

## Introduction

While the majority of the paper will be weighted towards questions on general average, approximately 20% of the marks will relate to the areas of knowledge listed under Salvage and Carriage of Goods by Sea.

## General Average

The candidate is expected to be familiar with and be able to explain the following areas in detail. They will be required to answer a number of practical problems, some of which will be detailed figured questions. Much of the syllabus and the examination questions are based upon the York-Antwerp Rules 1994 and it is that set of Rules which is referred to below unless specifically indicated otherwise.

### General principles

- Definition of a general average act, Rule A of YAR and s. 66(2) of the MIA, 1906. The candidate will need to be able to recognise the essential elements in cases such as perils of the sea, fire, piracy, machinery breakdown etc.
- Who can carry out such an act.
- The need for peril to be present and whether expenses incurred to avoid a non-existent peril can be claimed in GA.
- Understanding of all sections of Rule C and recognising practical situations where allowances can be made or are excluded.
- The main differences between YAR and English law on GA.
- The evolution and role of the Rule of Interpretation and the Rule Paramount of YAR issues that could arise out of currency of adjustment problems.
- Application of GA to specialised vessels such as FPSO, drilling rigs etc.
- The issues in GA with tug and tow - see US legal cases and Rule B of YAR.
- Main differences between YAR 1994 and 2004
- The provisions of YAR on losses to the environment and the cost of environmental measures
- The significance, if any, of a “declaration” of general average.
- Onus of proof and evidence requirements, Rule E of YAR.
- Currency of adjustment.

### Allowances

#### Sacrifices

- Detailed knowledge of Rules 1,2,3, 5, 7, 9 and 12 covering various specific situations of GA loss to ship, cargo and other property.
- Method of calculation of amount to be made good for ship in GA including unrepaired damage, Rules 18 and 13 of YAR (and *Henderson v Shankland*.)

- The circumstances of and method for calculation of a loss of freight admitted in GA set out in Rule 15 of YAR.
- The circumstances of and method for calculation of a loss of cargo admitted in GA set out in Rule 16 of YAR.
- The appropriate allowance for undeclared or wrongfully declared cargo.
- The concept involved in state of wreck and allowances under Rule 4 for cutting away damaged parts of the vessel.

#### Expenditures

- Third party liability damage allowed in GA under Rule C.
- Concept of substituted expenses, what can be considered for the alternative course of action and the application to practical situations.
- The ways that temporary repairs can be claimed in GA along with the application to practical situations. It is important that candidates are aware of how temporary repairs can also be claimed in particular average.
- Circumstances covering all allowances made for both putting into a port of refuge and while being detained there under Rules 10 and 11 of YAR. Knowledge of every aspect of these rules and the practical calculations that can arise therefrom is required.
- Allowances for salvage payments and consequent costs.
- Allowance of commission and interest on items of GA and practical calculation of such allowances.

#### Contribution

- The place and time for contribution, Rule G (and Fletcher v Anderson.)
- The concept of contributing interests, Rules G and the mechanism for calculating contributory values, Rule 17.
- Practical calculation of contributory values under rule 17 for all potential contributing interests including “made good”.
- Calculation of contributions attaching to time charterers’ bunkers.
- Liability for freight, chartered and ulterior, ROPs B26 and B27.
- The sub-division of contribution for freight between shipowner and time charterer where hire is to contribute.
- The calculation of contributory values in double/multiple GA situations.
- What happens if there are no arrived values.
- The significance of a vessel or cargo being a total loss.
- The significance of cargo being sold short of destination.

### Security

- The operation of a possessory lien in relation to securing GA contributions.
- The concept of obtaining, and format, of GA security.
- The contractual effects of bonds and guarantees.
- Non separation agreements including the third and fourth paragraphs of Rule G, what they are designed to cover, their limits and practical calculation of allowances under them.
- Issues arising on forwarding, security and payment of freight in City of Colombo type situations.
- Remedies by ship against cargo, cargo remedies as against ship and other cargo
- Shipowner's failure to take security and have an adjustment prepared – claims by cargo
- Treatment of cash deposits specified by YAR.

### Unseaworthiness/carrier's fault

- Provisions of Rule D of YAR.
- General knowledge of examples of carrier's fault in GA cases.
- Knowledge of how the shipowner may claim if cargo are excused from contributing due to a breach of the contract of affreightment.
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### Insurances

- The circumstances where an insurer might not be liable for GA loss or contribution, see s. 66(6) of MIA 1906.
- Effect of s. 73 (1) of MIA, 1906 on claims on marine insurers.
- Detailed knowledge of how reductions for underinsurance are calculated on hull, cargo and freight policies.
- Losses falling on the insurer under s. 66(4).
- The concept of average disbursements Insurance
- Outline of the main differences between Average Disbursements Clauses "A" and "B", 14/5/87.
- What can and cannot be declared on an ADI cover and the calculation of the opening and closing figures.
- Adjustment of claims on ADI insurance under "A" and "B" clauses.
- The liability of insurers where one person owns multiple interests in one incident
- The concept of ballast GA (under ROP B26) and insurance policies.
- Crediting insurers with payments on account including commission and interest.
- General understanding of absorption clauses.
- Possible requirement for insurance on cargo forced discharged and distinction from SOL insurance.

### Case law

The candidate would be expected to be familiar with, as a minimum the following cases and explain how the decisions assist us in dealing with general average:-

- ABT Rasha [1999]
- Alpha, The [1991]
- Anderson Tritton & Co v Ocean Steamship Co [1884-85]
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- Anglo-Grecian Trading Co v T. Beynon & Co [1926]
- Austin Friars Steamship Co Ltd v Spillers & Bakers Ltd [1915]
- Australian Coastal Shipping Commission v Green [1971]
- Beatrice, The [1975]
- Bijela, The [1994]
- Chandris v Argo Insurance Co Ltd [1963]
- Chellev v Royal Commission on the Sugar Supply [1922]
- City of Colombo, The [1978]
- Corry v Coulthard [1876]
- Crooks & Co v Allan [1879-80]
- Daniolos v Bunge & Co Ltd [1938]
- Despina R, The [1979]
- Federal Commerce and Navigation Co Ltd v Eisenerz GmbH [1975]
- Fletcher v Alexander [1867-68]
- Green Star Shipping Co Ltd v London Assurance [1933]
- Harrison v Bank of Australasia [1871-72]
- Henderson Bros v Shankland & Co [1896]
- Huth & Co v Lamport [1885-86]
- J.P. Donaldson, The [1897]
- Joseph Watson & Son Ltd v Firemans Fund Insurance Co [1922]
- Jute Express, The [1991]
- Kemp v Halliday [1865-66]
- Lash Atlantico, The [1987]
- Makis [1929]
- McCall v Houlder Bros [1897]
- Miliangos v George Frank (Textiles) Ltd [1976]
- Mormacmar [1947, USA]
- Northland Navigation Co Ltd V Patterson Boiler Works Ltd [1983]
- Papayanni v Grampian Steamship Co. [1896]
- Potoi Chau, The [1984]
- Ralli v Troop [1894]
- Royal Boskalis Westminster NV v Mountain [1999]
- S.C. Loveland Co v USA [1963]
- Seapool, The [1934]
- Shepherd v Kottgen [1877]
- Societe Nouvelle d'Armement v Spillers & Bakers Ltd [1917]
- Strang Steel & Co v A. Scott & Co [1889]
- Trade Green, The [2001]
- Transoceanica Francesca, The [1987]

- Troilus, The [1951]
- Union of India v E.A. Aaby's Rederi [1975]
- Wavertree Sailing Ship Co Ltd v Love [1897]
- Wilson v Bank of Victoria [1866-67]
- Wordsworth, The [1898]

### Reading materials

- York-Antwerp Rules 1974, 1994 and 2004
- Marine Insurance Act, 1906 – sections 66, 73.1
- The general average clauses included in the principal Institute hull, cargo and freight policy forms as well as Excess Liabilities and Disbursements and Increased Value.
- Rules of Practice of the Association of Average Adjusters nos. B1, B9, B24-37, C2, F1-22.
- Practice Committee Opinions of the Association of Average Adjusters nos. G2-23 and P5-6.
- Lowndes and Rudolf, The Law of General Average and The York-Antwerp Rules, 13<sup>th</sup> edition.
- N. Geoffrey Hudson and Michael Harvey, The York-Antwerp Rules: The Principles and Practice of General Average Adjustment, 3rd edition
- Prof. Francis Rose, General Average: Law and Practice, 2nd edition
- Goodacre, Marine Insurance Claims, 3<sup>rd</sup> edition.
- Templeman, Marine Insurance 6<sup>th</sup> edition (now somewhat dated but a good general overview with some practical calculations).
- D.J. Wilson, Average Disbursements and Other Subsidiary Interests, 1987.

### Salvage

The candidate is expected to be familiar with how a salvage claim may be made and paid for and display a good level of knowledge of the following areas:-

#### General principles (English law)

- Dangers to property
- Threat to the environment
- Obligations on salvors and owners of salvaged property.
- Subjects for salvage
- Parties entitled to recover salvage
- Criteria for reward of services
- Assessment of salvaged values
- Special compensation – Article 14.
- Maritime liens
- Sister-ship salvage
- Provision of security.

- Negligence of salvors and limitation of liability.
- Life salvage and who pays.
- Engaged services.
- Master's authority to enter a salvage contract.
- Criteria for entering a no cure no pay contract.
- Relationship between salvage and general average with reference to YAR Rule 6 1994 and 2004.
- Difference between salvage charges and sue and labour set out in MIA, 1906.

### **Lloyd's Open Form**

- Contractors' obligations.
- Property owners' duties.
- Rights of termination.
- Deemd performance.
- Scope of authority clause.
- LSSA provisions concerning security, liens and arrest.
- Interest and currency provisions.
- Purpose of SCOPIC clause
- Invoking Scopic.
- Security for Scopic payments and who pays.
- Method of calculation of amounts payable under SCOPIC.
- Role of SCR and SR.

### **Case law**

- *Ballantyne v MacKinnon [1896]*
- *Bosworth, The (No 3) [1962]*
- *Choko Star, The [1987]*
- *George Dean, The [1857]*
- *Troilus, The [1951]*
- *Undaunted, The [1860]*
- *Winson, The [1981]*

### **Reading Materials**

Lloyd's Standard Form of Salvage Agreement and Scopic Clause (latest version)

Merchant Shipping (Salvage and Pollution) Act 1994

Kennedy and Rose on the Law of Salvage, 7th Revised edition

John Reeder QC - Brice on Maritime Law of Salvage, 5th Revised edition

### **Carriage of Goods by Sea**

The object for this section of the module is to ensure that the candidate has a working knowledge of the obligations falling on the carrier under a contract of affreightment and the effects of an actionable breach in the performance of that contract and defences such a breach gives, to recovery of a general average contribution. Furthermore the module also expects the candidate to have good knowledge of the position of the shipowner as a bailee of cargo and the position of all parties in the event of legal abandonment of the voyage after a major casualty. The candidate is expected to be familiar with the following areas of knowledge:-

#### **Common law**

- Implied obligations in a contract of carriage in common law
- Exceptions available to a common carrier.
- Justifiable deviation.
- Effects of a breach of the contract of carriage.
- Functions of a bill of lading.
- Payment of freight.
- Frustration of the contract of carriage.
- Justifiable abandonment of the voyage.
- Master's duties on abandonment of the voyage
- Obligations for transshipment, cargo and discharging cargo following frustration of the contract.

#### **Carriage of Goods by Sea Act 1971**

- Be aware of when the Act and the Hague Visby Rules apply.
- Definitions under Article 1 of the Hague Visby rules.
- The carrier's duty to provide a seaworthy ship under Art III r.1
- Definition of unseaworthiness.
- Duty to exercise due diligence.
- Article III r.2 care of cargo.
- Burden of proof on due diligence.
- Effect of breach of duty.
- Exceptions of Article IV r.2.
- Shipper's responsibilities.
- Deviation which is excused.
- Limitation of liability; how does it work.

### Generally

- An outline of the differences between Hamburg Rules and Hague Visby Rules on liability of the carrier.
- An outline of the differences between Rotterdam Rules and Hague Visby Rules on liability of the carrier.
- Explain the nature of SOL insurance, its use and who bears the cost
- Effect on unseaworthiness
  - on the ship's ability to claim GA contributions
  - on insurance contracts
- Responsibility for goods and when it transfers
- The significance of a clean bill of lading
- Impact on insurance policies of deviation
- Responsibility for disposal of worthless cargo at destination

### Case law

#### Explain the facts and decisions of the following cases

- *Amstelslot, The* [1962]
- *Angliss & Co. (Australia) Proprietary Ltd v P&O Steam Navigation* [1927]
- *Assicurazioni Generali v Bessie Smith*
- *Davis Contractors v Fareham UDC* [1956]
- *De Cuadra v Swan* [1864]
- *Dimitrios N. Rallias, The* [1922]
- *Dominique, The* [1989]
- *Eugenia, The* [1964]
- *Fjord Wind, The* [2000]
- *Hain Steamship Co. Ltd v Tate & Lyle Ltd* [1936]
- *Hansen v Dunn* [1906]
- *Hunter v Prinsep* [1808]
- *Jackson v Union Marine Insurance* [1872-73]
- *Kish v Charles Taylor & Sons & Co.* [1912]
- *Kulukundis v Norwich Union Fire Insurance Society Ltd* [1937]
- *Liver Alkali v Johnson* [1872]
- *Lorna 1* [1983]
- *Maxine Footwear v Canadian Govt. Merchant Marine* [1959]
- *Moss v Smith* [1850]
- *Muncaster Castle, The* [1961]
- *Notara v Henderson* [1872]
- *Nugent v Smith* [1877]
- *Pa Mar, The* [1999]
- *Reardon Smith Line Ltd v Black Sea & Baltic General Ins. Co. Ltd* [1939]
- *Savona, The* [1900]
- *Scaramanga & Co. v Stamp* [1879-80]

- *Shipton v Thornton [1838]*
- *Siordet v Hall [1828]*
- *Standard Oil Co. of New York v Clan Line Steamers [1924]*
- *Teutonia, The [1869-72]*
- *Williams & Co v Canton Ins. Office [1901]*

### **Reading Materials**

Carriage of Goods by Sea Act 1971

Carriage of Goods by Sea Act 1972

Hamburg Rules

Rotterdam Rules

Dockray, *Cases & Materials on the Carriage of Goods by Sea*, 3<sup>rd</sup> edition.

Scrutton on *Charterparties and Bills of Lading*, current edition

Wilson, *Carriage of Goods by Sea*, 7<sup>th</sup> revised edition

"Special charges on cargo Part 1: The obligations of ship and cargo owners", N. Geoffrey Hudson in *Lloyd's Maritime and Commercial Law*