EXAMINER'S REPORT
MAY 2025

MARINE INSURANCE

Q1. Time and voyage policies play a significant role in managing operational risks in the maritime industry. Analyse the relevance of these policies in shipping practice, with reference to the provisions of the MI Act 1906 and relevant case law reference.

An essay type question on the use of time and voyage policies in practice in the shipping industry. Students were to identify that time policies give continuous coverage over a specific period of time, and do not require separate underwritings for each journey – used in commercial fleets. Voyage policies on the other hand, cover the insured interest for a particular voyage from one port to another, rather than for a specific duration – commonly used in cargo transport. Students were to present 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 **(*Thames and Mersey Marine Insurance Co v Gunford Ship Co* (1911); *Ocean Steamship Co v Evans* (1885))**, are cited in the study material/ textbook and the student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q2. 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 liner 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. Advise the marine insurance company as to their rights to reject the claim. Support your answer with relevant case law reference for which marks will be awarded.

A problem scenario on warranties and fair presentation. Students were expected to be familiar with the legal questions arising for consideration from the problem scenario, 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 on **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 was to be considered, and the students were to refer to the relevant provisions of the MI Act 1906, and the Insurance Act 2015 in their discussions.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. 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. Bonus marks for anyone citing ***BlueBon Ltd v Ageas (UK) Ltd*** **[2017].** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. A cargo ship owner takes out marine insurance on their vessel. The vessel is damaged due to the negligence of a port authority. The insurer pays out the claim in full. The shipowner later sues the port authority and recovers compensation for the same damage. Critically examine if the insurer can claim the recovered sum from the shipowner. Support your answer with relevant case law reference for which marks will be awarded.

A problem scenario on subrogation. Students were 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. A detailed discussion was to be carried out 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, and how this legal principle allows an insurer to step into the shoes of the insured after indemnification and recover losses from a third party responsible for the damage. The discussion presented was to 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 was to then cover the following points: **i)** how the cargo shipowner has been fully compensated, **ii)** how the compensation from the port authority relates to the same loss, the shipowner now has 'double recovery', which violates the principle of indemnity, and **iii)** the insurer is entitled to reimbursement from the shipowner, up to the amount it had paid. The answer should also outline the importance of the doctrine that the insured cannot recover more than the actual loss suffered.

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.

Q4. Company A owns a cargo ship insured by Company B. While obtaining the insurance policy, Company A fail to disclose that the ship's hull had suffered significant damage during its last voyage, which was only partially repaired. During a subsequent trip, the ship sinks due to water ingress from the weakened hull. Can Company B deny the claim on the grounds of non-disclosure? What are Company A's obligations under the Marine Insurance Act 1906 as amended by the Insurance Act 2015? Support your answer with relevant case law reference for which marks will be awarded.

A problem question on 'fair presentation'. Students were 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, and how it may apply to the facts presented. The answer presented were to contain a detailed discussion of the facts presented followed by a discussion of 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. The legal discussion should include an analysis of the factual details of Company A's obligations (under section 3 of Insurance Act 2015) and potential defences; the consequences of non-disclosure (under section 8 of Insurance Act 2015); Company B's right to deny the claim; followed by analysis of the criteria that is to be met under the principle, 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 were to refer to 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 has been abolished and is only available where material non-disclosure/ misrepresentation; and that a proportionate remedy is introduced.

Examples cited in the study material/ textbook, as there are currently no case laws on the issue. Case laws: **(*Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1995]; *The Star Sea* [2001]; *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG (The DC Merwestone)* [2016] UKSC 45; *Axa Versicherung AG v Arab Insurance Group (BSC)* [2017] EWCA Civ 96)** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q5. Answer BOTH parts of the question: Critically discuss, with suitable case law reference. i) The circumstances that may prompt a shipowner to give a notice of 'abandonment' of their insured ship, ii) Identify the provisions governing such notice of 'abandonment' and the consequences they have for both the insured and the assured.

A two-part essay type question on 'notice of abandonment', and its consequences. Students were expected to be familiar with the sections 60(2)(i) and 62(1) of the Marine Insurance Act 1906. Answers were to contain a detailed discussion on the 'notice of abandonment' of a ship by the shipowner and the consequences that flow from such abandonment. Discussions are to include, when may such a notice be issued – 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 include a clear discussion on when a shipowner may give a notice of 'abandonment' of his insured ship and such 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. Bonus marks for anyone citing the most recent decision in ***MV Renos*** **[2018]**.

Q6. Answer BOTH with case law reference to support your answers. a) particular Average Loss, and b) What are 'perils of the sea' as per the Marine Insurance Act 1906?

A two-part essay type question on 'particular average loss', and 'perils of the sea'. Students were to be fully aware of both 'particular average loss' and 'perils of the sea'. The students were to carry out a detailed discussion on **a)** particular average loss', and **b)** perils of the sea, and how particular average losses are losses which are directly sustained by the subject matter insured caused by an insured peril (s.56(1) & 64(1), MI Act); and how perils of the sea are defined under section 3 of the MI Act as 'fortuitous accidents or casualties of the seas', and 'do not include the ordinary action of the winds and waves'. The MI Act 1906 identifies the following as perils of the sea: *fire, war perils, pirates, rovers, thieves, captures, seisures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, etc*. A detailed discussion was to be presented on the above with the use of illustration/ and suitable case law reference.

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;** ***Canada Rice Mills Ltd v Unione Marine & General Insurance Co*** **[1941];** ***The Xantho*** **(1887);** ***Ionides v Universal Marine Insurance Co*** **(1863);** ***The Andreas*** **[1989].** General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q7. A cargo ship, facing a severe storm, jettisons cargo to stabilise and save the vessel. Upon reaching port, the shipowner demands that all cargo owners share the loss under *general average* rules. One cargo owner, *i.e.*, Company A, refuses to contribute, claiming they did not consent to the jettison. Critically analyse whether Company A are legally required to contribute under the principle of general average. Support your answer with suitable case law reference.

A problem question with on 'general average' (GA). Students were expected to be familiar with the concept of 'general average' (GA) and how a GA occurs when a voluntary sacrifice of cargo expenses is incurred; that the sacrifice is made for the common safety of the ship and cargo carried; that the action was reasonable and necessary to protect the ship and cargo; and when GA occurs, all cargo owners must proportionately contribute to the loss, even where their cargo was not sacrificed. A detailed discussion was to be carried out on whether under the circumstances, the losses arising will fall under a GA loss, which is voluntarily incurred for the common good; the options available to the shipowner; whether Company A's refusal to contribute can be sustained under the principles of GA. Students were to include/refer to the relevant provisions of the Marine Insurance Act 1906, *i.e.*, s 66 and the relevant York-Antwerp Rules in the discussion with reference to suitable case law reference.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook Case laws: ***Hingston v Wendt* (1864); *Birkley v Presgrave* (1801); *Montgomery v Indemnity Mutual Marine Insurance* [1902]; *KM Sugar Mills v The Owners of the Ship 'Archagelos Gabriel'* [1988]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q8. In marine insurance law, it is recognised that loss or damage may be the product of multiple causes. Common law distinguishes those causes which are legally significant from those which are not, for the purposes of determining the actual cause of the loss sustained by the assured. Those causes which are more legally significant are loosely grouped under 'proximate cause'. Explain the practical application of the doctrine of 'proximate cause', supporting your answer with suitable case law reference.

This essay type question on doctrine of proximate cause required the student to be familiar with the principles of proximate cause and the relevant provisions of the MI Act 1906. Answers presented were to 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 (***Reischer v Borwich* (1894); *The Ikeria*; *Leyland Shipping Co v Norwich Union Fire Insurance Society* [1918]; *Pink v Fleming* (1890); *Whiting v New Zealand Insurance Co* [1932]; *Aitchson v Lohre* [1939]; *Miss Jay Jay* [1987]; *Hamilton Fraser Co v Insurance Ltd*; *Magnum v Nova*; *Wayne Tank & Pump Co v***

Employers Liability Assurance Ltd **[1974];** ***Ionides v Universal Marine Insurance Co***.) 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.

Dr Jae Sundaram **4 July 2025**
Lead Examiner
Marine Insurance