EXAMINER'S REPORT
MAY 2024

MARINE INSURANCE

Q1. The assured who claims under the head of Sue & Labour will have to prove that it is not an expense that was incurred as a general average claim. Using examples analyse how a claim under Sue & Labour is different from a general average claim, and how it may be pursued.

An essay type question sue & labour and how it is different from general average (GA). 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. The discussions presented 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.

Quality of illustrations, both case 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**) 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. 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 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. Advice the marine insurance company as to their rights to reject the claim under the amended laws.**

A problem scenario dealing with 'express warranty' and 'duty of fair presentation'. The students were expected to be familiar with the legal questions arising for consideration,

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 could 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.

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. 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 were awardable to anyone citing ***BlueBon Ltd v Ageas (UK) Ltd*** **[2017].** Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. The Insurance Act 2015 brought about significant changes to English commercial insurance law. Has the Insurance Act 2015, in your opinion, efficiently eliminated the draconian effects of breaching a warranty as provided under the MI Act 1906? Or, has the Act made them more complicated for the market?

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 students 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 discussions were to 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 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. A vessel is badly damaged by fire (an insured peril) and the Assured, the shipowner, estimates that the costs of repairs will exceed the value of the ship when the repairs have been completed. Discuss the options open to the shipowner and the procedures that must be followed in claiming under the policy, explaining both his position and that of his

underwriters.

A problem scenario giving rise to a potential claim of 'constructive total loss'. Students were expected to be familiar with 'constructive total loss' and were to carry out a detailed analysis of the scenario to establish if under the given circumstances the shipowners have made a case for 'constructive total loss' in relation to the hull and cargo policies, *i.e.*, if the costs of repairs will exceed the value of the ship when the repairs have been completed. Students were expected to be aware of the relevant provisions of the MI Act 1906 (Section 60 – deprivation of the ship or goods due to an insured peril or the cost of damage would exceed their value once repaired or recovered) relating to constructive total loss and refer to them in the discussion.

Quality of illustrations, both case laws and examples (***Shepherd v Henderson* (1881) 7 App. Cas. 49; *The Lavington Court* [1945] 2 All ER 357** (economic test)**; *Irving v Manning* (1847) 1 HL Cas 287**)– 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.

Q5. State whether, in your opinion, the following losses or expenses should be allowed in general average under the terms of the York-Antwerp Rules, 1994. Give reasons supporting your decision in each case. a) Deterioration of fruit caused by a delay at a port of refuge to which the carrying ship has sailed for repairs following a general average act. b) Towage expenses incurred by the shipowner in saving his ship while in ballast *en route* to a port to load cargo. c) Pilferage of goods temporarily stored in a warehouse at a port of refuge while carrying vessel is undergoing repairs following a general average act. d) Cargo damaged by water in the mistaken, but nevertheless genuine, belief that the ship was on fire.

A problem question with on the application of York-Antwerp Rules (YAR) to the four given problem situations. Students were expected to be familiar with GA and York-Antwerp Rules 1994 (YAR) and carry out an analysis of the 4 situations/ snapshots presented. Analysis were to lead to the following conclusions: **a)** Rule C of YAR 1994 outlines that loss of market, and any loss or damage sustained by reason of delay shall not be admitted in GA, to be familiar that the vessel is under charter, and the expenses incurred as a result of GA are recoverable, **b)** the ship here is in ballast *en route* to a port to load cargo at the time of peril, and as there is no cargo on board this action is not for 'common safety' – see Rule A of YAR 1994 **c)** may not be recoverable under GA, but could possibly under bailment, **d)** GA requires a peril to be present – here peril was mistaken to be present – so no GA. The students were to refer to the YAR 1994 and any other relevant provisions of ITCH(95), IVCH(95), and the MI Act 1906.

Quality of illustrations, both case laws (***Joseph Watson & Sons Ltd v Fireman's Fund Insurance Company of San Francisco***) 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.

Q6. A vessel was on a voyage from Southampton, UK to Calais, France, and had a voyage policy to cover the voyage. The policy clearly stated that the policy was 'at and from Southampton to Calais'. On 3 March, the vessel sailed from Southampton, and proceeded to Dover, instead of Calais. While approaching Dover there was a fire on board the vessel. The shipowners duly put in a claim under the voyage policy. The insurers have now rejected the claim as unsustainable. Discuss critically the right of the shipowner.

A problem question dealing with a scenario with issues surrounding a voyage policy. The students were required to be familiar with 'voyage policies' under the MI Act 1906 and how they are used in practice. Here, the students were required to carry out a detailed discussion on voyage policies under s.25 of the MI Act, and how they are effected on hull (see IVCH (83), or IVCH (95)) as 'at and from…' policy. The students were expected to have a clear understanding of how voyage policies provide cover from the subject matter 'at and from' or from one place to another or others. Students were to discuss how in the instance case the voyage policy would terminate under S 45 of the MI Act, and the shipowner will not succeed as the destination had changed from Calais to Dover after the attachment of the risk.

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.

Q7. The doctrine of subrogation is statutorily recognised by the Marine Insurance Act 1906, and it is a common practice for insurers to include subrogation provisions in a policy. Discuss with suitable case law reference the rights of a subrogated insurer.

An essay type question on the doctrine of subrogation, and its application. The 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. The discussion presented was to 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; and why the doctrine is widely viewed as a corollary to the principles of indemnity in insurance contracts and covered under the MI Act 1906. The discussion presented was to 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.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws for subrogation: ***Burnard v Rodocanachi*** **(1882);** ***Castellian v Preston*** **[1882];** ***Simpson v Thomson*** **(1877);** ***Yorkshire Insurance Co v Nisbet Shipping Co Ltd*** **[1961] 1 Lloyd's Rep 479.** General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q8. Explain the purpose and function of a Shipowners' Protection & Indemnity Club, and how it benefits the shipowners.

This essay type question on P&I Clubs 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 was to be carried out by the student about the purpose and function of the shipowner's P&I clubs in the shipping industry. Students were to discuss how P&I clubs benefit the shipowners (club letters etc.) and how they are governed by the Marine Insurance Act 1906. The answer was 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.