

ASSOCIATE EXAMINATIONS

PAPER 1 – Case Summaries

Quebec 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.

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.”

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 sea-water 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.

Reischer v Borwick [1894]

A paddle-steamer tug was insured against collision damage but not in respect of perils of the seas etc. The tug collided 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 collision damage. The Court of Appeal held that the initial collision 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.

Thomas v Tyne & Wear [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.

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.

British and Foreign v Gaunt [1921]

A shipment of wool was sent from Chile to England on all risks terms “from the sheeps 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.”

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.

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.

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.

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.

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."

"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.