EXAMINER'S REPORT
JULY 2020

MARINE INSURANCE

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

In this essay type question, the students were expected to be familiar with sue & labour. The answer presented was to discuss sue & labour – which is defined as Expenses incurred for the purpose of averting or diminishing any loss – Section 78(3) MI Act 1906; and how it is a duty cast upon the assured and his agents to take such measures to avert and minimise the loss - Section 78(4) MI Act 1906. The students were to present a detailed discussion is to be presented on 'sue & labour' under marine insurance contracts, and how it differs from the expenses incurred as general average claim.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***Kidston v Empire Marine Insurance Co Ltd*** **(1866) LR 1 CP 535;** ***Astrovlanis Compania Naviera SA v Linard 'Gold Sky'*** **[1972] 2 Lloyd's Rep 187;** ***State of The Netherlands v Youell & Hayward and Others*** **[1998] 1 Lloyd's Rep 236.** Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q2. Explain BOTH the below, providing suitable examples with case law reference: a) Particular Average Loss, and b) General Average Loss.

A two-part question dealing with **a.** particular average loss, and **b.** general average loss under the MI Act 1906. It was essential that the students were familiar with both 'particular average loss' and 'general average loss', *i.e.,* how particular average losses are losses which are directly sustained the subject matter insured caused by an insured peril (s.56(1) & 64(1), MI Act); and how general average losses are is one where the loss falls initially upon the party who has incurred the loss, but is, ultimately, borne proportionately by all the parties interested in the adventure (S.66, S 66(1) MI Act, Y-A Rules 1994, if incorporated).

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case laws: ***Kingston v Wendt*** **(1876) 1 QBD 367;** ***Ruabon Steamship Co Ltd v London Assurance*** **[1900] AC 6 (HL);** ***Kemp v Halliday*** **(1865) 34 LJQB 233.** Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. The terms of the marine insurance cover of a luxury cruise liner warranted that a) *'the cruise liner is classed and the existing class maintained,'* and b) *the cruise liner shall at all-times be seaworthy and licensed to carry passengers.'* While leaving port, the cruise liner collided with a chemical carrier, prompting the owners to claim under the marine insurance cover for the damage sustained. It has however transpired that at the time of the accident the cruise liner was not classed. The marine insurance company are contemplating the rejection of the claim on the grounds that the class warranty has been breached, besides exploring other legal issues that may arise under the circumstances. Advice the marine insurance company as to their rights to reject the claim under the amended laws.

A problem question on the breach of express warranty, etc. Here students were expected to be familiar with the legal issues arising for consideration, namely – *breach of express warranty*; *a possible breach of duty of 'fair presentation'; and the options available to the insurers under the circumstances*. The students were to carry out a detailed analysis of the facts presented, followed by a detailed discussion **i)** if under the circumstances, the claim can be considered as being in breach of the 'express warranty', and **ii)** if the failure to disclose the information that the cruise liner was not classed would amount to a breach of the 'duty of fair presentation.' The legal position as introduced by the Insurance Act 2015 to MI Act 1906 is to be considered, and the students were to make reference to the relevant provisions of the MI Act 1906, and the Insurance Act 2015 in their discussions.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Nevertheless, students can 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.

Q4. Both time and voyage policies are widely used to cover different operational risks. Discuss with reference to case laws and the provisions of the MI Act 1906, the relevance of the two policies in shipping practice.

An essay type question on time and voyage policies which are widely used in the shipping industry. The students are to be familiar with the two type of policies, and are to carry out a detailed discussion on the use of time and voyage policies in shipping in both time and voyage charters, 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.

Quality of illustrations, both case laws and examples – the 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.

Q5. One of the key changes introduced by the Insurance Act 2015 to the MI Act 1906 was the position regards 'breach of warranty' and the consequences thereof. Has the change introduced, your opinion, results in eliminating the significant effects of breaching a Warranty or, made it more complicated for the market? Discuss with suitable examples and illustrations.

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.

Q6. Discuss the difference between the concepts of 'total loss' and 'constructive total loss 'in relation to both the hull and the cargo policies.

An essay type question, the subject matter finds more application in day-to-day shipping 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.

Q7. Discuss BOTH parts of the question: a) 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.

A two-part essay type question on floating policy under s.29, and open cover under the MI Act. The students were to be fully familiar with 'facultative cargo insurance,' and the use of floating policy and an 'open cover' under the MI Act 1906. Students are to carry out a detailed discussion on floating policies under s.29 of the MI Act, and 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. The students were also 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. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q8. 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 and examples cited in the study material/ textbook and student's own choice. Case laws: ***Burnard v Rodocanachi*** **(1882);** ***Castellian v Preston*** **[1882];** ***Simpson v Thomson*** **(1877);** ***Yorkshire Insurance Co v Nisbet Shipping Co Ltd*** **[1961].** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

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