EXAMINER'S REPORT
NOVEMBER 2019

MARINE INSURANCE

Q1. What is the duty of 'fair presentation' introduced under the Insurance Act 2015, and how has it modified the duty of 'utmost good faith' which underpins a marine insurance contract?

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 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/ textbook, 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.

Q2. Discuss the difference between the concepts of 'total loss' and 'constructive total loss' in relation to both the hull and the cargo policies.

Although essay type, this question finds more application in day-to-day shipping practice as an important area in MI practice. This question requires the students to be familiar with – i) the differences between a 'total loss' and 'constructive total loss'; ii) the relevant provisions of the MI Act 1906; and iii) the procedures to be followed, besides the relevant case laws.

Students are expected to be aware relevant provisions of the MI Act 1906 relating to total loss and constructive total loss. A detailed discussion on the difference between the concepts of 'total loss' and 'constructive total loss 'in relation to both the hull and the cargo policies' is expected to be present. In a situation where the cost of repairs would exceed the

value of the ship it would be considered a constructive total loss. A constructive total loss is defined under s.60 Marine Insurance Act 1906 as deprivation of the ship, or goods due to an insured peril, or the cost of damage exceeding their value once repaired or recovered.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases laws – ***Sheppard v Henderson*** **(1881) 7 App. Cas. 49**; ***The Lavington Court*** **[1945] 2 All ER 357** (economic test); ***Irving v Manning*** **(1847) 1 HL Cas 287**. Answers are to be well structured, dealing with the 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 essay type question 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 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 it is 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/ text book 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.

Q4. Answer BOTH parts of the question with relevant examples.
Explain the use of:

a) floating Policy under S.29 of the Marine Insurance Act 1906,
b) an Open Cover under the Marine Insurance Act 1906.

Use suitable examples to support your answer.

An essay type question on floating policy (s.29, MI Act), and 'open cover' under MI Act. Preliminary discussion on 'facultative cargo insurance,' and the use of floating policy and an 'open cover' under the MI Act 1906.

To present a good answer the students are to carry out **a)** a detailed discussion on 'floating policies' under s.29 of the MI Act, and how it is effected in practice for a sum insured, covering a number of assured's shipments over an unspecified period of time, and **b)** the use of 'open cover' under the MI Act 1906. The students are expected to have a clear understanding of how a floating policy covers all shipment, and how it has an overall value, and how an 'open cover' is an undertaking by an insurer to issue policies including floating policies within the terms of the cover.

Quality of illustrations, both case laws 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.

Q5. Answer BOTH parts of the question with relevant examples.

a) What is meant by 'assignment of policy' and the rights of an assignee under the assigned policy.

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

It is essential that the students are familiar with 'assignment of policy' and the 'perils of the sea' and its application in the MI industry.

Here, the students are expected to be fully acquainted with both assignment of policies and perils of the sea. Answers presented should contain a detailed discussion on **a)** how the MI Act 1906 provides that the marine insurance policy is assignable unless it is expressly prohibited under the policy, with the discussion focussing on *assignment of policy, rights of assignees and why the marine policy is assignable,* and **b)** the 'perils of the sea' as described under the MI Act 1906. A good answer will include a clear discussion on each of the above topics, with suitable illustrations.

Quality of illustrations, both case laws 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.

Q6. Analyse the doctrine of 'proximate cause' in marine insurance practice with relevant case laws.

Again, a question dealing with one of the fundamental legal principles of MI, that is 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 that is to be considered (*cause 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.

Q7. The doctrine of subrogation is statutorily recognised by the Marine Insurance Act 1906, and it is a common practice for insurers to include subrogation provisions in a policy. Explain the rights of a subrogated insurer. Use examples to support your answer.

An essay type question dealing 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/ 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.

Q8. The Insurance Act 2015 introduced changes to the MI Act 1906 and modified the position that a breach of warranty would entitle the insurer to avoid all claims under the policy from the date of breach.

Explain the change introduced by the Insurance Act 2015. In your opinion has this eliminated the significant effects of breaching a Warranty or, made it more complicated for the market?

An essay type question dealing with one of the key changes brought about by the Insurance Act 2015 on breach of warranty. To answer this question the students are 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 should have 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.

As there are currently no case laws under the modified position, students can use their own

illustration. Students can also use the definition of warranties provided by Lord Mansfield in ***Bean v Stupart*** **(1778)** to distinguish the current position from the earlier view. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.