



# EXAMINER'S REPORT MAY 2021

## MARINE INSURANCE

**Q1. Answer BOTH parts of the question: a) a floating Policy under S.29 of the Marine Insurance Act 1906, b) Explain what are 'perils of the sea' as per the Marine Insurance Act 1906?**

This essay type question required the student to be familiar with 'facultative cargo insurance,' and the use of floating policy and 'perils' under the MI Act 1906. The students were to carry out a detailed discussion on **a)** 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 **b)** 'perils of the sea' as per 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 'perils of the sea' is an important element of a marine policy and how it determines claim arising under a marine policy.

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.

**Q2 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 the possible claims arising under particular average and general average under the circumstances with suitable case laws to support your answer.**

A problem question dealing with a scenario where a fire breaks on board a vessel carrying general cargo. Here, the students were required to carry out a detailed discussion on whether under the circumstances, the losses arising will fall under particular average loss, or 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; the options available to the shipowner; the

procedures to be followed whilst lodging any claim, and the rights of the cargo interests.

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/ 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.

**Q3. Has the Insurance Act 2015 efficiently eliminated the harsh effects of breaching a warranty, or has the Act made them more complicated?**

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 were 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 were to present 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.

Examples cited in the study material/ textbook, as there are currently no case laws under the modified position. 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. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**Q4. The doctrine of subrogation is statutorily recognised by the Marine Insurance Act 1906, and its application occurs at the expense of the insured. What are the rights of a subrogated insurer? Explain with suitable case law examples.**

An essay type question on the doctrine of subrogation, and its application. The students are expected to be familiar with the doctrine of subrogation which is considered as a necessary incident of a contract of indemnity in marine insurance contracts. 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 once indemnified *an assured is not permitted to be compensated twice*, 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.

Cases 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.

**Q5. The responsibilities and liabilities of the assured and insurer are clearly set out in the Marine Insurance Act 1906. With suitable case law examples, discuss BOTH of the following: a) Insurable Interest b) Duty of fair presentation.**

A two-part essay type question on **a)** insurable interest, and **b)** the duty of 'fair presentation'. To get a pass the students were required to are to present a detailed discussion on **a)** insurable interest with reference to the provisions of the MI Act 1906 and case law reference, and **b)** the duty of 'fair presentation' introduced under the Insurance Act 2015, and how it has modified the duty of 'utmost good faith' which underpins a contract of indemnity in marine insurance laws. 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 non-disclosure/ misrepresentation; and a proportionate remedy is introduced.

Examples cited in the study material/ textbook, as there are currently no case laws on the issue. (*Lucena v Craufurd* (1806); *Moonacre* [1991]) Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q6. Explain the practical application of the doctrine of 'proximate cause', supporting your answer with suitable case law examples.**

An essay type question on the practical application of the doctrine of 'proximate cause' in MI practice. The students were expected to be familiar with the relevant provisions of the MI Act 1906 and present 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 was to 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.

Case laws and examples cited in the study material/ textbook and student's own choice. Cases 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]. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q7. You are the owner of an oil tanker engaged in worldwide trade, there is the risk of the vessel sailing in waters where there have been recent incidents of piracy. State the type of MI cover / policy that you would require under the circumstances, briefly outlining the legal basis and scope of the cover provided by each of the policies that you intend to enter into.**

An essay type question on the policy necessary to cover risk of piracy at sea. The students were to be fully aware of piracy committed on the high seas where cargo ships have been targeted by pirates and present a preliminary discussion of such incidents. The students were to carry out a detailed discussion on “piracy” and if it is seen and covered under the definition of “peril of the sea” under the MI Act 1906. The discussion should then focus on how one could possibly counter the perceived threat of piracy by taking appropriate cover / policy for the marine adventure.

Quality of illustrations (case laws and examples) are student’s own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**Q8. Answer BOTH parts of the question: a) Explain the purpose and function of a Shipowners’ Protection & Indemnity Club, and how it benefits the shipowners. b) Discuss the difference between the concepts of ‘total loss’ and ‘constructive total loss’ in relation to both the hull and the cargo policies.**

A two-part essay type question on **a.** the purpose and functions of the P&I clubs in the shipping industry, and **b.** the differences between a ‘total loss’ and ‘constructive total loss’. Students were expected to be aware relevant provisions of the MI Act 1906 relating to insurable interest and the application of the principles, and to carry out a detailed discussion on **a)** how the P&I clubs benefit the shipowners (club letters, etc.), and how it is governed by the MI Act 1906, and **b)** the difference between the concepts of ‘total loss’ and ‘constructive total loss’ in relation to both the hull and the cargo policies.

Case laws and examples cited in the study material/ textbook and student’s own choice. Case Laws: *De Vaux v Salvador (1836)*; *Western Hope case*). Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references