain the rights of a subrogated insurer, using examples to support your answers.

The question deals with one of the key doctrines of MI practice. 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.

A detailed discussion on the doctrine of subrogation, which is widely viewed as a corollary to the principles of indemnity in insurance contracts, and covered under the MI Act 1906. The discussion should clearly set out the fundamental principle that an assured is not permitted to recover more than their actual loss, 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.

Case laws (*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/ text book and student's own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

8. Discuss, with suitable examples, the practical application of the doctrine of 'proximate cause' in marine insurance practice.

Again, a question dealing with one of the fundamental legal principles to be considered while ascertaining the cause giving rise to a claim. A preliminary/introductory discussion on the application of *causa proxima*, or the doctrine of 'proximate cause' in MI practice. Students are expected to be familiar with the relevant provisions of the MI Act 1906.

Answers produced should contain a detailed discussion on the doctrine of 'proximate cause' which clearly states that it is the immediate, not the remote, cause is to be considered (*causa proxima, non remota, spectatur*). The discussions should 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.

Quality of illustrations, both case 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]***) and examples – the cited in the study material/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.