



# EXAMINER'S REPORT NOVEMBER 2024

## MARINE INSURANCE

**Q1. Why would an insurer who has insured a risk want to reinsure it with another insurer? Critically discuss with suitable case law reference.**

An essay type question on the practice of reinsurance. The students were expected to be familiar with the practice of reinsurance which is defined as insurance of insurers. In practice, an insurer may transfer, through reinsurance, either a part or whole of the risk to another insurer/ insurers. The students were to discuss **a)** how reinsurance is formed between two insurers – where the original insurer is called the 'reinsured' in the agreement, and the contract between the assured and the insurer is the original insurance; the contract between the reinsured and the reinsurer is the reinsurance, **b)** how reinsurance reduces the net liability on individual risks and protection from multiple losses, and gives the insurer more security for its equity (risk management) **c)** how there is no privity of contract between the assured and the reinsurer; **d)** how reinsurance involves international transactions – how a local insurer outside the UK may insure a local risk and reinsure the risk in London, *etc.*, and **e)** how the duty of utmost good faith/duty of fair presentation of the risk will also apply to such reinsurance contracts. Answers were to demonstrate a clear understanding of reinsurance contracts and the reason one may reinsure.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Laws: ***Re London Guaranteer Company (1914)***; ***Aetna Insurance Co v Home Insurance Co [1981]***; ***Travellers Casualty & Surety Co of Europe Ltd v Commissioner of Customs & Excise [2006]*** Lloyd's Rep IR 63; ***Wasa International Insurance Co v Lexington Insurance Co [2009]***. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**Q2. Answer BOTH parts of the question with suitable case law reference: a. What are the losses excluded from a marine insurance policy? b. what is insurable interest, and how does this principle apply to marine insurance?**

An essay type question on **a)** losses excluded from a MI policy (both under law and express exclusion clauses); and **b)** 'insurable interest' as under the MI Act 1906. Students were expected to be familiar with the losses excluded from a MI policy and insurable interest. Students were to carry out a detailed discussion on **a)** losses excluded from a MI policy (S.55(2) MI Act 1906) (losses arising from acts of terrorism, or civil unrest, losses resulting

from intentional or criminal actions by policy holders or their employees, misconduct, wear and tear, inherent vice, delays in transit; improper packaging, etc.), besides express exclusion clauses; and **b**) what is insurable interest and as per the MI Act 1906 (s. 5, s. 7, s.14(3), etc.), and what it entails, and can be identified as having an insurable interest (*shipowners; cargo interests; mortgagor & mortgagees, insurer, etc.*) and when interest must attach. Students were expected to be fully acquainted with the perils of the sea and demonstrate a good understanding of what is insurable interest and what it entails.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws: ***Lucena v Craufurd (1806); Thomas v Hopper (1858); Livie v Jenson (1810); Wayne Tank & Pump Co v Employer Liability Assurance [1974]; The Miss Jay Jay [1987]; Mainz Kommanditgesellschaft v White [1983]; Canada Rice Mills (1940); Noten v Harding [1990]; The Skian Sea [2001]; The Cendor Mopu [2011]; Samuel v Dumas.*** General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**Q3. The vessel STAR was carrying a cargo of soya bean meal from Argentina to Shanghai. The insured freight policy contained a 'sue and labour' clause and warranted free from particular average. The STAR encountered heavy weather and had to put into an intermediate port where she was declared a constructive total loss. This necessitated the cargo to be transhipped and carried on board the vessel SKY. The shipowners have now put in a claim for the expenses incurred in chartering the SKY and cargo handling fees and suing and labouring expenses. The underwriters have proceeded to reject the claim contending that the policy was warranted free from particular average. Critically discuss with suitable case law reference, if the claim is sustainable.**

A problem scenario on sue & labour. Students were expected to be familiar with sue & labour and the relevant provisions of the MI Act 1906. Students were to carry out a critical analysis of the scenario presented and provide 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. Students were to demonstrate a clear understanding of the 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 and examples – the cited in the study material/ textbook and student's own choice. Case laws: ***Integrated Container Services v British Traders Insurance Co [1984]; Royal Boskalis Westminster v Mountain [1997] Kidston v Empire Marine Insurance Company (1866).*** General structure and quality of answers – dealing with the issues individually and critically using relevant case laws and references.

**Q4. Both time and voyage policies are widely used to cover different operational risks. Discuss with reference to case laws and the provisions of the MI Act 1906, the relevance of the two policies in shipping practice.**

An essay type question on time and voyage policies. Students were to present a preliminary discussion on the use of time and voyage policies in practice in the shipping industry. 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.

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. ***Mount v Larkins (1832)***

**Q5. The vessel NORHTERN STAR collided with a naval vessel belonging to Country A and was deemed a total loss. Upon a claim being lodged, the insurers have indemnified the owners of the NORTHERN STAR. Since being indemnified, the shipowners have now commenced proceedings in Country A for damages for the loss of the NORTHERN STAR. The claim made in the court proceedings are far higher than the payout received from the insurers. The insurers are contemplating suing the shipowners contending that they are entitled to the full amount under subrogation. Critically discuss, with suitable case laws reference, the rights of the shipowner and the insurer.**

A problem question with on the doctrine of subrogation. Students were expected to be familiar with the doctrine of subrogation in marine insurance contracts. Students were to carry out a detailed discussion on the doctrine of subrogation in insurance contracts which is covered under the MI Act 1906. The discussion should focus on how important it is 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 and examples cited in the study material/ textbook and student's own choice. Case laws: ***Yorkshire Insurance Co v Nisbet Shipping Co Ltd [1961]; Banque Financiere de la Cité v Parc (Battersea) Ltd [1999]; The Napier [1993]; Barnard v Rodocanachi (1882); Castellain v Preston (1883)***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

**Q6. The Marine Insurance Act, 1906 provides that the marine insurance policy is assignable unless it contains terms expressly prohibiting assignment. Explain FOUR of the following: i) 'assignment of the policy'; ii) why the marine cargo policy is invariably assignable? iii) the rights of the assignee under an assigned policy; iv) the protection afforded to the assignee by effecting the insurance on a 'lost or not lost' basis; and v) the provisions of the Institute Time Clauses – Hulls regarding assignment of the marine insurance hull policy.**

An essay type question on assignment of policy, rights of assignees, etc. The students were to carry out a preliminary discussion on *assignment of policy, rights of assignees, why the marine policy is assignable, the protection afforded to the assignee under the policy, and the provisions of the Institute Time Clauses – Hulls regarding the same*. The students were to carry out a detailed discussion on the provisions of the MI Act 1906 which provides that the marine insurance policy is assignable unless it is expressly prohibited under the policy. The discussion should focus on *assignment of policy, rights of assignees, why the marine policy is assignable, the protection afforded to the assignee under the policy, and the provisions of the Institute Time Clauses – Hulls regarding the same*.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Laws: (***Brown v Royal Insurance (1859)***; ***Wilson v Wilson (1854)***) General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references

**Q7. 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.**

An essay type question on the doctrine of 'proximate cause', and its application. The students were expected to be familiar with the relevant provisions of the MI Act 1906. Answers produced were expected 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 were 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 were to be supported by case law reference.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. 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***. 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 with suitable case law reference: a) Particular Average Loss, and b) General Average Loss.**

This essay type question on particular average loss' and 'general average loss' required the student to be fully aware of how particular average losses are losses which are directly sustained the subject matter insured caused by an insured peril (s.56(1) & 64(1), MI Act); and how general average losses are is one where the loss falls initially upon the party who has incurred the loss, but is, ultimately, borne proportionately by all the parties interested in the adventure (S.66, S 66(1) MI Act, Y-A Rules 1994, if incorporated). Students were to carry out a detailed discussion is to be presented on the above with the use of illustration/examples/case laws and with reference to the relevant provisions 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: ***Kingston v Wendt (1876) 1 QBD 367; Faith v Noble; Ruabon Steamship Co Ltd v London Assurance [1900] AC 6 (HL); Kemp v Halliday (1865) 34 LJQB 233; MV Aegean Sea [1999]; Birkley v Presgrove (1801); Harrisons v Bank of Australasia (1872); Austin Friars SS Ltd v Spillers & Bakers Lrd.; Simonds v White; MV Darya Manzil [2000]; The Hellenic [1998]; The Great Eastern [1869]; Joseph Watson & Sons v Fireman & Fund Insurance Co.*** General structure and quality of answers – dealing with the issues individually and critically using relevant case laws and references.