

AAA EXAM SYLLABUS - MODULE F2

Hull & Machinery / Loss of Hire / War Risks / Cargo / Miscellaneous (3 hours)



ASSOCIATION OF
Average Adjusters

Fellowship Level Examinations

Module F2: Hull & Machinery / Loss of Hire / War Risks / Cargo / Miscellaneous (3 hours)

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

SYLLABUS - GENERAL

The primary purpose of this module is to test the Candidates extensively on their knowledge of the law and practice relating to insurance claims involving loss of or damage to hull and machinery, loss of hire, war risks and cargo.

Candidates will 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 should be familiar with the insurance of war and strikes risks and be able to apply the basic principles relating to the adjustment of cargo 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 judgments to understand the reasoning behind the judicial decisions.

The majority of the paper (approximately 55%) will be weighted towards questions on Hull and Machinery claims, with approximately 35% relating to Loss of Hire, War Risks and Cargo, and the remaining 10% to the miscellaneous topics (labelled D to H) which have been allocated to this Module.

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HULL AND MACHINERY CLAIMS

Candidates should be familiar with the provisions of the Institute Time Clauses – Hulls dated 1/10/83 and 1/11/95, plus the International Hull Clauses 2003.

Candidates are expected to be familiar with and be able to explain the following areas in detail:

Areas of Study – H&M Claims

Proximate cause

- The concept of proximate cause
- How the provisions of MIA 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 the Institute Time Clauses – Hulls 1/10/83, 1/11/95 and the International Hull Clauses 2003
- Definitions of the different perils insured against
- Concept of latent defect and how damage arising can be claimed
- The Institute Additional Perils Clauses – Hulls 1/10/83: extra cover offered and limitations
- Burden of proof relating to different perils
- Definition of loss or damage

Insurers' 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 (and relationship with allowances in general average)
- Overtime (and relationship with allowances in general average)
- Air freight
- Increased cost of repairs by reason of deferral (ROP A4)
- Generator hire

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- Division of drydock dues (ROP D5)
- Tank cleaning (ROP D6)
- Removal costs (ROP D1)
- 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
- Nature and extent of duty
- 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

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- Application of each accident deductible clauses
- Institute Machinery Damage Additional Deductible Clause
- Additional Deductible Adaptation Clause

Other common provisions in hull policies

- Navigation
- Termination
- Disbursements warranty

General Average

Although general average is dealt with in detail in module F1, candidates should have a basic understanding of claims for general average on the Institute Time Clauses – Hulls 1/10/83, including in particular:

- Ballast general average
- Deduction from cost of repairs under Rule XIII of the York-Antwerp Rules, 1994
- Underinsurance

H&M Claims – Additional Topics

- Incidence of loss
- The apportionment of claims between various policies where applicable deductibles are different
- Successive losses, including partial loss followed by total loss
- Cause of action and limitation under English law
- Calculation of interest due to insurers on payments on account which include general average

Selected Hull & Machinery Clauses

Awareness of the main provisions of the following insofar as differing from the Institute Time Clauses – Hulls 1/10/83:

- The Institute Time Clauses – Hulls:
 - Restricted perils:
 - Total loss, General Average and 3/4ths Collision Liability (including Salvage, Salvage Charges and Sue and Labour)
 - Total Loss Only (including Salvage, Salvage Charges and Sue and Labour)
 - Port Risks

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- The Institute Voyage Clauses – Hulls
- The Institute Fishing Vessel Clauses 20/7/87
- The Institute Yacht Clauses 1/1/85:
 - Perils insured and exclusions applying thereto
- American Institute Hull Clauses (September 29, 2009), including in particular (but not exclusively) the differences in:
 - Cover provided for loss of damage caused by latent defect etc.
 - Treatment of sue and labour costs incurred in the context of a constructive total loss
 - Extent of cover for collision liabilities
 - The treatment of recoveries
- American Hull Syndicate Liner Negligence Clause.
- Nordic Marine Insurance Plan (latest version), including in particular (but not exclusively) the differences regarding:
 - All risks cover with exclusions
 - Incidence of loss
 - Extent of cover for collision liabilities
 - Apportionment of common expenses and accessorial expenses
 - Calculation of constructive total loss
 - Addition of interest to quantum of claim

Case Law – H&M Claims

Candidates are expected to be very familiar with the cases in **bold print** and be aware of the decisions in the supplementary cases:

1. **Agenoría Steamship Co. Ltd v Merchants Marine Insurance Co. Ltd [1903]**
2. **Alchemist, The [1982, USA]**
3. **Andreas Lemos, The [1982]**
4. Armar, The [1981]
5. **B Atlantic, The [2018]**
6. **Brillante Virtuoso, The [2019]**
7. **Caribbean Sea, The {1980}**
8. **Chandris v Argo Insurance [1963]**
9. CJ Wills & Sons v World Marine Insurance Co. Ltd [1980]
10. Cohen Sons & Co. v National Benefit Assurance Co. Ltd [1924]
11. Commonwealth Smelting Ltd v Guardian Royal Exchange Assurance Ltd [1986]
12. Davidson v Burnand [1868-69]

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13. DC Merwestone, The [2016]
14. Dimitrios N Rallios, The [1922]
15. Eurysthenes, The [1976]
16. Field Steamship Co. Ltd v Burr [1899]
17. Fraser Shipping Ltd v Colton [1997]
18. Global Process Systems v Syakariat Takaful Malaysia (The Cendor Mopu) [2011]
19. Hall v Hayman [1912]
20. Hough v Head [1885]
21. Hutchins Bros v Royal Exchange Insurance Corp [1911]
22. Irvin v Hine [1950]
23. Irene EM, The [2013]
24. Jackson v Mumford [1904]
25. Kastor Navigation Co. Ltd v AGF Mat v AXA Global Risks [2004]
26. Kelly v Norwich Union Fire Insurance [1990]
27. Knight of St. Michael, The [1898]
28. Kusel v Atkin [1997]
29. Kuwait Airways v Kuwait Insurance [2000]
30. Leyland Shipping Co. Ltd v Norwich Union Fire Insurance Society [1918]
31. Lloyd (J.J.) Instruments Ltd v Northern Star Insurance Co. Ltd (The Miss Jay Jay) [1987]
32. Lockyer v Offley [1786]
33. Lohre v Aitchison [1878]
34. Magnus v Buttemer [1852]
35. Marel, The [1994]
36. Medina Princess, The [1965]
37. Moss v Smith [1850]
38. Nukila [1997]
39. Oceanic Steamship v Faber [1907]
40. Phillips v Barber [1821]
41. Popi M, The [1985]
42. Renos, The [2019]
43. Republic of Bolivia v Indemnity Mutual Marine Assurance [1909]
44. Ruabon, The [1900]
45. Samuel v Dumas [1924]
46. Scindia Steamships Ltd v The London Assurance [1937]

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- 47. Star Sea, The [2001]
- 48. Stewart v Steele [1842]
- 49. Thomas v Tyne & Wear SS Freights Insurance Association [1917]**
- 50. Vancouver, The [1886]**
- 51. Vergina, The [2001]
- 52. Wadsworth Lighterage & Cooling Co. Ltd v Sea Insurance Co. Ltd [1929]**
- 53. Wayne Tank and Pump Co Ltd v Employers Liability [1974]**
- 54. Whittle v Mountain [1921]**
- 55. Wilson Shipping Co. v British and Foreign Marine Insurance [1921]**

Reading Materials – H&M Claims

It should be noted that some of the leading textbooks have not been revised for some time and may not therefore deal with the latest clauses or case-law. Nonetheless they all offer useful guidance regarding the basic principles.

Candidates will find relevant material in any of the following:

- Goodacre, Marine Insurance Claims (3rd edition, 1996)
- Introduction to Hull Claims (2018; download from Subscribers' section of AAA website)
- Arnould, Law of Marine Insurance and Average (19th edition, 2018)
- Templeman, Marine Insurance (6th edition, 1986)
- Hudson, Marine Insurance Clauses (5th edition, 2012)
- Hodges, Cases and Materials on Marine Insurance Law (1st edition, 1999)
- Rose, Marine Insurance Law and Practice (2nd edition, 2012)
- Brown, Marine Insurance Volume 3 Hull Practice (2nd edition, 1993)
- O'May on Marine Insurance (1st edition, 1993)
- Lowndes & Rudolf, The Law of General Average and The York-Antwerp Rules (15th edition, 2018)
- Buglass, Marine Insurance and General Average in the United States: An Average Adjuster's Viewpoint (3rd edition, 1991)
- Practice Committee Opinions of the Association of Average Adjusters, nos. P 1-5, 8 and 9.
- Association of Average Adjusters Chairmen's Addresses:
 - 1976: B. Dann
 - 1982: Rt. Hon. Lord Justice Donaldson
 - 1989: A. J Birch

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- 1992: J. S. Crump
- 1996: C. J. Barstow
- 2001: J. M. Duncan
- 2002: T. Madge
- 2005: M. Harvey
- 2008: R. R. Cornah
- 2009: R. R. Cornah
- 2010: Sir Stephen Tomlinson
- 2012: P. P. Silver
- 2015: P. O. Rowland
- 2016: A. M. Paton
- 2017: K. Martin (extended version)
- 2019: W. Richards

LOSS OF HIRE

Areas of Study - LOH

Awareness of the main provisions of the ABS 1/10/83 Clauses for Loss of Charter Hire Insurance in particular in relation to:

- Coverage, including whether damage is required for a claim to arise
- Exclusions
- Part days
- Slow steaming
- The repair clause (Common time simultaneous repairs)
- Calculation of claims on policies

Candidates should also be aware of the main differences in cover provided under Lazard Form and the current edition of The Nordic Plan.

Case law – LOH

Candidates are expected to be very familiar with the following cases:

1. **Capricorn, The [1995]**
2. **Toisa Pisces, The [2012]**
3. **Wondrous, The [1992]**

Reading Materials – LOH

- Chairman's Address, 2012: P. P. Silver

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WAR RISKS

Areas of Study – War Risks

- Perils covered by the various war and strikes clauses for hull, cargo and freight.
- Detainment clause.
- Exclusions.
- Termination.

Case law – War Risks

Candidates are expected to be very familiar with the cases in **bold print** and be aware of the decisions in the supplementary cases:

1. Aliza Glacial, The [2002]
2. **Andreas Lemos, The [1983]**
3. Atlantic Maritime Company Inc. v Gibbon [1953]
4. Atlantic Mutual Insurance Co v B King [1919]
5. Baker Caster Oil Co v Ins Co of North America [USA 1944]
6. **Bamburi, The (Arbitration) [1982]**
7. Bayview Motors Ltd v Mitsui Mar & Fire Ins. Co [2003]
8. **Becker Gray v London Ass Co [1915]**
9. **Cory & Sons v Burr [1883]**
10. Costain-Blankevortt (UK) Dredging Co Ltd v Davenport [1979]
11. Fenwick (William France) & Co Ltd v North of England Association [1917]
12. Field & Others v Receiver of Metropolitan Police [1907]
13. Grecia Express, The [2002]
14. **Ionides v Universal Marine Insurance Association [1863]**
15. **Kuwait Airways Corp. v Kuwait Insurance Co [1996]**
16. Levi v Assicurazione Generali [1940]
17. **Leyland Shipping Co v Norwich Union Fire Insurance Soc. [1918]**
18. **Middows Ltd v Robertson [1941]**
19. Miller v Law Accident Insurance Society [1903]
20. National Oil Co of Zimbabwe v Sturge [1991]
21. Nishina Trading Co. Ltd v Chiyoda Fire & Marine Insurance Co Ltd [1969]
22. **Naylor v Law Accident Insurance Soc. [1902]**
23. **Nesbit v Lushington [1792]**
24. **Panamanian Oriental Steamship Corporation v Wright (The Anita) [1970]**
25. **Panamerican World Airways Inc. v Etna Casualty & Surety Co [USA 1975]**

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26. *Pesquerías y Secaderos v Beer* [1949]

27. *Polurrian S.S. Co. Ltd v Young* [1915]

28. *Rickards v Forestal v Land Timber* [1942]

29. *Robinson Goldmining v Alliance Marine & General Insurance Co Ltd* [1901]

30. *Rodoconachi v Elliott* [1874]

31. *Salem, The* [1983]

32. *Sanday v British and Foreign Marine Insurance* [1916]

33. *Société Belge de Bétons and Others v London & Lancashire Insurance Co. Ltd* [1938]

34. *Spinney's v Royal Insurance Co. Ltd* [1980]

35. *Stoomvaart Maatschappij SVH v Merchants Marine Insurance Co Ltd* [1919]

36. *Wondrous, The* [1997]

Reading materials – War Risks

- Marine Insurance Act, 1906 - First Schedule - Rules for Construction.
- S.1 and 10a of Public Order Act, 1986 concerning definition of riot.
- Arnould, Law of Marine Insurance and Average (latest edition).
- Miller, Marine War Risks.

CARGO

Areas of Study - Cargo

- Positive cover under “A” clauses 2009.
- Exclusions under clause 4 of “A” clauses.
- Unseaworthiness and unfitness under clause 5 of “A” clauses.
- Differences of cover afforded by “B” and “C” clauses.
- Duration of cover under the Transit Clause.
- Cover under ICC in the event of :
 - termination of the contract of carriage
 - forwarding
 - change of voyage
- Necessity for both to blame collision clause.
- Cover under ICC for:
 - salvage charges
 - general average
 - duty of assured clause

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- Claim for constructive total loss under ICC.
- Adjustment of particular average on goods with reference to s. 71 of the Marine Insurance Act, 1906 and law cases.
- Claim on unidentified cargo sold damaged at destination.
- Claim for general average sacrifice and expenditure on a cargo policy.
- Underinsurance and claims in general average and for salvage charges.
- Documents required for adjusting a cargo claim.
- Insurable interest and benefit of insurance under ICC.
- Cover offered by:
 - Classification clause
 - Country damage clause
 - Location clause
 - Replacement clause
- Difference between floating and open policies.
- Liability for extra expenses for discharging damaged cargo – under which insurance might this fall.
- Rules of Practice of the Association of Average Adjusters.

Case law - Cargo

1. **Asfall v Blundell [1895]**
2. Bayview Motors Ltd v Mitsui Marine & Fire Insurance Co [2003]
3. **Berk v Style [1956]**
4. Boon and Cheah v Asia Insurance Co Ltd [1975]
5. Bowring & Co v Amsterdam London Insurance Co [1936]
6. **British and Foreign Marine Insurance Co v Gaunt [1920]**
7. **Brown v Fleming [1902]**
8. Butler v Wildeman [1820]
9. De Monchy v Phoenix Insurance Company of Hartford [1929]
10. **Duff v Mackenzie [1857]**
11. Fabrique de Produits v Large [1923]
12. **Francis v Boulton [1895]**
13. Global Process Systems v Syakarat Takaful Malaysia [2011]
14. Hills v London Assurance Co [1839]
15. Ionides v Hartford [1859]
16. John Mahn v Russell [1960]

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17. Johnson v Sheddon [1802]

18. Lewis v Rucker [1761]

19. London and Provincial Leather Process Ltd v Hudson [1939]

20. Lysaght v Coleman [1895]

21. Matthews Ltd v Robson and other test cases [1940]

22. Maignen & Co v National Benefit Assurance Co [1922]

23. Masefield AG v Amlin [2011]

24. Mayban General Insurance Bhd v Alstom Power Plants Ltd [2004]

25. Middows v Robertson [1929]

26. Overseas Commodities Ltd v Style [1958]

27. Ralli v Janson [1856]

28. Roux v Salvador [1836]

29. Safadi v Western Assurance Co [1933]

30. Sassoon & Co v Yatsher Insurance Co [1923]

31. Soya GmbH v White [1983]

32. Taylor v Dunbar [1869]

33. Traders & General Insurance Association v Bankers & General Insurance Co [1921]

34. Wadsworth Lighterage Ltd v Sea Insurance Co Ltd [1929]

35. Whiting v New Zealand Insurance Co Ltd [1932]

36. Wünsche Handelsgesellschaft m.bh v Tai Ping Insurance Co Limited [1998]

Reading materials - Cargo

- Dunt, Marine Cargo Insurance
- Goodacre, Marine Insurance Claims (3rd edition)

MISCELLANEOUS TOPICS – F2

D. Coverage under Builders' Risks clauses including faulty welds and faulty design.

E. Double insurance as reflected in Marine Insurance Act 1906, ss. 32 and 80: Arnould (19th edition) Ch. 32-08.

F. Contribution between policies covering the same risk - understanding of the date when contribution arises and the 3 recognised methods of calculation: Arnould (19th edition) Ch. 32, paras 21 to 25.

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G. Reinsurance: compromised or agreed loss: Arnould (19th edition) Ch. 33-20.

H. "Pay to be paid" clauses per the Third Party (Rights against Insurers) Act 2010: Arnould (19th edition) Ch. 8-69.

Case law relevant to the Miscellaneous Topics allocated to this Module:

E. Double Insurance

- Bruce v Jones [1863]
- Newby v Reed [1762] 96 E.R. 237
- Weddell v Road Transport and General Insurance Co Ltd [1932]

F. Contribution

- Commercial Union Assurance Co. v Hayden [1977]
- Legal and General Assurance Society Ltd v Drake Insurance Co Ltd [1992]
- O'Kane v Jones [The Martin P] [2003]

G. Reinsurance: compromised or agreed loss

- Bergens Dampskibs-Assurance Forening v Sun Insurance Office Ltd. [1930]
- Chippendale v Holt [1895]
- Street v Royal Exchange [1913]

H. "Pay to be paid" clauses

- Fanti, The; and Padre Island, The No.2 The, [1991]
- Gurney v Grimmer [1932]

Reading material – Miscellaneous

- Goodacre, Marine Insurance Claims (3rd Edition)
- Arnould's Law of Marine Insurance and Average (19th edition)

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Approximate allocation of marks for this

Module:

F2	%
H&M	55
LOH	15
War Risks	10
Cargo	10
Misc.	10
	<u>100</u>