



EXAMINER'S REPORT

MAY 2019

MARINE INSURANCE

Question 1.

A fire broke out in the engine room of a ship, and having lost its engine power, the ship had to be towed into port. The shipowners have now lodged a claim with their marine insurers. During the investigations it became apparent that during the last survey, which was carried out five months before the incident, it was advised that the vessel be drydocked for a complete 'overhaul of the engine room' within the next four months. The insurers have proceeded to reject the claim on the grounds that this vital piece of information was not disclosed by the assured, and that as a result the shipowners were in breach of the provisions of the Marine Insurance Act 1906 (as amended by the Insurance Act 2015), including the 'duty of fair presentation.' The shipowners, however, contend that the survey report was not available at the time of taking out the cover. What advice do you give the insurers?

A problem question focused on the recently introduced changes through 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.

To get a pass mark the answer presented should 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 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 every 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 non-disclosure/ misrepresentation; and a proportionate remedy is introduced.

Students should have used the examples cited in the study material/ text book, as there are currently no case laws on the issue. Answers should be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 2.

A vessel collided with a barge while leaving the port after discharging its cargo. The vessel sank as the collision resulted in leaving a hole in the hull, as well as severely damaging the barge. Initial

investigations carried out have revealed that the 18-year old ship had sustained extensive damages to its hull, including the hole. Further assessment reveals that the ship may have to go into drydock for a prolonged period of time, in order to be repaired. The shipowner (of the single ship company) states that the cost of repair together with settling the claims of the barge owners could far outweigh any gains made from repairing the vessel. The shipowner is facing a significant bill, and in talks with the banks and other financiers. The shipowner asks your advice and would like to know if they would be justified in issuing a notice of abandonment under the MI Act 1906, and if yes, what procedures should be followed. Support your answers with suitable case law reference and examples.

Another problem question revolving around the legal liabilities of the shipowner in a collision situation with another ship/object; why/when a shipowner may issue a notice of abandonment and its effect on both the Hull and P&I policy. Students are expected to be familiar with the sections 60(2)(i) and 62(1) of the Marine Insurance Act 1906, and the application of the above laws to the facts presented.

Good answers should contain a detailed discussion of the facts presented, and on 'notice of abandonment' of a ship by the shipowner. Discussions are to include, if and when may such a notice be issued under the given circumstances – constructive total loss (CTL) of the subject matter insured, etc. 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 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.

Answers should include quality illustrations, both case laws (*Royal Boskalis Westminster NV v Mountain* [1997]; *Robertson v Nomikos* [1939]; *Knight v Faith* [1850]) and examples – 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.

Question 3.

A cruise liner was insured, and the terms of the cover 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.'* The cruise liner collided with a container carrier, prompting the owners to claim under the marine insurance cover for the damage sustained. However, at the time of the accident the cruise liner was not classed. The insurance company is 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 insurers as to their rights to reject the claim both under the old and new law.

A problem question, which expects the student to be familiar with breach of express warranty, and a possible breach of duty of fair presentation (S.3 Insurance Act 2015), and the options available to the insurers under the circumstances and the procedures to be followed.

Good answers should contain a preliminary discussion of the facts of the scenario followed by a detailed discussion as to whether under the circumstances, the claim can be considered as being in breach of the 'express warranty', and 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.' Both legal positions are to be considered under the modified/new position as introduced by the Insurance Act 2015. Students are to include/refer to the relevant provisions of the Marine Insurance Act 1906 and the Insurance Act 2015 in the discussion with reference to case laws.

Students should have used the examples cited in the study material/ text book, 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. Answers should be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 4.

What are the rights of a subrogated insurer? Discuss with suitable case law examples.

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 (***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/ text book and student's own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 5.

What is the doctrine of 'proximate cause' in marine insurance practice? Discuss with suitable case law examples.

Again, 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.

Question 6.

Answer BOTH with case law examples to support your answers: a. What are 'perils of the sea' as per the Marine Insurance Act 1906? b. State the measure of indemnity, as specified in the Marine Insurance Act, 1906, for damage to the insured ship i. Where the damage has been repaired; ii. Where the damage has been partially repaired, iii. Where the damage has not been repaired.

A two-part essay type question, where the student is expected to attempt both parts. The student is to present a preliminary discussion 'perils of the sea' and on measure of indemnity as specified in the MI Act 1906 for the insured ship under different heads.

The question requires that students carry out a detailed discussion on **a.** perils of the sea, and **b.** the measure of indemnity for damage to an insured as specified in the MI Act 1906 for the insured ship under different heads – *where the damage has been repaired, where the damage has been partially repaired, where the damage has not been repaired*. Good answers should include a clear discussion on each of the above subject with suitable illustrations. Students are expected to be fully acquainted with the perils of the sea and demonstrate a good understanding of how the measure of indemnity is calculated with differing levels of damage.

Quality of illustrations, both case laws 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.

Question 7.

A marine insurance policy may be effected to cover the subject matter insured for a period of time (time policy), or from one place to another (voyage policy). With reference to the provisions of the Marine Insurance Act 1906, discuss the principles of insurance relating to a time policy and a voyage policy.

An essay type question on the use of time and voyage policies in practice in the shipping industry.

Good answers should contain 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/ 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.

Question 8.

You are the owner of an oil tanker engaged in worldwide trade. While there is the risk of the vessel sailing in waters where there have been recent incidents of piracy, the deal as presented is lucrative and you are exploring a workable solution to cover the risks. State the type of insurance cover / policy that you would require under the circumstances, outlining briefly 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 an imagined premise where the oil tanker is to sail through waters where piracy had been reported in recent times, requiring the student to analyse the scenario and suggest the type of policies one would be inclined to use. Here, students are expected to be aware of piracy committed on the high seas where cargo ships have been targeted by pirates, and present a preliminary discussion of such incidents.

A good answer should contain 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.