ASSOCIATION OF
Average Adjusters

Associateship Level Examinations

Module A2: Hull and Cargo Claims - (2 ½ hours)

Syllabus, Bibliography, Law Cases and Sample Questions (Applicable to examinations sessions held from March 2022 onwards)

SYLLABUS

Candidates will not be expected to reproduce verbatim the wording of the Clauses which are detailed in this syllabus but they should nevertheless be very familiar with the key words and phrases used in those clauses and be aware of their practical implications.

It should also be anticipated that some topics covered in Module A1 may be revisited in the context of the Institute Clauses. Candidates are advised to explain their answers clearly and to quote authorities (law cases, section numbers of legislation, etc.) where appropriate.

HULL CLAIMS

Hull and machinery policy claims: Institute Time Clauses – Hulls 1/10/83

General
- Time bars applicable to policy claims under English Statute Law

Clause 4: Termination
- Effect of change of classification etc.

Clause 6: Perils
- Perils insured against
- Application of the "due diligence" proviso.

Clause 8: 3/4ths collision liability
- Coverage
- Exclusions
- Simple calculations to demonstrate understanding of the principles involved in:
  - Single and cross liabilities
  - Treatment of costs
  - Treatment of recoveries

Clause 9: Sistership
- Principles
- Determination of quantum

Clause 10: Notice of claim and tenders
- Provisions as regards notice
- Entitlements and penalties regarding tenders

Clause 11: General average and salvage
- Extent of coverage under clause 11.1
- GA in ballast – clause 11.3

Clause 12: Deductibles and Recoveries
- Application of clause, in particular:
  - Each separate accident or occurrence (see AAA Report of the Special Committee 1972)
  - Sighting bottom
  - Application to claims for total loss, including for claims under clause 13.

Clause 13: Duty of assured (sue and labour)
- The duty of the assured
- Extent of coverage
- Effect of under-insurance
- Exclusions
- Examples of such measures
- Sue and labour claims where a total loss arises

Clause 14: New for old
- Principle
- Effect of the clause

Clause 16: Wages and maintenance
- When excluded/allowed

Clause 17: Agency
- Principle

Clause 18: Unrepaired damage
- Measure of indemnity
- Successive losses

Clause 19: Constructive total loss
- When established
- Options available in the event of a CTL

Clauses 23 to 26: War, strikes, malicious acts and nuclear exclusions
- The various types of losses which are excluded

Average adjusting practice

- Candidates are required to show an understanding of the practice in relation to the following:
  - Expenses of removing a vessel for repair per AAA Rule of Practice D1
  - Dry dock expenses per AAA Rule of Practice D5
  - Treatment of the cost of tank cleaning and / or gas-freeing per AAA Rule of Practice D6
  - Scraping and painting per AAA Rule of Practice D8
  - Treatment of the cost of overtime incurred to expedite repairs
  - Treatment of the cost of temporary repairs
  - Treatment of progressive damage sustained over more than one policy period

General Average

Candidates are not expected to have a detailed knowledge of general average or the York-Antwerp Rules but should be familiar with the key words and phrases used, and should show an understanding of the basic principles set out in the following York-Antwerp Rules 1994:

- Rule A: General average defined
- Rule C: Included and excluded losses
- Rule D: Remedies and defences
- Rule F: Substituted expenses

They are also required to provide examples of:

- General average sacrifices of ship and cargo
- General average expenditure incurred for the common safety
- General average expenditure allowable at a port of refuge

They should also be prepared to carry out simple calculations of:

- Allowances in general average based on a given scenario
- Contributory values of ship and cargo
- Apportionment of a general average

Other hull clauses, insurances and principles

Institute Additional Perils Clauses – Hulls 1/10/83

- Extension of cover compared to ITCH

IUA Cyber Loss Exclusion Clauses - IUA 09-081 / IUA 09-082

- Purpose and application to marine hull and cargo claims

General Average Absorption Clauses

- Typical coverage

Increased value and excess liability policies

- Principle of underinsurance
- Claims to which underinsurance applies under ITCH 1/10/83
- Purpose and effect of increased value and excess liability policies

Loss of hire insurance under A.B.S Loss of Charter Hire Insurance 1/10/83

- Nature of coverage and basis of recovery

P&I insurance
- Main areas of cover provided by the International Group Protection and Indemnity Clubs

Lloyd's Open Form 2011
- Knowledge of the provisions of this salvage contract

CARGO CLAIMS

Institute Cargo Clauses 2009, A, B & C

Candidates may expect to answer questions involving the following under the "A" Clauses:

- Risks covered (clauses 1, 2 and 3)
- Exclusions (clauses 4 to 7)
- Transit clause (clause 8)
- Termination of contract of carriage (clause 9)
- Insurable interest (clause 11)
- Forwarding charges (clause 12)
- Increased value (clause 14)
- Minimising losses (clauses 16 and17)

Candidates should be aware of the differences in cover provided by the A, B and C clauses.

Adjustment of cargo claims

Candidates will be expected to carry out simple calculations of a cargo claim stated on:
- Depreciation basis
- Salvage loss basis

Miscellaneous

- Meaning and operation of open covers
- Documentation of claims (summarise the documents that an assured would be requested to provide when submitting a cargo claim and describe the purpose of each)

BIBLIOGRAPHY (COMMON TO MODULES A1 AND A2)

It should be noted that some of the leading textbooks have not been revised for some time; nonetheless all the books listed here offer useful guidance regarding the basic principles.

- Introduction to Hull Claims (2014, download from Association of Average Adjusters website, Subscribers' section)
- Chalmers, Marine Insurance Act 1906 (10th edition, 1993)
- Templeman, Marine Insurance (6th edition, 1986)
- Goodacre, Marine Insurance Claims (3rd edition, 1996)
- Susan Hodges, Cases and Materials on Marine Insurance Law (1st edition, 1999)
- Hudson, Marine Insurance Clauses (5th edition, 2012).
- Study material can also be found on the websites of average adjusters and solicitors.

(We have listed above the latest editions of which we are aware, but Candidates are advised to check for subsequent updates).

Additional text of relevance for Module A2:

- Dunt, Marine Cargo Insurance (2nd edition, 2015)

SUMMARIES OF RELEVANT LAW CASES (CASES 1 TO 15 ARE COMMON TO MODULES A1 AND A2. THE REMAINING CASES ARE SET FOR STUDY ONLY FOR MODULE A2)

1) Québec Marine Insurance v Commercial Maritime [1870]

A vessel was insured on a voyage policy from Montreal to Halifax. After leaving Montreal the boiler, which had been defective prior to the start of the voyage, broke down, requiring the vessel to seek shelter and repair it. After repairing the boiler, the vessel sailed but was lost during heavy weather. Insurers declined the claim since the vessel had originally sailed in an unseaworthy condition due to the defective boiler, thus breaching the implied warranty of seaworthiness in a voyage policy. The Privy Council agreed that insurers were not liable, even though the breach (the defective boiler) had been put right at the time of the Total Loss.

2) Dudgeon v Pembroke [1877]

The assured took out a time policy on an iron steamship while she was in dry-dock at Millwall undergoing an extensive overhaul. The vessel made a ballast passage to Gothenburg, during which she was noted to be making some water. On the return loaded passage to London she encountered heavy weather and became water-logged, eventually grounding and becoming a total loss. It was admitted that the vessel was unseaworthy, but it was also found that the Assured was not privy to this unseaworthiness. The House of Lords held that the Assured were entitled to recover for a loss by sea perils (heavy weather) because a “long course of decisions in the courts of this country have established that *causa proxima non remota spectator* is the maxim by which these contracts of insurance are to be construed and that any loss caused immediately by the perils of the sea is within the policy, though it would not have occurred but for the concurrent actions of some other cause which is not within it.”

3) Hamilton v Pandorf [1887]

This was a contract of carriage case in which the bill of lading included an exceptions clause in respect of “dangers and accidents of the seas”. Rats had gnawed through a lead pipe on the ship allowing seawater to enter and damage the cargo. It was held that the exception clause would apply because the action of the rats was only the remote cause, the immediate cause being the ingress of seawater as the ship rolled.

4) Reischer v Borwick [1894]

A paddle-steamer tug was insured against collision and contact damage but not in respect of perils of the seas etc. The tug made contact with a floating object, causing damage to the condenser and allowing ingress of water into the vessel. Whilst proceeding under tow to the nearest dock, a temporary repair failed and the vessel had to be beached and she became a total loss. Insurers argued that they were only liable for the initial contact damage. The Court of Appeal held that the initial contact was the proximate cause of the total loss, the tug being “continuously in danger from the time the condenser was broken”, and the Assured’s claim should succeed.

5) Thomas v Tyne & Weir [1917]

Vessel insured under a time policy was sent to sea in an unseaworthy state in two respects: firstly, insufficient crew, secondly unfitness of the hull; the assured was privy to (aware of) the first but not the second. The vessel was lost due to the unfitness of the hull. It was held that the insured was able to recover because the exclusion on MIA 39(5) only operates if the loss was attributable to the particular unseaworthiness to which the Assured was privy.

6) The "Ikaria" [1918]

During the First World War a vessel was lying off Le Havre when she was hit by a torpedo. She had sustained severe damage, but the crew were able to bring her into the port alongside a quay. However, a gale caused the vessel to range heavily against the quay and she was ordered by the authorities to move to the outer harbour. As a result of the continuing bad weather and touching bottom at low tide because she was down by the head, the vessel became a total loss. Shipowners claimed for a loss by sea perils under their hull policy but their insurers argued that the war risks exclusion should apply.

The House of Lords agreed that the total loss was a result of war perils, since at all times the vessel was still in the grip of the casualty that originated with the torpedo attack. The proximate cause is not necessarily proximate in time and the real test is to consider which cause is proximate in efficiency.

7) British and Foreign v Gaunt [1921]

A shipment of wool was sent from Chile to England on all risks terms "from the sheep's back" to the warehouse in Europe. On arrival it was found to have sustained water damage at some time while en route to the loading port, but Insurers declined the claim because the Assured were unable to specify exactly how and when the damage had occurred. The House of Lords allowed the claim saying that under an "all risks" policy the Assured was only obliged to show that some fortuity had occurred (and that no exclusions applied) and "he is not bound to go further and prove the exact nature of the accident… which occasioned his loss."

8) Samuel (P) & Co. Ltd v Dumas [1923]

A vessel was scuttled by the master and crew with the connivance of the owner. A claim was put forward by the innocent mortgagee, but it was held that he was unable to recover because scuttling of the vessel, with the owner's connivance, was not a peril of the sea. There was no fortuity involved in a deliberate act to sink a vessel.

9) Wadsworth Lighterage v Sea Insurance [1929]

A wooden barge was insured against total loss including damage by collision, standing or sinking. The barge had spent 50 years carrying coal on the River Mersey and sank at her moorings on a calm night. It was held that the loss was due to ordinary wear and tear and therefore excluded by Section 55 of the MIA. The sinking had occurred because "a very old barge which had been bumping about in the Mersey for a long time had come to the end of its tether". The loss was therefore due to the general debility of the barge rather than any fortuity.

10) Berk v Style [1955]

A cargo of kieselguhr (material used for filtration) was shipped in bags from Africa to London on "all risks" terms. On arrival it was found that many of the bags had burst. The claim for the cost of re-bagging, etc., was rejected by the Court on the basis that the bags had burst because of insufficient strength and this weakness was an inherent vice for which insurers were not liable.

11) Yorkshire Insurance Co. v Nisbet [1961]

The Assured's vessel had been in collision with a Canadian naval vessel and became a Total Loss, for which the hull insurers paid £72,000. The Assured subsequently obtained a recovery from the Canadian Government which, because of an intervening devaluation of sterling, was equivalent to £127,000. It was held that insurers' right of subrogation only entitled them to recover up to the amount they had paid.

12) The "Popi M" [1985]

A vessel insured under a time policy was steaming through the Mediterranean in good weather when shell plating in the engine room suddenly opened up, flooding and later sinking the vessel. The owners advanced a number of theories as to what might have caused the sudden shell plating failure, including contact with a submarine. The insurers declined to settle the claim on the basis that the loss was due to ordinary wear and tear on an elderly vessel. The House of Lords reviewed the extensive expert evidence and, finding it inconclusive, rejected the claim, saying "it is always open to the Court… to conclude that the proximate cause of the ship's loss, even on a balance of probabilities, remains in doubt, with the consequence that the Shipowners have failed to discharge the burden of proof which lay upon them."

13) "Miss Jay Jay" [1987]

A fast motor yacht encountered adverse weather on a passage from France to the U.K. On arrival it was found that the hull had been damaged partly as a result of poor design of internal stiffeners and partly because of the adverse weather.

In the High Court it was held that (with regard to Rule of Construction 7) it was not necessary for weather to be exceptionally bad to give rise to a claim arising from perils of the sea. If the action of the sea is the immediate cause of the loss, a claim will still arise even if conditions are within the range that could reasonably be anticipated.

In the Court of Appeal, it was confirmed that where there are two proximate causes of a loss and one is included (adverse weather) and the other is not expressly excluded by the policy (unseaworthiness due to inadequate stiffeners) the claim will succeed.

14) Masefield AG v Amlin [2011]

In the early 2000's the proliferation of piracy in the Gulf of Aden and around the Indian Ocean caused the shipping and insurance industry to consider issues which had not arisen for many years - the last piracy case to be heard in the English Courts being in 1590 (Hicks v Palington).

The "Bunga Melati Dua" was hijacked by Somali pirates. The ransom was paid and the ship returned to her owners within 6 weeks. The assured attempted to claim that cargo was an ATL

or CTL on account of hijacking, on the ground that they were "irretrievably deprived" of the cargo (ATL), or a CTL because ATL appeared unavoidable. It was argued that prospects of recovering cargo should not be taken into account, because paying ransom was contrary to English public policy. The Court of Appeal upheld the judgment at first instance, determining that payment of ransom is not contrary to public policy, and therefore not illegal under English law. The Court also found that an assured is not irretrievably deprived of property if it is legally and physically possible to recover it (and even if such can only be achieved by disproportionate effort and expenses).

15) "Brillante Virtuoso", The [2015]

This case concerned what was ultimately found (in a judgment given in 2019) to be an attempt to defraud the vessel's war risk insurers of US$ 77 MM. However, before the question of liability under the policies was tried, the preliminary issues which had arisen regarding the quantum of the loss were placed before the High Court.

In addition to disputing the existence of a CTL, Underwriters contended that there should be no liability for standby tugs from the point the vessel was redelivered under LOF (7 October 2011) on the basis that the original peril had ceased to operate (piracy, vandalism, malicious mischief etc.). However, in the 2015 judgment the court held that the vessel was a CTL and (i) that the original peril continued to operate after redelivery by the salvors, (ii) that such ongoing expenses as the standby tugs were incurred for the benefit of assured and underwriters; therefore sue and labour expense should be recoverable until proceedings were commenced on 8 February 2012 (date when claim form issued) but not until the vessel was ultimately delivered to scrap purchasers on 15 March 2012.

++++++++++++++++++++++++++++++++

THE FOLLOWING CASES (16 TO 24E) ARE SET FOR STUDY ONLY FOR MODULE A2

16) Magnus and Others v Buttemer [1852] 11 CB 876

Whilst the vessel was waiting for her order in order to discharge her cargo, she moored in the river for some four or five days. When she did go to the wharf to discharge, she floated and grounded with the rise and fall of the tide, although at no time was she actually dry. The riverbed in the vicinity was hard and every time she grounded, she took on a list and was later found to be damaged. The owners claimed for a loss by a peril of the seas (stranding). The question before the court was whether the grounding during the normal rise and fall of the tide, constituted a stranding. The court found that it was not a stranding, as there was an absence of fortuity in the incident.

17) The "Vancouver" [1886]

Following a voyage from Hong Kong to San Francisco the vessel was found to have a foul bottom. This was affecting the vessel's speed so it was necessary to for her to be dry docked to enable cleaning, scraping and painting before she put to sea again. Whilst in dry dock it was discovered that the stern post was fractured due to a peril of the seas, so therefore damage repairs were recoverable from hull insurers. If owner's works had been carried out separately, it would have taken 3 days, whilst the particular average repairs would have required 8 days. The work was carried out simultaneously and completed within the 8 days. The House of Lords affirmed the earlier decision in the Court of Appeal that as the simultaneous works had saved time in the dry docking; the costs should be apportioned equally for those 3 days saved.

18) The "Ruabon" [1897]

The vessel entered dry dock at Cardiff in January 1896 for repairs in consequence of having run aground. Her next scheduled maintenance and classification survey was due in November 1896. The owners therefore took the opportunity to advance the date of the survey and carry it out concurrently with the grounding repairs. The owners claimed all dry-docking costs on their policies of insurance, which the insurers objected to, contending that the repairs ought to be equally divided.
The Commercial Court and Court of Appeal followed the decision of the Vancouver case that the costs should be apportioned. However, the House of Lords ruled that the whole of the dry-docking expenses should be paid by the underwriters.

19) "Knight of St. Michael", The [1898]

Shortly after sailing, part of the cargo onboard started to heat and half of it had to be discharged at a port of refuge. Only a portion of it was delivered at destination. The shipowner claimed on his policy of insurance for the loss of freight. The defendant insurers denied liability. The court ruled that, notwithstanding that fire did not break out and no damage was suffered by the cargo, the assured could recover the lost freight, since the cargo loss was due to the preventive action of the master. The Court found that it was reasonably certain that, if the voyage had continued, spontaneous combustion would have taken place and the ship and cargo would have been destroyed by fire. The result is that loss suffered as a result of an action taken to mitigate an existing state of peril, is recoverable under a policy covering that peril. In the special circumstances of this case, where the master had acted to prevent a loss by fire, the owner was not prevented from recovering the lost freight; however, the cargo-owner would not have been able to recover from his insurer, on the ground of inherent vice of the cargo.

20) Agenoria Steamship Co Ltd v Merchants' Marine Insurance Co Ltd [1903]

On a voyage from Australia to New Zealand, the vessel sustained damage and after being temporarily repaired in Auckland, she proceeded to Australia for permanent repairs. The owners included in their claim against their hull and machinery underwriters the cost of dispatching a superintendent who represented them. The underwriters contended that the repairs could have been done in an equally efficient manner without the additional cost. The Court decided that the owners were entitled to the cost of a surveyor, but that a local one would have sufficed in the circumstances.

21) Vlassopoulos v British & Foreign "The Makis" [1928]

Whilst loading, the ship's foremast broke of and fell into one of her holds, where it was damaged beyond repair. Repairs necessary to enable the safe prosecution of the voyage were effected. After that damage had been repaired the ship proceeded on her voyage and she met with a second mishap, seriously damaging her propeller blades, and the ship was put into a port of refuge. The owners sought contribution to all the expenditure incurred both at the loading port and at the port of refuge. As regards the first casualty, the Court held that the lettered Rules prevailed and that the owners could not recover contribution in general average for the expenditure incurred in the loading port, since they could not prove their claim under the lettered Rules. As regards the second casualty, the defendants questioned whether ship cargo and freight were in immediate danger. The Court held that it is not necessary in order to constitute a general average act that the ship should be actually in the grip or even nearly in the grip of the disaster that may arise from a danger. It is sufficient to say that the ship must be in danger, or that the act must be done in order to preserve her from peril. It was also commented that the peril must be real and not imaginary, substantial and not merely slight.

22) "Eurysthenes", The [1976]

Whilst on a voyage from the United States to the Philippines, the vessel grounded. The cargo interests claimed against the shipowners for the loss sustained by their cargo and the shipowners sought indemnity from their P&I insurers. The defendant P & I Club alleged that, at the time of her sailing, the Eurysthenes had knowingly be sent to sea in an unseaworthy state for not having a sufficient number of crew members, proper charts, a serviceable echo sounder and an operative boiler. The question of what constitutes "privity" within the meaning of s. xx of the Marine Insurance Act 1906 came before the Court. The Court of Appeal found that privity Means 'knowledge and consent', and that it is not necessarily the same as wilful misconduct. Further, 'Knowledge' not just positive knowledge, but also the knowledge implied by phrase "turn a blind eye" i.e. if one suspects the truth but turns a blind eye so as to not know it for certain, one should be deemed to know the truth and thus be privy to the unseaworthiness. However, negligence in not knowing the truth at all is not considered to be as equivalent of turning the blind eye.

23) "Renos", The [2019]

A vessel insured under ITCH 1/10/83 caught fire and sustained substantial damage. Owners obtained quotations for the cost of repairs, which suggested that the vessel could be a constructive total loss. Other estimates and quotations were obtained in the following months, which were inconclusive, owing to considerable discrepancies, some suggesting that the vessel was a CTL and others that she was not.

6 months after the casualty, the owners served a notice of abandonment to the underwriters. The insurers acknowledged liability for a partial loss but not for CTL. The High Court held that 6 months were a sufficient period of time for the owners to make inquiries in terms of s. 62(3) of the Marine Insurance Act 1906, and that the word "future" in s. 60(2)(ii) means future to the casualty i.e. including cost of recovery incurred before the service of the NOA. The Supreme Court upheld the decision of the High Court and also decided that expenditure incurred in the nature of SCOPIC is not to be taken into account when assessing whether a vessel is a CTL or not.

24) Selected cases relevant to the peril "Latent Defect"

The following cases are grouped together for the convenience of Candidates:

A. Jackson v Mumford [1902]

The leading Judge in the Court of Appeal included *obiter dicta* in his judgment as follows: "The phrase 'defect in machinery'…/…means a defect of material, in respect either of its original or…/…after-acquired composition." He added: "the phrase…/…does not cover the erroneous judgment of the designer as to the effect of the strain which his machinery will have to resist, the machinery itself being faultless, the workmanship faultless, and the construction precisely that which the designer intended it to be".

As a consequence, the view was held for many years that the word 'defect' was limited to a 'defect in material' and that damage caused by a weakness or defect in design was not included within the term 'latent defect'.

B. Dimitrios N Rallias [1922]

This was a contract of carriage case in which the Court of Appeal quoted with approval a leading commentator's definition of the concept as being : "A defect which could not be discovered by a person of competent skill and using ordinary care." * The judgment is

interesting for the comments made concerning the matter of whether those responsible for checking the vessel acted negligently and whether any such negligence might affect the Court's conclusion as to whether a defect was "latent" or not. The leading Judge said: I am quite clear that negligence is not a test of latency".

*(It should be noted, however, that the Court stopped short of approving that definition as exhaustive or definitive).

C. Brown v Nitrate Producers [1937]

This was another contract of carriage case in which the trial Judge had to consider how to define the term "latent defect". He found that that a latent defect is latent not just to the eye but to all the senses. He went on to add that the test to be carried out in order to identify any such defect must be reasonable: "I cannot myself believe that in every case it is obligatory upon the ship's officer on the commencement of a voyage to go and tap every rivet to find if it has a defect or not…" He concluded: "I think it means such an examination as a reasonably careful man skilled in that matter would make…"

D. "Caribbean Sea, The [1979]

In this case, the vessel sank in moderate weather and investigation showed that a short tube connecting the starboard main sea suction valve to the ship's side had developed a circumferential crack. The Owners argued that the loss was caused by a latent defect; the Insurers contended that the loss was due to wear and tear or to a defect in design. The trial Judge commented as follows: "…in considering whether there was a defect in the hull or machinery which directly caused the loss of or damage to the ship, one is concerned with the actual state of the hull and machinery and not with the historical reason why it has come about that the hull and machinery is in that state. If the hull and machinery is in such a state that there can properly be said to be a defect in it, and such defect is the proximate cause of the casualty, it would seem to matter not that it had come into existence by virtue of (for example) poor design, or poor construction, or poor repair, unless a casualty so caused is excluded from the cover…"

In rejecting both of the Insurers' defences he found that the proximate cause of the loss was a combination of fatigue cracks arising from faulty design and the normal working of the ship. The defect constituted a latent defect, not wear and tear.

(One question left open by the decision in "Jackson v Mumford" was whether a "defect in machinery" was restricted to a "defect of material", or whether, for example, damage caused by the negligent assembly of materially sound parts of an engine would fall under the definition, despite the absence of a defect of any material. In this case the Judge approved the notion that the inadequacy of a particular part could constitute a shortcoming of, as opposed to a defect in, the machinery. On the other hand, he departed from the narrowness of the earlier judgment in also approving the suggestion that a defect in machinery did not have to be a material defect and could include incorrect assembly.)

E. "Nukila"", The [1997]

A jack up rig, insured under a marine policy subject to Institute Time Clauses Hulls 1/10/83 including the Additional Perils Clause, sustained damage to one of its legs caused by a faulty weld on the leg which was agreed to be a latent defect. The insurers resisted the claim on the basis that the entire leg and welding was all one part, and therefore latently defective, the recovery of which was excluded.

In the Court of Appeal the lead Judge imposed 3 tests:

1. was there damage to subject matter insured?
2. did it occur during policy?
3. was it caused by a latent defect?

It was held that damage was different from, and over and above the original latent defect even though both were contained in one component.

The case is important for a number of reasons, not least because it clarified that, in terms of ITCH 1/10/83, cover exists under the Inchmaree clause if, as here, the assured can show that damage to the subject matter insured has occurred which is proximately caused by a latent defect in that subject-matter. The exclusion of the cost of repairing/replacing the originally defective part was viewed as a separate exercise; in any event it was not relevant in the case of the *Nukila* since the insurance policy included the Additional Perils Clauses.

SAMPLE QUESTIONS FOR MODULE A2

Hull

1. Outline two circumstances in which a policy may terminate automatically under ITC Hulls 1.10.83.

2. With reference to the guidelines given by the Special Committee Report of 1972:

   a) Summarise the main principles as applied to Clause 12 of ITC Hulls 1.10.83:

   b) Give two examples to illustrate the practical application of these guidelines.

3. Following negotiations between the parties regarding a collision, liabilities and damages are agreed as follows:

	"A"	**"B"**
	(60% to blame)	(40% to blame)
Damage to ship	US$ 60,000	US$ 130,000
Demurrage	20,000	50,000
	US$ 80,000	US$ 180,000

   a) Show the cash settlement between the parties.
   b) "A" is insured subject to ITC Hulls 1.10.83, deductible US$20,000. State the claim on "A"'s policy.

4. Liability for a number of items is excluded under Clause 8 of ITC Hulls 1.10.83. Outline three such exclusions.

5. In what circumstances are wages and maintenance of crew allowed under ITC Hulls 1.10.83.

6. Outline your understanding of the following named perils:

   a) Perils of the seas.
   b) Barratry.

7. A vessel enters drydock to carry out damage repairs and Owners' maintenance work as follows:

	Repair Cost	**Days in drydock required**
Accident 1	US$500,000	5
Accident 2	US$750,000	10
Owners' work	US$200,000	5

   The cost of entering/leaving drydock is US$20,000 and the daily dues are US$10,000.

   Divide the drydocking expenses:

   a) Assuming the vessel is drydocked specially for damage repairs.
   b) Assuming the vessel is scheduled for a routine drydocking.

8. A vessel sailing in ballast suffers a severe grounding, following which a Constructive Total Loss claim is settled. Various unsuccessful attempts were made to refloat the vessel using tugs on a daily hire basis, at a total cost of US$500,000. The wreck was sold for breaking up *in situ* for US$250,000. The Insured Value of the vessel was US$10,000,000 but her Sound Market value at the time of the loss was US$12,000,000.

   The vessel was insured subject to ITC Hulls 1.10.83, deductible US$100,000. Adjust the claim for tug hire expenses.

9. A products tanker sustains grounding damage while entering Rotterdam to discharge cargo. After completion of discharge the Classification Society approves a single ballast voyage to a repair port. After taking quotations, the vessel removes to Lisbon where permanent repairs are effected in drydock. Owners took advantage of the drydocking to carry out various Class surveys which were not due at that time. On completion of repairs the vessel sails to Tunisia to load cargo.

   Outline:

   a) What expenses can generally be taken into consideration when calculating removal costs.
   b) How the removal expenses in this case would be dealt with assuming the vessel was insured under ITC Hulls 1.10.83.

10. A loaded container vessel goes heavily aground on an offshore reef, and salvors are engaged under LOF 2011. Identify which of the following costs would be allowed in General Average:

    a) LOF salvage award.
    b) Hull damage due to the grounding.
    c) Hull damage sustained during refloating operations.
    d) Cargo damage sustained during lightening operations.
    e) Damage to reefer cargo due to delay in the voyage while aground.
    f) Fines for pollution and damage to the reef caused during refloating operation.

11. Outline the purpose and effect of the Institute Additional Perils Clause 1.10.83.

12. A vessel suffers a main engine damage due to negligence of repairers and makes a recovery under his ITC Hulls 1.10.83 policy of US$500,000 after application of the US$100,000 deductible.

    Subsequently the Shipowner makes a recovery from the repairer as follows:

    - Loss of earnings: US$100,000
    - Repair costs: US$450,000

    How would this recovery be dealt with?

13. A vessel insured for US$15,000,000 (deductible US$100,000) subject to ITC Hulls 1/10/83 is on a loaded voyage when she grounds. Tugs are engaged on a daily hire basis and the vessel is refloated successfully but sustains damage to her steering gear in the

process. Permanent repairs to the steering gear and grounding damage are effected at a nearby port of refuge and the voyage is completed. The following costs are incurred:

- Tug assistance: US$100,000
- Port of refuge expenses: US$50,000
- Grounding damage to ship: US$200,000
- Refloating damage to ship: US$125,000
- Water damage to cargo: US$100,000

The Sound Market value of the vessel is US$12,000,000 and the CIF value of cargo is shown as US$8,000,000. Adjust the claim on the Hull policy.

Cargo

14. If cargo is insured under Institute Cargo Clauses (A) what is the level of proof required to substantiate a claim?

15. Explain what is meant by a "salvage loss" settlement.

16. 1000 boxes of mangoes were shipped Puerto Rico to London. Insured value £12 per box under ICC(A) 2009.

    Due to a peril insured against the mangoes arrived ripe to a varying degree and were sold immediately at an average price of £6 per box against a market price for sound mangoes of £10 per box as follows:

Gross proceeds of sale: £6 x 1,000 boxes	£6,000
Less sales commission:	-300
Carriage charges:	50
	£5,650

    Adjust the claim on the policy.

17. Under Institute Cargo Clauses 2009:

    a) When does the insurance attach?
    b) What is the position in the event of a change of voyage?

18. While investigating the circumstances of a cargo claim, insurers become aware that the carrying vessel was in poor condition and clearly unseaworthy at the commencement of the voyage.

    How might such unseaworthiness affect any claim under Institute Cargo Clauses 2009?

19. Outline four of the General Exclusions found in Institute Cargo Clauses 2009.

++++++++++++++++++++++++++