



EXAMINER'S REPORT

Nov 2020

MARINE INSURANCE

1. Both Shipowners' Protection & Indemnity Clubs and conventional marine insurers are governed by the provisions of the Marine Insurance Act 1906. Unlike an insurance company, which is answerable to its shareholders, a Mutual P&I Club is the servant only of its members. 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/ textbook 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.

Q2 Discuss with suitable examples the practical application of the doctrine of 'proximate cause' in marine insurance practice.

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 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.

Q3. What circumstances may prompt a shipowner to 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 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/ 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.

Q4. 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 if, in your opinion, the duty of 'fair presentation' as introduced by the Insurance Act 2015 has 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,

Q5. 'The Assured under a contract of marine insurance policy is under an obligation to avert or minimise the loss'. Analyse the implications of this statement for an assured in a marine insurance policy.

An essay type question on sue & labour. To get a pass the students were expected to be familiar with sue & labour and the relevant provisions of the MI Act 1906. The students were to carry out a detailed discussion on 'sue & labour' under marine insurance contracts which is based on the 'stitch in time' approach, and how it differs from the expenses incurred as general average claim. Students were to demonstrate a clear understanding of sue & labour clause, which is viewed as an extraordinary expense and a type of particular average, distinct from other forms of partial losses, such as GA and salvage charges; and how the object is to encourage the assured (+the servants or agents) to avert or minimise /mitigate any loss.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases laws – ***Aitchison v Lohre* [1879]; *The Gold Sky* [1972]; *Integrated Container Services v British Traders Insurance Co* [1984]; *State of The Netherlands v Youell & Hayward and Others* [1998] 1 Lloyd's Rep 236.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q6. 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, i.e., ITCH 1/10/83; 1/11/95/; or IHC 2003?

An essay type question, where the students were 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. It was essential that students mentioned 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 discussions were to 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.** It was also required that the answer referred to the measure of indemnity to be quantified with regards to 'reasonable cost of repairs,' i.e., what would have to be expended to put the ship right.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases laws – ***Aitchison v Lohre* [1878]; *Usher v Noble* [1810]; *The Catariba* [1997]; *The Medina Princess* [1965].** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q7. Answer BOTH parts of the question, providing suitable illustrations with case law reference: a) Particular Average Loss, and b) General Average Loss.

A two-part essay type question on particular average loss and general average loss. The students were to be fully aware of both 'particular average loss' and 'general average loss', *i.e.*, how particular average losses are losses which are directly sustained to the subject matter insured caused by an insured peril (s.56(1) & 64(1), MI Act); and general average losses are 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 to present a detailed discussion on the above legal aspects with the use of illustration/examples/case laws and with reference to the relevant provisions of the MI Act.

Quality of illustrations, both case laws and examples – the 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 are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q8. One of the key changes introduced by the Insurance Act 2015 to the Marine Insurance Act 1906 was the position regards 'breach of warranty' and the consequences thereof. In your opinion has the change resulted in eliminating the significant effects of breaching a Warranty or, made it more complicated for the market? Discuss using suitable examples.

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 entitle 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.