



MARINE INSURANCE

INTRODUCTORY REMARKS

Students who scored over 70% demonstrated a clear understanding of the topic taken up for discussion. Question 8 was the most popular one this year, followed by question 7. The least popular one was question 3.

The statistics from this year's Shipping Law exams present a few positives in comparison with the 2012 exams. It is impressive, as there were no students from the 2012 exams achieving marks of 70% or above. This presents a very improved picture.

This year we see an increase in number of students scoring marks of over 60% and over 70%, and a decrease in the number of failures.

1. What is abandonment and under what circumstances may shipowners give notice of abandonment of their ships? Explain the provisions governing such notice and the consequences they have for both insurers and the assured.

This question was the fourth most popular question. Here, the candidates were expected to be familiar with the legal doctrine of 'abandonment' in shipping and marine insurance practice and the relevant provisions of the Marine Insurance Act 1906. The candidates were to carry out a detailed discussion on 'abandonment' of a ship by the shipowner, and the consequences that flow from this. The answer was to include a clear discussion on when a shipowner may give a notice of 'abandonment' of his insured ship and such consequences of a notice on both insurer and assured. Those who fared above average had presented a good answer, using case laws in their discussions to demonstrate a good understanding of the law. The performance of the candidates on this question could be summarised as being good.

2. Answer both parts:

- (a) Define a general average act and state the essential features which must exist in order for it to be justified.**
- (b) In a general average adjustment the amounts made good in respect of general average sacrifice also contribute to the loss. Explain why this is necessary, illustrating your answer with examples using your own figures.**

Question relating to - a) *general average act and its essential features*, and b) *why is it necessary for the amounts made good in respect of general average sacrifice also contribute to the loss*: The candidates were expected to be familiar with the principles of general average and its place in marine insurance practice. The candidates were to carry out a detailed discussion on 'general average' in marine insurance contracts, and the essential features that must exist in order for it to be justified. Answer was also to include discussion on the necessity for such a practice, and how in a general average adjustment the amounts made good in respect of the 'sacrifice' also contribute to the loss. The performance of the candidates on this question was above average.

3. Using appropriate examples, state the measure of indemnity, as specified in the Marine Insurance Act 1906, for damage to the insured ship:

- (a) Where the damage has been repaired.**
- (b) Where the damage has been partially repaired.**
- (c) Where the damage has not been repaired.**

This was the least popular question on the paper. The candidates were expected to be familiar with the measure of indemnity as specified in the MI Act 1906 for an insured ship under different heads. The candidates were expected to carry out a detailed discussion on the measure of indemnity as specified in the MI Act 1906 for an insured ship under different heads:

- i. where the damage has been repaired,*
- ii. where the damage has been partially repaired, and*
- iii. where the damage has not been repaired.*

All the students attempting to answer secured a pass, getting 50% and above. The performance of the candidates on this question was commendable.

4. The Marine Insurance Act 1906 provides that the marine insurance policy is assignable unless it contains terms expressly prohibiting assignment. Explain all of the following:

- (a) What is meant by assignment of the policy?**
- (b) Why the marine cargo policy is invariably assignable.**
- (c) The rights of the assignee under an assigned policy.**
- (d) The protection afforded to the assignee by effecting the insurance on a 'lost or not lost' basis.**

This was the fourth most popular question. Here, the candidates were expected to be familiar with assignment of marine insurance policies, and the rights of the assignees. The candidates were to carry out a detailed on the relevant provisions of the MI Act 1906 which provides for the assignment of marine insurance policy. The discussion was to focus on *assignment of policy, rights of assignees, why the marine policy is assignable, and the protection afforded to the assignee under the policy*. The performance of the candidates on this question was good.



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5. Answer both parts:

(a) State, with examples, the circumstances under which an assured may claim an actual total loss.

(b) Discuss the rights that automatically accrue to underwriters upon payment of a claim for total loss of the subject matter insured.

This was the second least popular question. The candidates were expected to be familiar with total loss and the rights that accrue on underwriters upon payment of a claim for total loss in insurance practice. The candidates were expected to carry out a detailed discussion on the circumstances under which an assured may claim an actual total loss, and on the rights that automatically accrue to the underwriters upon payment of a claim for total loss of the subject matter insured. The students were also expected to be aware of how rights are subrogated. The performance of the candidates on this question was good.

6. 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 they will act or refrain from acting in a certain way. The effect of breach of a warranty can be used to defeat liability for claims. Explain with examples.

This was the 3rd least popular question. The candidates in particular, were expected to be familiar with this form of 'technical defence' to claims. The candidates were to carry out a detailed discussion on warranties under a marine insurance contract, and how it was a condition precedent and promissory in nature. Students were also expected to discuss this technical defence that the insurers resort to while defending any claims, and the consequences of breach of warranty. The performance of the candidates on this question could be summarised as being above average.

7. Explain the purpose and function of a Shipowners' Protection & Indemnity Club, the benefits that accrue to the shipowners, and how it is governed by the Marine Insurance Act 1906.

This was the second most popular question, with a total of 28 candidates attempting to answer. Here, the candidates were expected to be familiar with the role played by the P&I clubs in the shipping industry. They were to carry out a detailed discussion on the purpose and function of the shipowner's P&I clubs in the shipping industry. Students were also to discuss how P&I clubs benefit the shipowners such as club letters. The performance of the candidates on this question could be summarised as being good.

8. What is the doctrine of utmost good faith (uberrimae fidei) and how does it affect the performance of a marine insurance contract? Using suitable examples, discuss the obligations it imposes upon the prospective assured and the broker, and its importance to the insurer.

This was the most popular question on the paper. The candidates were expected to be familiar with the duty of utmost good faith, uberrimae fidei, under a marine insurance contract. They were also to carry out a detailed discussion on the legal principles behind the duty of utmost good faith, uberrimae fidei, in a marine insurance contract, its uniqueness to insurance contracts, and how it affects the performance of the contract. The answer presented was also to include discussions on the obligations that it imposes upon the prospective assured and the broker, and its importance to the insurer. The performance of the candidates on this question was good.