

INSTITUTE OF CHARTERED SHIPBROKERS

APRIL 2008 EXAMINATIONS

WEDNESDAY 30 APRIL – AFTERNOON

MARINE INSURANCE

Time allowed – Three hours

Answer any FIVE questions – All questions carry equal marks

1. Discuss the following with regard to marine insurance contracts:
 - a) Role and Function of P & I Clubs
 - b) Role of a marine insurance broker
 - c) Assignment of a marine insurance policy
 - d) Implied warranty of legality

2.
 - a) Discuss the role of the principle of '*utmost good faith*' in a contract of marine insurance.
 - b) Is the assured's duty of utmost good faith in any way alleviated when the assured utilised the services of a marine insurance broker?
 - c) Does the duty of utmost good faith affect the insurer?

3.
 - a) Sec 55(1) of Marine Insurance Act 1906 provides that only '*the immediate, not the remote, cause is to be considered*'. Discuss this statement with examples.
 - b) If a marine hull policy provides that a risk of fire is an insured peril, but after investigations the insurer came to know that the assured deliberately set the vessel on fire, will the assured be successful in their insurance claim for total loss?

4.
 - a) Discuss with examples, the differences between '*franchise*' and '*excess*' in relation to particular average warranty.
 - b) '*The Assured under a contract of marine insurance policy is under an obligation to avert or minimise the loss*'. Analyse the implications of this statement for an assured in a marine insurance policy.

5.
 - a) Insurers upon payment of a total loss claim from an assured are entitled to certain *rights* pursuant to the principles of subrogation. Discuss these rights in your own words.
 - b) In what way do the cargo insurers protect their rights of subrogation?

6. Rule A of *York Antwerp Rules 1994* provides for the essential features of general average. Discuss each of the essential features in detail, with examples, in context of a general average declaration made by a Master of a vessel.

7.
 - a) Discuss the advantages and disadvantages of an *open cover* policy and a *floating policy* in relation to cover for cargo shipments.
 - b) How can a cargo insurer make sure, that the vessels which are going to be used for shipment of cargoes under the long-term cargo policies, will not be sub-standard?

8. Discuss the following in relation to the International Hull Clause (Cl.601- 01/11/03) and Institute War and strike clause (Cl. 281, 96, hulls time):
 - a) Clause 13 – Classification and ISM clause
 - b) Clause 15 – New for old
 - c) Additional clause 43 - General Average Absorption
 - d) War and Strike Exclusion Clause

THE INSTITUTE OF CHARTERED SHIPBROKERS

MARINE INSURANCE(MI)

2008

EXAMINER'S REPORT

OVERALL COMMENTS

The overall standard of the answers was good. It shows that most candidates have good commercial knowledge and they can apply that knowledge within the set framework of marine insurance. However, in order to score even higher, candidates have to put in more efforts and have to cite relevant sections from the Marine Insurance Act 1906 and various case laws. Questions were drafted to cover all the major principles of Marine Insurance and to cover both the hull and cargo policies. Further, candidates were required to answer only 5 questions out of eight in the paper. The majority of candidates, who failed in this question paper either, did not study at all for this paper or they did not answer the relevant issues in the questions. Candidates cannot pass such an examination by answering vaguely as they have to tread carefully in a set framework of Marine Insurance Act 1906 and relevant cases.

QUESTION 1 - MARINE INSURANCE CONTRACTS

The question comprised of four sub-parts and it was popular amongst the candidates. It basically covered the most important and basic areas of marine insurance. A few candidates chose to answer each sub-part in great detail and that may have affected them in relation to time remaining for answering other questions. Nevertheless, most who answered this question earned around 60%. It is important to appreciate that when answering such questions, any candidate's likelihood of passing the exam is improved considerably due to the fact it contains 4 sub-parts. The only sub-part where candidates' answers were less than average was on '*implied warranty of legality*'. All the sub-parts required the key points to be discussed in one or two paragraphs.

QUESTION 2 – ROLE OF UTMOST GOOD FAITH

This question was again a popular choice amongst the candidates. Those few who secured good marks were the ones who clearly discussed the issues of both the misrepresentation and the disclosure, while citing relevant sections from the Marine Insurance Act 1906. A few good candidates even discussed the relevant case laws or discussed the principles using examples. However, many candidates were unable to discuss precisely how the duty of utmost good faith affects the insurers. Further, a discussion on the relevance of this principle even after the insurance contract is concluded between the insurer and the assured was needed to secure high marks.

QUESTION 3 - PROXIMATE CAUSE AND WILFUL MISCONDUCT

A fairly popular question and the answers varied from very good to a below average. The answers required a detailed study of sec 55 and sec 55(2) of the Marine Insurance Act 1906. In discussing both the issues of proximate cause and wilful misconduct, a good candidate must use examples and have to cite relevant case law to highlight their understanding of the concepts. In answering the second part of the question, candidates should have discussed the possibility of assured setting the vessel on fire himself or through some one else. It would have raised another set of issues and as a result candidates would have gained further marks.

QUESTION 4 - FRANCHISE , EXCESS AND SUE AND LABOUR

Answered quite well in most cases and candidates who earned good marks discussed all the five conditions for sue and labour namely reasonable; not a salvage charge; incurred before destination; incurred in connection with insured peril; not a general average. The answers on Franchise and Excess in general were quite good, where many candidates used a tabular format to discuss the differences.

QUESTION 5 - SUBROGATION AND IMPORTANT CLAUSE

A good answer to this question required a discussion on the concept of subrogation, a supplementary contract and its salient features, while citing the relevant sections from the Marine insurance Act 1906. Good answers, when discussing the concept of subrogation, also discussed the issue of proprietary rights on abandonment and how it affects the insurers. Most candidates discussed the salient features of 'important clause' quite well.

QUESTION 6 - GENERAL AVERAGE

Any discussion of marine insurance is incomplete without the discussion of General Average. Most candidates discussed all the salient features quite well i.e. extraordinary sacrifice and expenditure; reasonable; voluntary; imperilled; in the common venture. Good answers discussed each one of them with examples and also discussed the controversy as to '*reasonableness*' of expenditure.

QUESTION 7- CARGO POLICIES

This was not a popular question, however, those who opted to answer it covered most of the salient features of facultative and floating policies and had used relevant examples. They also discussed correctly the Institute of Classification Clause – qualifying vessels and class requirements.

QUESTION 8 - INSTITUTE HULL POLICIES AND CARGO POLICIES CLAUSES

This question required a basic understanding of standard policies and the various standard clauses in them in the marine insurance market. It provided candidates with the chance to secure high marks due to the presence of many sub-parts. All that was required for each sub- part was one or two paragraph with key issues.

CONCLUSION

A good number of candidates scored over 60% marks in this paper, which is very pleasing. The highlight of the answers were candidates demonstrating a detailed understanding of various topics, citation of relevant case law and statutes, use of examples to convey the salient features, readable handwriting and above all managing time well during the paper. Candidates scoring well in this paper needed to demonstrate knowledge, tactics to answer the question paper, skills to manage time well under pressure and general commercial knowledge expected of a professional working in shipping.