



**MONDAY 16<sup>th</sup> APRIL 2012 – AFTERNOON**

## **MARINE INSURANCE**

**Time allowed – three hours**

**Answer any FIVE questions – all questions carry equal marks**

**Please read the questions carefully before answering**

1. The right of subrogation is extremely important to insurers, and it is not uncommon for insurers to include subrogation provisions in a policy. This doctrine is statutorily recognised by the Marine Insurance Act, and its application occurs at the expense of the insured. What are the rights of a subrogated insurer? Explain with suitable examples.
2. The responsibilities and liabilities of the assured and insurer are clearly set out in the Marine Insurance Act 1906. With suitable examples, discuss **both** of the following:
  - a) Insurable Interest
  - b) Disclosure and Representation.
3. Warranties in marine insurance are terms of contract by which the insured promises that a stated fact is true or will remain true, or that he will act or refrain from acting in a certain way. The effect of breach of warranty is quite controversial. It is now settled in the House of Lords in *Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd (The Good Luck)* [1992] 1 AC 233 that breach of warranty would put the risk to an end automatically as from the time of breach. Breach of warranty is one of the technical defences that insurers can use to defeat liability for claims. Discuss using examples.
4. Both shipowners' Protection and Indemnity Clubs and conventional marine insurers are governed by the provisions of the Marine Insurance Act 1906. Unlike an insurance company, which is answerable to its shareholders, a P&I Club is the servant only of its members. Explain the purpose and function of a shipowners' Protection and Indemnity Club.
5. Insurance contracts are highly unusual in that they are founded upon the doctrine of *uberrimae fidei* or doctrine of good faith. Both in Common law and under the Marine Insurance Act 1906, a Contract of marine insurance is governed by the doctrine of utmost good faith. What is the duty of utmost good faith and how does it affect the performance of a marine insurance contract? Explain with suitable examples.

**PLEASE TURN OVER**

6. In marine insurance law, it is recognized 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 examples.
7. General average expenses and 'sue & labour' are not one and the same. Using suitable examples analyse the fundamental differences between the two.
8. The vessel *Sky* was insured with *Sea Insurance* for a total agreed value of US\$4,250,000. Three months prior to taking up the policy the vessel underwent a survey and it was strongly advised that she was dry-docked to address some immediate problems with her hull, in addition to others. While the *Sky* was dry-docked for 3 weeks, not all problems were resolved.

Later the *Sky* was time chartered for a period of 18 months, and it was strongly rumoured that the vessel was to take long journeys between Brazil and China transporting Soya bean. The owners of the *Sky* mentioned the dry-docking of the vessel to the insurance broker but failed to mention the long list of recommendations by the surveyors. The dry-docking was referred to in the conversation. Three months into the time charter party contract, while carrying a cargo of Soya bean from Brazil, *Sky* developed serious engine problems (besides other problems), and is now stranded.

*Sky* while being towed encountered a hurricane and experienced serious damage to her hull incurring general average costs and some salvage costs. She was dry-docked in Jamaica. It is feared that the cost of towage, salvage costs and repairs might far exceed her total value. The owners of *Sky* have put in a claim for 'total loss' or 'constructive total loss'. Discuss the legality of the claim.