ASSOCIATION OF
Average Adjusters

Associateship Level Examinations

Module A1: Marine Insurance Act 1906, Insurance Act 2015 and Related Principles of Insurance

(2 ½ hours)

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

SYLLABUS

Candidates will be expected to demonstrate knowledge and understanding of the main sections of the Marine Insurance Act 1906 (MIA) and Insurance Act 2015 (IA15) that are set out below. Candidates are not expected to reproduce the entire wording of the Acts verbatim but should be very familiar with the key words and phrases used in the Acts and their practical implications. They should also understand the nature and significance of the changes to the 1906 Act brought about by the introduction of the 2015 Act.

Concept of indemnity

- Marine insurance defined, MIA 1

Risks covered

- Mixed sea and land risks, MIA 2

Insurable interest

- Who may have an insurable interest, MIA 5 (2)
- When interest must attach or can be acquired, MIA 6 (1) (2)
- Quantum of interest, MIA 14

Disclosure and representations

- Concept of good faith, MIA 17 and IA 14
- Application of IA to business insurance only, IA 2
- Duty of Fair presentation, IA 3
- Knowledge of the insured IA 4
- Knowledge of the insurer IA 5

Disclosure and representations (cont.)

- Knowledge, General provisions IA 6, 7
- Remedies for breach of duty, IA 8

Valued policy

- Effect of fixed value, MIA 27(3), 68(1)

Warranties

- Nature of a warranty, MIA 33(1), (2) and first sentence of (3)
- Warranties and representations, IA 9
- Effect of breach of warranty, IA 10(2)
- When breach is excused, IA 10(3) and (4)
- Terms not relevant to the actual loss, IA 11
- Warranty of seaworthiness in voyage policies, MIA 39(1) to (4)
- Position under a time policy – potential consequences of unseaworthiness as described in MIA 39(5)
- Warranty of legality, MIA 41

Assignment

- When a policy can be assigned, MIA 50(1)
- Effect of assignment, MIA 50(2)

Loss and abandonment

- Meaning and effect of the term “proximate cause”, MIA 55(1)
- Excluded losses, MIA 55(2)
- Partial and total loss, MIA 56

Actual Total Loss

- Definition and notice of abandonment, MIA 57
- Missing ship, MIA 58

Constructive Total Loss

- Definition, MIA 60(1)
- Examples of CTL relating to ship and cargo, MIA 60(2)

Effect of constructive total loss

- Options available to assured who can demonstrate existence of a CTL, MIA 61

Notice of abandonment

- Requirement to give notice, MIA 62(1)
- When it must be given, MIA 62(3)
- Refusal of notice, MIA 62(4)
- When notice not required, MIA 62(7,8,9)
- Effect of “writ clause”.

Effect of abandonment

- Insurers' entitlement, MIA 63(1)

Particular Average loss

- Definition, MIA 64(1)

General Average

- Definition, MIA 66(2)
- Policy liability for expenditure vs sacrifice, MIA 66(4)
- Common ownership, MIA 66(7)

Partial loss of ship

- Reasonable cost of repairs, MIA 69
- Unrepaired damage, MIA 69(2,3)

Partial loss of cargo

- Total loss of part, MIA 71(1, 2)
- Partial loss at destination, MIA 71(3)

General Average and salvage

- Under-insurance, MIA 73

Successive losses

- Liability for successive losses, MIA 77

Sue and labour

- Supplementary clause, MIA 78(1)
- General Average and Salvage distinguished, MIA 78(2)
- Duty of Assured, MIA 78(4)

Subrogation

- Nature of insurers' rights (total loss), MIA 79(1)
- Partial loss, MIA 79(2)

First schedule of MIA

Candidates will be expected to demonstrate good knowledge of the Rules of Construction regarding:

➢ Perils of the seas (7) ➢ Pirates (8) ➢ Thieves (9) ➢ Arrests (10)	➢ Barratry (11) ➢ Ship (15) ➢ Freight (16) ➢ Goods (17)

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).
- Donald O'May, Marine insurance: Law and policy (1993)
- 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).

SUMMARIES OF RELEVANT LAW CASES (COMMON TO MODULES A1 AND 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 affreightment 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, 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.

SAMPLE QUESTIONS FOR MODULE A1

1. What do you understand by the concept of "Indemnity"? Give two basic principles that follow from this concept.

2. Can any party take out a contract of marine insurance? Give reasons for your answer.

3. If an assured has no insurable interest at the time of a loss, can he benefit in any way from a contract of marine insurance?

4. At the time of negotiating a hull and machinery policy a shipowner did not disclose a history of main engine problems. If the main engine suffers damage during the period of the policy, would the shipowner still be able to make a claim, assuming that the cause of the loss was a peril insured against?

5. A ship with a sound market value of US$15,000,000 is insured on a valued policy for US$ 20,000,000. In the event of a total loss, how much will the shipowner recover from the insurers? Explain your answer with reference to the Marine Insurance Act.

6. What do you understand by the term "promissory warranty" in section 33(1) of the MIA1906?

7. A policy of insurance on a ship has a warranty stating that the vessel must be classed and class maintained. At the date of commencement of the policy the vessel is not classed. Shortly afterwards and before any loss the vessel becomes fully classed. A loss is subsequently sustained. Can the shipowner recover in respect of such loss? Support your answer with reference to any appropriate section(s) of the currently applicable legislation.

8. Are there any circumstances where a breach of a warranty may be excused? Support your answer with reference to any appropriate section(s) of the currently applicable legislation.

9. A vessel is insured for 12 months as at 1st January. During the course of trading the shipowner becomes aware that the vessel is unseaworthy due to leaking hatch covers but elects not to repair. In November the vessel runs aground as a result of negligent navigation. Would the fact that the vessel was unseaworthy at the time of the grounding enable the insurer to reject the claim in respect of the grounding? Support your answer with reference to any appropriate section(s) of the currently applicable legislation and to any case law which you consider relevant.

10. A voyage policy on electrical goods. During the voyage, the vessel sustains damage due to perils of the sea (a peril insured against on the cargo policy). The cargo also sustains damage and the ship is delayed at a port of refuge to such an extent that the goods eventually arrive at destination too late to meet the Christmas market for which they were intended. As a consequence, the goods are sold for a much lower price. Can the cargo owner recover for this loss?

11. Give the two main criteria that would give rise to a Constructive Total Loss claim on a Hull policy under the terms of section 60 (1) of the MIA 1906.

12. A small vessel is insured on a valued policy for an amount of US$ 1,000,000. While on a voyage in ballast and not under charter she runs aground. In each of the following situations state whether the shipowner can claim for a Constructive Total Loss:

a) Sound value US$ 1.2m. Estimated cost of refloating US$ 300,000, estimated cost of repairs US$ 750,000.

b) Sound value US$ 900,000. Estimated cost of refloating US$ 250,000 estimated cost of repairs US$ 650,000.

(In answering, ignore any issues concerning the timing of the submission of a notice of abandonment)

13. A ship with a sound value of US$ 5,000,000 and an insured value of US$ 4,000,000 runs aground and the engine room is flooded. During a high tide she refloats herself. The estimated cost of repairs is US$ 4,500,000. What options are there for the shipowner to claim from the insurers?

14. If an assured wishes to claim for a CTL on a policy, what action must it take to comply with section 62(1) of the MIA 1906?

15. A shipowner asks for your advice as to what constitutes a general average act in terms of of the MIA 1906. What are the main principles that you would draw to his attention?

16. A ship sustains damage as a result of a peril insured against but the shipowner only effects part permanent repairs. The remaining part permanent repairs are still outstanding when the policy expires. The cost of the repairs effected are below the policy deductible, but the estimated cost of the deferred repairs would exceed the deductible. Is there any claim on the policy and, if so, how would it be assessed?

17. a) 1000 bags of coffee are insured for US$ 250,000. During the course of the voyage 4 bags are lost due to Insured perils discharge. What is the claim?

b) 1000 bags of coffee are insured for US$ 250,000. During the course of the voyage 24 bags are delivered that have been damaged by insured perils and it is agreed that the damage is 20%. What is the claim?

18. A ship is insured for 12 months with an insured value of US$ 10,000,000. During the course of the policy year the vessel sustains 3 casualties which in total cost US$ 11,000,000 to repair. Can the shipowner recover the US$ 11,000,000?

19. A vessel with a sound and insured value of US$ 5,000,000 runs aground on a loaded voyage. She refloats herself and puts into a port of refuge where repairs are effected and the following costs are incurred:

Grounding repairs: US$ 4,500,000.

Ship's proportion of general average expenditure: US$ 750,000.

Can the shipowner recover in full? Give reasons for your answer with reference to any relevant sections of the MIA 1906.

20. Summarise the salient facts and judicial decisions in the following law cases: [the question will typically mention the names of 3 or 4 of the law cases forming part of the syllabus].

21. While heaving up an anchor, the anchor is fouled and the crew cut the chain; the anchor and chain are lost. The crew drop a marker buoy, but the shipowner takes no further action and claims for the cost of a new anchor and chain. Assuming that the loss of the anchor

can be considered as a peril of the sea and ignoring any question of a deductible, does the insurer have any defence to the claim?

22. a) When an insurer settles a total loss, does he automatically become the owner of whatever may remain?

    b) Does an insurer have any rights of ownership if he settles a partial loss?

23. If an insurer does not take over any rights of ownership of property on which he has settled a loss, is he entitled to receive any monies that are received by the insured in respect of a recovery that might be obtained from a third party? Give reasons for your answer with reference to any relevant sections of the MIA 1906.

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