

Introduction

The purpose of this module is to test the candidate extensively on their knowledge of the law and practice relating to hull claims. The candidate will also need to demonstrate their knowledge of both the theoretical and practical basis for the calculation of claims for particular average losses on ship, total losses with ancillary claims and loss of earnings claims. They will be required to answer a number of practical problems, some of which will be detailed figured questions. Candidates will be expected to show a clear understanding of the development of marine insurance law and the leading law cases and to be able to apply these principles to practical examples. Candidates should identify which are the key law cases on important topics and read the judgements to understand the reasoning behind the judicial decisions.

A number of topics that featured in Modules 1 and 2 will be revisited in greater depth in this module. In particular the candidate is expected to be familiar with and be able to explain the following areas in detail:

Proximate cause

- the concept of proximate cause
- how the provisions of S.55(2) apply to claims
- losses arising from a number of causes
- losses arising from included and excluded perils

Insured perils

- perils insured under Institute Time Clauses Hulls 1.10.83 and 1.11.95
- definitions of the different perils insured against
- concept of latent defect and how damage arising can be claimed
- want of due diligence by the assured, owners or managers
- Additional Perils Clause 1.10.83 - what is the extra cover offered and what are the limitations
- burden of proof relating to different perils
- definition of loss or damage

Insurer's defences

- want of due diligence by the Assured owners or managers
- express and implied warranties
- failure to avert or minimise a loss

Particular average

- Measure of indemnity.
- Concept of the reasonable cost of repairs.
- Case law justification for common allowances.
- Temporary repairs (in both GA and PA).
- Overtime.
- Air freight (in both GA and PA).
- Increased cost of repairs by reason of deferral.

- Generator hire.
- Division of drydock dues (ROP 5).
- Tank cleaning (ROP 6).
- Removal costs (ROP 1).
- Pollution in drydock.
- Costs of opening up where there is no damage discovered.
- Removal of cargo for repair to ship.
- Unrepaired damage.
 - Legal basis.
 - Under clause 18. ITC (Hulls) 1.10.83 or similar.
- Common policy provisions such as
 - Bottom painting.
 - Wages and maintenance.
 - Agency commission.
- Notice of claim and tenders, and application of the clause.

Total loss

- Actual total loss.
- Missing ship.
- Constructive total loss.
- Notice of abandonment and implications of acceptance/refusal.
- Common policy provisions concerning constructive total loss.
- Claims in addition to a total loss and against proceeds

Duty of assured /sue and labour clauses

- Provisions of MIA, 1906.
- Who recovers what and why under such clauses.
- Duty and recoverability of expense in the absence of such clause.
- Underinsurance.
- Expenses incurred trying to save ship and cargo where there is a total loss.

Deductibles

- Application of each accident deductible clauses.
- Machinery damage additional deductible clause.

Other common provisions in hull policies

- Navigation.
- Termination.
- Disbursements warranty.

Please note the war and strikes exclusions are dealt with in paper 5.

Institute Time Clauses Hulls 1.11.95

- The main differences with the 1983 clauses.

International Hull Clauses 1.1.2003

- The main differences with the 1983 clauses.

American Institute Hull Clauses

- Awareness of the main provisions.
- Awareness of significant differences with ITC Hulls 1.10.83.
 - Breakdown of generators etc.
 - Restriction on using sue and labour costs incurred prior to NOA to calculate a CTL.
 - Restriction on claiming the cost of a latently defective part.
 - 4/4th collision clause cover.
 - Deductible wording for recoveries.
- American Hull Syndicate Liner Negligence Clause.

Norwegian Marine Insurance Plan

- Awareness of:
 - All risks cover with exclusions.
 - Incidence of loss.
 - Approach to adjustment of drydocking, general expenses and superintendence together with removal expenses.

Miscellaneous

- Incidence of loss and the apportionment of claims between various policies.
- Successive losses.
- Partial loss followed by total loss.
- Cause of action and limitation.
- Division of interest to be credited to hull insurers on payments on account covering GA.

Loss of hire

- Coverage under ABS form
- Part days
- Slow steaming
- Damage required for a claim?
- Repair clause (Common time simultaneous repairs)
- Claims on policies

Case law

The candidate would be expected to be familiar with, as a minimum, the following cases and explain how the decisions can assist us in dealing with subjects listed above.

- *Agenoria Steamship Co. Ltd v Merchants Marine Insurance Co. Ltd [1903]*
- *Alchemist, The [1982, USA]*
- *Andreas Lemos, The [1982]*
- *Armar, The [1981]*
- *Capricorn, The [1995]*
- *Caribbean Sea, The [1980]*
- *Chandris v Argo Insurance [1963]*
- *CJ Wills & Sons v World Marine Insurance Co. Ltd [1980]*
- *Cohen Sons & Co. v National Benefit Assurance Co. Ltd [1924]*
- *Commonwealth Smelting Ltd v Guardian Royal Exchange Assurance Ltd [1986]*
- *Davidson v Burnand [1868-69]*
- *Dimitrios N Rallios, The [1922]*
- *Eurysthenes, The [1976]*
- *Field Steamship Co. Ltd v Burr [1899]*
- *Fraser Shipping Ltd v Colton [1997]*
- *Global Process Systems v Syakariat Takaful Malaysia [2011]*
- *Hall v Hayman [1912]*
- *Hough v Head [1885]*
- *Hutchins Bros v Royal Exchange Insurance Corp [1911]*
- *Irvin v Hine [1950]*
- *Jackson v Mumford [1904]*
- *Kastor Navigation Co. Ltd v AGF Mat v AXA Global Risks [2004]*
- *Kelly v Norwich Union Fire Insurance [1990]*
- *Knight of St. Michael, The [1898]*
- *Kusel v Atkin [1997]*
- *Kusel v Atkin [1997]*
- *Kuwait Airways v Kuwait Insurance [2000]*
- *Leyland Shipping Co. Ltd v Norwich Union Fire Insurance Society [1918]*
- *Lloyd (J.J.) Instruments Ltd v Northern Star Insurance Co. Ltd [1987]*
- *Lockyer v Offley [1786]*
- *Lohre v Aitcheson [1878]*
- *Magnus v Buttemer [1852]*
- *Marel, The [1994]*
- *Medina Princess, The [1965]*
- *Moss v Smith [1850]*
- *Nukila [1997]*
- *Oceanic Steamship v Faber [1907]*
- *Phillips v Barber [1821]*
- *Popi M, The [1985]*
- *Republic of Bolivia v Indemnity Mutual Marine Assurance [1909]*
- *Ruabon, The [1900]*
- *Samuel v Dumas [1924]*

- *Scindia Steamships Ltd v The London Assurance [1937]*
- *Star Sea, The [2001]*
- *Stewart v Steele [1842]*
- *Thomas v Tyne & Wear SS Freights Insurance Association [1917]*
- *Vancouver, The [1886]*
- *Vergina, The [2001]*
- *Wadsworth Lighterage & Cooling Co. Ltd v Sea Insurance Co. Ltd [1929]*
- *Wayne Tank and Pump Co Ltd v Employers Liability [1974]*
- *Whittle v Mountain [1921]*
- *Wilson Shipping Co. v British and Foreign Marine Insurance [1921]*
- *Wondrous, The [1992]*

Reading materials

Goodacre, *Marine Insurance Claims*, 3rd edition

Arnould's *Law of Marine Insurance and Average*, current edition

Templeman on *Marine Insurance*, 6th edition, (somewhat dated but readable).

Hudson and Madge, *Marine Insurance clauses*, 4th edition

Hodges, *Cases and Materials on Marine Insurance Law*

Prof. F.D. Rose, *Marine Insurance Law and Practice*

Practice Committee Opinions of the Association of Average Adjusters, nos. P1-5 and 8.

AAA Chairmen's Addresses

- 1976 B. Dann
- 1982 Rt. Hon. Lord Justice Donaldson
- 1989 A. J Birch
- 1992 J. S. Crump
- 1996 C. J. Barstow
- 2001 J. M Duncan
- 2002 T. Madge
- 2005 Michael Harvey
- 2008 R. R. Cornah
- 2009 R. R. Cornah
- 2010 Sir Stephen Tomlinson