

Institute of Chartered Ship Brokers

Marine Insurance

Examiner's Extended Report May 2023

Question 1

Question on changes brought about by Insurance Act 2015 to 'breach of warranty' and their consequences: An essay type question that brings into focus one of the key 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. Here, the students were to carry out 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 discussion should 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 to 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.

Question 2

Question on abandonment of an insured ship and the consequences of such abandonment: An essay type question on abandonment of an insured ship, where students were expected to be familiar with the legal principle of 'abandonment' in shipping practice and marine insurance laws; and why/ when a shipowner may issue a notice of abandonment. Here, students were expected to be familiar with the sections 60(2)(i) and 62(1) of the Marine Insurance Act 1906. The students were required to present a detailed discussion on the 'notice of abandonment' of a ship by the shipowner and the consequences that flow from such action. Discussions were to include i) the circumstances that may lead to the issue of such a notice – *in the case of a constructive total loss (CTL) of the subject matter insured, the shipowner may issue a notice of abandonment*, and ii) in the event no notice of abandonment is given, the loss to be treated as a partial loss, and the right to claim a CTL may be lost. The answers were also to cover 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.

Question 3

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

Question 4

Question on 'sue and labour': An essay type question on 'sue and labour' and their implications on the assured. Here, students were expected to be familiar with sue & labour and the relevant provisions of the MI Act 1906. The students were required to present 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 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.

Question 5

Question on fair presentation. A problem scenario focusing on the changes introduced through the Insurance Act 2015. The key legal issue is on the duty of 'fair presentation' introduced under Section 3 of the 2015 Insurance Act. This was a question to test the awareness of the students to the changes introduced by the Insurance Act 2015 to the MI Act 1906, *i.e.*, the duty of 'fair presentation' in the place of the duty of 'utmost good faith'. Answers 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 discussions were to 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.

Question 6

Question on the doctrine of subrogation, its application, and the rights of the 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 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 was to i) 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 ii) 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.

Question 7

Question on a) perils of the sea as per the MI Act 1906; and b) general average act: A two-part essay type question on a) 'perils of the sea', and b) General Averages. The students were to carry out a detailed discussion on **a)** 'perils of the sea', and **b)** 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. Students were expected to be fully acquainted with the perils of the sea and demonstrate a good understanding of General Averages.

Question 8

Question on P&I Clubs: An essay type question on P&I clubs, required the students 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. The question required a detailed discussion 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 it is governed by the Marine Insurance Act 1906. The answer is to clearly detail the cover offered under P&I clubs to its members.

Conclusion:

The student achieving marks of above 70% had performed very well, presenting a detailed analysis of the legal issues with the use of case law. Those who failed to get the grades had not presented credible legal answers.

It is essential that students present legal arguments with reference to case law in the discussions. This point is made as the marine insurance course is based on UK laws, which has its foundation in precedent.