

ONE YEAR LLM DEGREE SECOND SEMESTER EXAMINATION,

SEPTEMBER 2021

MARINE INSURANCE AND P& I PRACTISE

Duration: 10.00am - 1.45 pm

Maximum Marks: 50

Question carry Ten marks

Module 1 (Time 10 a.m-10.45 a.m (35 minutes for writing and 10 minutes for uploading)

1. a) The assured purchased a personal boat and for avoiding tax, registered the boat in the name of Company X. The company X executed a power of attorney in favour of the assured for the use of the vessel. The assured insured the vessel in his name, instead of insuring it in the name of Company X. The vessel was lost due to fire. Can the assured recover under the insurance policy. Substantiate the relevant principle of marine insurance involved in this case.

OR

b) “The phrase ‘utmost good faith’ is also known by its Latin equivalent as *uberrima fides*. ... [T]here is no magic in the expression *uberrima fides*. There are no degrees of good faith. It is entirely inconceivable that there could be a little, more or most (utmost) good faith. The distinction is between good faith or bad faith. There is no room for *uberrima fides* as a third category of faith in our law. ... *Uberrima fides* is not a juristic term with a precise connotation. It cannot be used as a yardstick with a precise legal meaning. ... In my opinion *uberrima fides* is an alien, vague, useless expression without any particular meaning in law.” (Joubert JA in *Mutual & Federal Insurance Co Ltd v The Municipality of Oudtshoorn* 1985 (1) SA 419 (A))

Discuss, with reference to the conceptual basis for, and ongoing utility of, a duty of utmost good faith in marine insurance law.

Module 2 Time 10.45 a.m-11.30 a.m (35 minutes for writing and 10 minutes for uploading)

2. a) “I think it clear that the term ‘perils of the sea’ does not cover every accident or casualty which may happen to the subject matter of the insurance on the sea. It must be a peril ‘of’ the sea. Again, it is well settled that it is not every loss or damage of which the sea is the immediate cause that is covered by these words. They do not protect, for example, against the natural and inevitable action of the winds and waves, which results in what may be described as wear and tear. There must be some casualty, something which could not be foreseen as one of the necessary incidents of the

adventure.” (Lord Herschell in *Wilson, Sons and Co v Owners of Cargo per ‘Xantho’* (1887) 12 App Cas 503, HL). Substantiate.

OR

b) Examine the effect of delay and wilful misconduct on the part of the assured on marine insurance policies.

Module 3(Time 11.30 a.m-12.15 p.m (35 minutes for writing and 10 minutes for uploading)

3. a) MV *Bamburg* is a specialised cement carrier. On September 1980, the vessel carried cargo of cement to a Iraqi government organisation on time charter from Mombasa to Khor al Zubir, Iraq. The vessel insured under Lloyd’s war risk policy with institute war and strikes clauses. On September 22, 1980, Iraq invaded Iran and the master of the vessel was informed by the harbour master that all movements of merchant shipping had been prohibited and that the vessel could not sail. Till the arbitration was brought, the permission for the vessel to leave has not been given by the harbour master in Iraq.

Decide

- i) Has the detention of the vessel been proximately caused by a peril insured against?
- ii) Have the owners been deprived of possession?
- iii) whether the vessel was a constructive total loss by reason of an insured peril when the claimants gave notice of abandonment on Sept 30, 1981 and Oct 14, 1981?

OR

b) The plaintiffs chartered the vessel *Govino* for a voyage from the Persian Gulf to London and insured the profit on charter with the defendants. When *Govino* arrived in the Thames with a mixed cargo, including dates, she was in collision with another vessel and sank. Although she was later raised, the dates were deemed unfit for human consumption and were sold to be distilled into spirits. The plaintiffs, having paid the chartered freight, claimed from their insurers for the loss of profits brought about by the non-delivery of the dates. Decide whether there is a total loss of the cargo?

Module 4((Time 12.15 p.m-1.00 p.m (35 minutes for writing and 10 minutes for uploading)

4. a) What are the provisions of the Marine Insurance Act, 1963 regarding payment of Premium and return of premium on Marine Policies?

OR

b) write short notes on

(i) Double Insurance

(ii) subrogation

Module 5(Time 1.00 p.m-1.45 p.m (35 minutes for writing and 10 minutes for uploading)

5. a) Trace the history and evolution of Mutual Insurance business in England. Does the Indian Marine Insurance Act recognise mutual insurance?

OR

b) What are the roles, powers and functions of Protection and Indemnity Clubs?
