



# EXAMINER'S REPORT

## NOVEMBER 2021

### MARINE INSURANCE

#### Question 1

Answer **BOTH** parts of the question.

- a) Define a General Average (GA) act and state the essential features which must exist to constitute GA.**
- b) A marine hull policy provides that a risk of fire is an insured peril. A fire breaks out on board a vessel, and after investigations the insurer comes to know that the assured deliberately set the vessel on fire. Will the assured be successful in their insurance claim for total loss?**

-----

The two-part question (one essay type and one problem scenario) required the student to have a good knowledge of General Averages (GA) (essay type), and of marine hull policies relating to the peril of fire (problem scenario). The students were to carry out a detailed discussion on **a)** General Averages (GA), the necessity for such a practice and how in a GA adjustment the amounts made good in respect of the 'sacrifice' also contribute to the loss, and **b)** how a wilful act of arson will not be covered by a contract of indemnity, as it is against public policy and deemed an act of crime. The students are expected to have a clear understanding of General Averages, and how a wilful act of arson will not be covered by a contract of indemnity under the Marine Insurance Act.

Quality of illustrations, both case laws and examples – 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.

## Question 2

Answer BOTH parts of the question.

**a) What is the doctrine of 'proximate cause,'? Discuss with suitable case law reference.**

**b) What is the 'duty of fair presentation,' and why was it introduced in 2015 under the Insurance Act? Discuss with suitable case law reference.**

-----

A two-part essay type question on **a)** doctrine of 'proximate cause', and **b)** the duty of 'fair presentation' introduced under the Insurance Act 2015. Here, the students were required to carry out a detailed discussion of the doctrine of 'proximate cause, including the common law principles of proximate cause while determining the actual cause of the loss arising under a marine insurance policy, 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, answers were to contain a clear discussion on the doctrine of 'proximate cause' and 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.

Quality of illustrations, both case laws [for **a)** *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]*; for **b)** as there are currently no case laws on the issue (*Lucena v Craufurd (1806)*; *Moonacre [1991]*)] 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.

### Question 3

Answer BOTH parts of the question.

Using suitable case law reference

- a) What is insurable interest?
- b) What is the doctrine of subrogation

-----

Two-part essay type question on **a)** insurable interest, and **b)** the doctrine of subrogation. The students were to carry out a detailed discussion **a)** insurable interest with reference to the provisions of the MI Act 1906 and case law reference, and **b)** the doctrine of subrogation which is considered as a necessary incident of a contract of indemnity in marine insurance contracts. 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. Students are expected to be aware of the relevant provisions of the MI Act 1906, *i.e.*, section 3 (insurable interest), and section 79, relating to the above two areas of practice.

Case laws and examples cited in the study material/ textbook and student's own choice.  
Case laws: (***Castellian v Preston [1882]***; ***Burnard v Rodocanachi [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.

#### Question 4

**A vessel is badly damaged by fire (an insured peril), and the assured, the shipowner, estimates that the cost of repairs will exceed the value of the ship when the repairs have been completed. Discuss, i) the options available to the shipowner, ii) the procedure to be followed to claim under the policy, and iii) the position of the underwriters.**

-----

Though cast as an essay type question, the students were to carry out a preliminary discussion on the options available to the shipowner under the circumstances and the procedures to be followed whilst lodging a claim. This is to be followed by a detailed discussion to be carried out on **i)** the options available to the shipowner under the circumstances, **ii)** the procedures to be followed whilst lodging the claim, and **iii)** the position of the underwriter. Students were to include/refer to the relevant provisions of the Marine Insurance Act 1906 in the discussion.

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.

### Question 5

**With suitable case laws, discuss the legal liabilities which may devolve upon a shipowner where their ship is held entirely responsible for a collision with another ship, and explain to what extent these liabilities are recoverable under a policy subject to Institute Time Clauses – Hulls 1/11/95.**

-----

The question requires the students to present a preliminary discussion on the legal liabilities of the shipowner in a collision situation with another ship. The students were expected to be familiar with the *Institute Time Clauses – Hulls*, and were to carry out a detailed discussion on the legal liabilities of the shipowner in a collision situation where their ship is held entirely responsible for the collision, and determine to what extent these legal liabilities were recoverable under a marine policy which is subject to *Institute Time Clauses – Hulls 1/11/95*.

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.

### Question 6

**Under what circumstances may a 'sue and labour' expense be justified, and how is it different from general averages and a salvage claim?**

-----

An essay type question on the practical application of 'sue & labour' in MI practice. The students were expected to be familiar with the relevant provisions of the MI Act 1906 relating to 'sue & labour' and present a detailed discussion on 'sue & labour' under marine insurance contracts, and how it differs from the expenses incurred as general average, and salvage claims. Students are to demonstrate a clear understanding of sue & labour and with the use of illustrations/ case laws. Relevant provision – Sections 78(3); 78(4) 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: ***Kidston v Empire Marine Insurance (1866)***; ***Gold Sky [1972]***; ***Aitchison v Lohre (1879)***. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

### Question 7

Answer BOTH parts of the question.

a) What is a floating Policy under S.29 of the Marine Insurance Act 1906?

b) What is an Open Cover under the Marine Insurance Act 1906?

-----

A two-part essay type question on a) 'floating policy,' and b) the use of and an 'open cover' under the MI Act 1906. Students were to carry out a detailed discussion on floating policies (identified under section 29 of the MI Act) and 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.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Laws: ***Union Insurance Society of Canton Ltd v. George Wills & Sons [1915]***; General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

### Question 8

Explain the purpose and function of a Shipowners' Protection & Indemnity Club, and how it benefits the shipowners.

-----

An essay type question on the purpose and functions of the P&I clubs in the shipping industry. The students were to carry out a preliminary discussion on the purpose and function of the shipowner's P&I clubs in the shipping industry, and how P&I clubs benefit the shipowners (club letters etc.) and how it is governed by the Marine Insurance Act 1906. The answer should include a clear discussion on the above subject with suitable illustrations. Students are to have a good understanding of the key role played by the P&I Clubs in the shipping industry.

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