Specimen coursework assignment

M90 – Cargo and goods in transit insurances

The following is a specimen coursework assignment including questions and indicative answers.

It provides guidance to the style and format of coursework questions that will be asked and indicates the length and breadth of answers sought by markers. The answers given are not intended to be the definitive answers; well-reasoned alternative answers will also gain marks.

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Coursework submission rules and important notes

Before commencing work on, or submitting, your coursework assignment it is essential that you fully familiarise yourself with the content of *Mixed Assessment Candidate Guidelines*. This includes the following information:

- Answers to a coursework assignment should be between 5,000 and 10,000 words in total depending on your writing style.
- Arial font and size 11 to be used in your answers.
- Important rules relating to referencing all sources including the study text, regulations and citing statute and case law.
- Penalties for contravention of the rules relating to plagiarism and collaboration.
- Six month deadline from enrolment date for the submission of coursework answers.
- The total marks available are 200. You need to obtain 120 marks to pass this assignment.
- Do not include your name or CII PIN anywhere in your answers.

Top tips for answering coursework questions

- Read the Learning Outcome(s) and related study text for each question before answering it.
- Ensure your answer reflects the context of the question. Your answer must be based on the figures and/or information used in the question.
- Ensure you answer all questions.
- Address all the issues raised in each question.
- Do not group question parts together in your answer. If there are parts (a) and (b), answer them separately.
- Where a question requires you to address several items, the marks available for each item are equally weighted. For example, if 4 items are required and the question is worth 12 marks, each item is worth 3 marks.
- Ensure that the length and breadth of each answer matches the maximum marks available. For example, a 30 mark question requires more breadth than a 10 or 20 mark question.

The coursework questions link to the Learning Outcomes shown on the M90 syllabus as follows:

Questions	Learning Outcomes	Chapter(s) in the Study Text	Maximum marks per answer
1	Learning Outcome 2	Chapters 3 and 4	20 marks
2	Learning Outcome 3	Chapters 2 and 5	20 marks
3	Learning Outcome 4	Chapter 6	20 marks
4	Learning Outcome 5	Chapters 5, 6, 7 and 8	20 marks
5	Learning Outcome 5	Chapters 5, 6, 7 and 8	20 marks
6	Learning Outcome 6	Chapters 2 and 9	10 marks
7	Learning Outcome 6	Chapters 2 and 9	10 marks
8	Across more than one Learning Outcome	Across more than one chapter	30 marks
9	Across more than one Learning Outcome	Across more than one chapter	30 marks
10	Across more than one Learning Outcome	Across more than one chapter	20 marks

M90 specimen coursework questions and answers

Question 1 - Learning Outcome 2 (20 marks)

You are a claims handler for a marine cargo insurer. One of the insurer's policyholders is a manufacturer of machinery who recently used a freight forwarder to arrange transit of some heavy machinery from England to a customer in Argentina. The Master of the carrying vessel issued a bill of lading which incorporated the Hague-Visby Rules.

In stormy conditions at sea, the lashings holding the machinery broke and both the machinery and the vessel suffered damage. The Master diverted the ship to a nearby safe port where the machinery was re-stowed, allowing the vessel to complete its journey to Argentina.

The policyholder has notified you of a claim for the damage to the machinery. You are carrying out your initial investigations which include considering the opportunity for recovery of any sum you may pay in settlement of the claim.

(a) Explain, with justification, the extent to which the vessel owner may have liability to the owner of the machinery for the damage caused. (10)

(b) Identify, with justification, which other parties might be held liable for the damage to the machinery. (10)

Answer to question 1 (Learning Outcome 2)

(a) Damage to the machinery would be covered by the marine cargo insurers subject to the terms and conditions of the insurance policy.

Shipments of machinery are usually covered for 'all risks' under Institute Cargo Clauses (A) 1/1/09, including a second-hand replacement clause and/or similar recognised international clauses.

If covered under Institute Cargo Clauses (A) 1/1/09 the claim would be recoverable because partial damage is covered. The claim would be paid minus any policy deductible.

Provided the machinery was not unloaded at the safe port but merely re-stowed, cover would continue uninterrupted. Had the machinery been unloaded from the vessel, re-loaded and re-stowed, it would be necessary for underwriters to be promptly notified in order to maintain cover, otherwise, the cover would have ended when the machinery was discharged from the ship. They could argue that cover has terminated, in accordance with clause 9 of the Institute cargo clauses (A) 1/1/09. In the scenario described the marine cargo insurance would pay for the damage that occurred when the original lashing failed because this damage occurred prior to arrival in the safe port.

If covered under Institute Cargo Clauses C (2009) the claim would be not recoverable from the cargo insurer because cover for damage is not included.

If the Master declared a general average incident, cover for general average contributions is covered by both cargo and hull insurers under the above Institute Clauses. The cargo owner and vessel owner could both recover from their insurers.

Cargo insurers could recover any claims paid from the vessel owner via the principle of subrogation.

If the machinery was insured on restricted perils for example Institute Cargo Clauses (C) 1/1/09, the cargo owner could recover the cost of the damage directly from the vessel owner, subject to the defences and limitations contained in the Hague-Visby Rules. The protection and indemnity (P&I) insurers of the vessel would deal with any such cargo claims.

(b) Under Article 3 of Hague-Visby the bill of lading is *prima-faice* evidence of the carrier having received the goods.

For any claim to succeed in the first instance, it will be necessary for the owner of the machinery to establish who did the lashing of the cargo.

That activity would have been undertaken by either stevedores or by members of the vessel's crew.

For any claim to succeed against the vessel owner there must be actual fault on their part or on the part of their servants or agents, for whom the shipowner is vicariously liable.

If the owner of the damaged machinery blames the vessel owner of being negligent, the onus is on the owners of the machinery to prove that the shipowner was liable.

The vessel owner would be liable if the place on the vessel where the machinery was stowed was not fit and safe for the purpose of securing the machinery and this caused the lashings to break.

If the cause of the lashing breaking was proven to be due to the unseaworthiness of the vessel, then the owner would be liable if it was caused by a lack of due diligence on their part.

Article 4.2 provides the vessel owner with a number of named defences and states that the vessel owner or carrier will not be liable for loss or damage resulting from any of them.

One of the defences is 'perils, dangers and accidents of the sea or navigable waters'.

Given that the lashing broke to a storm at sea the vessel owner could present this as an Article 4.2 defence.

If the cargo insurers appointed a surveyor to conduct a loading survey and to approve the lashings their report would provide crucial evidence that would either support and/or defend any claim.

Question 2 - Learning Outcome 3 (20 marks)

A substantial cargo of fresh chilled meat is being shipped from Leith, Scotland, to the Port of London. The meat has been bought by the consignee on Incoterms 2010®, Cost, Insurance and Freight (CIF) terms. Upon discharge in London the meat is found to have been damaged as a result of a failure in the refrigeration plant on the carrying vessel. The consignee makes a claim to the insurer named on the insurance certificate. Marine cargo insurance for the shipment had been effected on Institute Frozen Meat Clauses (A) 1/1/86, whereas the CIF Incoterm makes no reference to these insurance clauses.

(a) Explain, with justification, **three** ways in which the insurer may respond to the claim. (12)

(b) Explain the extent to which the buyer might have rights of recourse against the seller of meat. (8)

Answer to question 2 (Learning Outcome 2)

(a) The Institute Frozen Meat Clauses (A) 1/1/86 state that they are not suitable for chilled, cooled or fresh meat but the London Market clauses do not offer any clauses which are specific to chilled, cooled or fresh meat. However, in the preamble to the clauses it is stated that the clauses are purely illustrative and that an insurer is free to alter them. This leaves the insurer with two alternative ways of providing the cover. First, is to use the Institute Frozen Meat Clauses (A) 1/1/86 and to ignore the statement in the preamble that the clause are not suitable for chilled, cooled or fresh meat. The fact that this statement exists in the preamble makes no difference to the cover provide by the clauses because it is not an exclusion.

A good alternative is to endorse the policy and the certificate of insurance to note that chilled meat is covered by the policy.

Second, an insurer can cover the chilled meat under the Institute Frozen Food Clauses 1/1/86, which makes no reference to chilled, cooled or fresh meat, but which does contain a clause which requires the breakdown of the refrigerant machinery on the ship to last for at least 24 hours.

(b) The use of the Institute Frozen Food Clauses 1/1/86 exceeds the test set by the Incoterm, 'Cost Insurance & Freight 2010' under which the seller is required to provide the buyer with an assignable insurance cover to at least the minimum cover available in the London market – Institute Cargo Clauses (C) 1/1/86, so the seller has satisfied its obligation under the CIF Incoterm.

It remains only for the insurer to admit the claim under the terms of the Institute Frozen Meat Clauses 1/1/86 and to pay the buyer for the value of the meat which was deteriorated.

Because the seller both satisfied and exceeded its obligation under the CIF Incoterm the buyer has no recourse against the seller.

Question 3 - Learning Outcome 4 (20 marks)

You are an insurance broker. One of your clients is a haulage contractor that carries goods between the UK and Europe under the CMR Convention. You have arranged a haulage contractor's liability policy, with a £250 excess for each and every claim, for your client with a haulage contractors insurer.

During a recent carrying to Europe all the goods carried were damaged beyond repair. The goods weighed 20 tonnes and had a total value of £260,000.

The owner of the goods invoiced your client with the total value of the goods together with an amount for the buyer's loss of profit of £39,000. Your client, on passing the invoice to you, had asked you to notify the insurer of a claim for the total amount based on the invoice received.

The insurer has already accepted that your client is liable for the loss in accordance with the CMR Convention.

Your client now asks you for advice as to the settlement offer that you expect the insurer will make.

(a) Calculate, **showing all your workings**, the sum which you expect the insurer will offer to your client to settle the claim for the damaged goods. *For the purpose of your calculation use an exchange rate of £1.22 to one special drawing right (SDR).* (10)

(b) Explain, with justification, the extent to which the sum you have calculated in (a) above may be less than the invoice amount for the goods. (7)

(c) Explain the extent to which the insurer will settle the claim for the loss of profit. (3)

Answer to question 3 (Learning Outcome 4)

(a) The legal liability of the haulage contractor under the CMR Convention is calculated in the following way:

Value of the goods: £260,000.

Weight: 20,000 kilos.

Rate of Exchange: £1.22.

1/1.22 = 0.819.

8.33 SDR's (special drawing rights) X 0.819 = £6.82227 per Kilo.

20,000 kilos x £6.82227 per kilo = £136,445.

£136,445 - £250 deductible = £136,195.

The insurer would offer the sum of £136,195 to settle the claim for loss of goods.

(b) Haulage contractor's legal liability differs from cargo insurance because it is not the actual goods that are insured for physical loss or damage, but the haulage contractor's legal liability to the owner of the goods for their loss or damage whilst in their care custody and control.

This legal liability can arise under:

Private contract terms.
Statute or international convention.
Common law.

Liability under common law is unlimited and it is customary, therefore for haulage contractors to protect themselves by limiting their legal liability by private contract terms and/or statute or international convention. The haulage contractor in the case study has liability limited by CMR, which is an international convention given the force of law in the UK by the Carriage of Goods by Road Act 1965.

The CMR convention allows the haulier to limit their liability. Compensation under CMR is payable at a rate of 8.33 special drawing rights (SDR's) per kilo of goods lost or damaged.

The reason the sum calculated in part (a) is less than the invoice amount of the goods is because the haulier's legal liability is limited by CMR.

There is no guarantee that you will receive compensation from a road haulier. They have to be found liable but the CMR Convention provides the haulage contractor with defences and reliefs from liability.

(c) Under the CMR convention compensation is payable at a rate of 8.33 SDR's per kilo of goods lost or damaged but the convention does not include any provision for loss of profits. Compensation is limited to 8.33 SDRs per kilo of weight lost or damaged, with interest payable at the rate of 5% per annum pro rata from the date the claim is submitted to the haulage contractor.

For this reason, the haulage contractor's liability insurer would therefore not settle the claim for loss of profit.

Question 4 - Learning Outcome 5 (20 marks)

You are an underwriter for a marine cargo insurer. You are approached by an insurance broker who asks you to consider the cargo insurance for a long-established major shipper of grain. The shipper conveys grain across the globe, with regular voyages on routes from Canada to the Baltic States; and from Australia to Northern Europe.

(a) Explain, with justification, **four** significant underwriting considerations for these routes. (12)

(b) Explain, with justification, for two of the significant underwriting considerations that you have explained in (a) above, **one** separate underwriting action for **each** consideration in order to reduce your exposure to the risk. (8)

Answer to question 4 (Learning Outcome 5)

(a) Grain is usually shipped in bulk but can also be shipped in bags.

Grain shipped in bulk tends to be transported in dry bulk carriers. The main features of these vessels are the single weather deck and large holds with wide hatches to facilitate loading and discharge by mechanical means. Large hatches however can be a potential source of wet damage particularly in heavy weather.

Grain is most likely to be damaged by heating, infestation, sweat and contact with water.

General heating in dry grain is usually caused by inherent vice as a result of the moisture content in the grain being too high or the period in the ships hold being excessive. Moisture levels for grain should be between 10% and 16%.

Grain shipped in bulk is susceptible to ship's sweat which is the term for moisture which condenses on the cold steelwork forming the ship's structure. Cargo is said to be damaged by ship's sweat when moisture condensing on ship's steelwork runs back into the grain and saturates it, or when cargo is wetted by direct contact with ship's steelwork on which moisture has condensed.

Ship's sweat is more prevalent when external temperatures fall rapidly, as when a vessel approaches northern Europe in winter with cargo loaded in a warmer climate. In this instance the cargo temperature drops at a slower rate than that of the air and seawater. The difference in temperature brings about sweating.

Grain shipped from Canada to the Baltic States would involve the vessels sailing across the Atlantic Ocean and then possibly going through the Kiel Canal. The mid-Atlantic Ocean is susceptible to stormy weather from November to March whilst the North Atlantic Ocean is prone to stormy weather from October to May.

During winter months there is also the risk of ice accretion in the North Atlantic as well as the risk of sea fog off Newfoundland and Labrador where the Gulf Stream meets the Labrador Currents and around Greenland.

Grain shipped from Australia to Northern Europe would usually be transported across the Indian Ocean through the Gulf of Aden/Red Sea and up through the Suez Canal. This route would avoid the Cape of Good Hope which is notorious for heavy weather.

The Indian Ocean is susceptible to cyclones from November to mid-May and both the Indian Ocean the Gulf of Aden are susceptible to piracy.

(b) In order to reduce the risk of loss, underwriters may insist on a hatch and hold survey of the vessel prior to loading. This would involve a surveyor inspecting the vessel prior to the loading of the grain and would include a detailed examination of the weather tightness of the cargo hatch covers. This could involve ultra-sound testing.

The examination could be extended to ensure that the vessels ventilation system is working correctly. This will reduce the ship's/cargo sweat, as ventilation will assist in equalising cargo and atmospheric temperatures.

A load survey may also be requested by underwriters to check on the condition of the grain at the time of loading. Such action could ensure that the moisture content of the load was within guidelines. The surveyor could also check weigh the cargo on loading to potentially avoid any claims for short delivery.

Question 5 - Learning Outcome 5 (20 marks)

You are an underwriter for a marine insurer. You are approached by a company that imports iron ore in bulk. This product comes from inland India via the port of Mumbai, through the Suez Canal, to the UK port of Port Talbot at regular intervals throughout the year.

(a) Identify **five** significant potential risk factors, excluding the route, associated with the transportation of these commodities. (10)

(b) Explain, with justification, **five** significant potential risk factors, excluding these commodities, associated with this route that may concern you. (10)

Answer to question 5 (Learning Outcome 5)

(a) Five significant potential risks with transporting ore in bulk include:-

1. Loss of weight due to spillage during loading and unloading from/to different means of transport, or during transit.
2. An increase in weight due to the absorption of moisture from the atmosphere.
3. Difficulty in establishing an accurate weight prior to being loaded resulting in instability of the carrying vessel caused by excess weight.
4. Instability of the carrying vessel caused by shifting of the cargo.
5. Contamination by other cargo or water during transit resulting in a chemical reaction.

(b) Five significant risk profiles associated with the route include the following:-

1. As the ore is being transported from a mine located inland, which is probably remote, to the ocean port of Mumbai one should expect this leg of the transit to be fairly primitive. Roads and driving conditions are not as good as they are in Europe and while the main railway lines in India are generally good, it is necessary to consider the condition of the branch lines that will probably be used to get there, as well as the training and experience of the drivers who may not be aware of the overturning risk inherent in carrying heavy cargo such as bulk ore, especially around bends in the road or railway.

2. There is often considerable difficulty in establishing an accurate weight prior to loading bulk cargoes on to an ocean vessel. In many cases this is measured by taking the draught of the vessel, but this is not generally considered reliable. The use of weighbridges is to be preferred, provided a sufficient margin of error is allowed to take account of losses sustained during the weighing and loading operation, particularly if the ore is dry and dusty.

3. One of the prime hazards associated with the shipment of bulk ore, however, is structural damage to the carrying vessel during the voyage due to improper cargo distribution creating a loss or reduction of stability in the vessel. In the present example, the voyage from Mumbai to Port Talbot will involve transit across the Arabian Sea, the Suez Canal, the Mediterranean Sea, and the Bay of Biscay in the Atlantic Ocean, all of which carry associated weather risks. It is for this reason, following the loss of a number of vessels, that the International Maritime Solid Bulk Cargoes Code (IMSBC Code) was adopted and made mandatory by SOLAS (International Convention for the Safety of Life at Sea) in 2008.

4. Transit through the Suez Canal in the current political climate creates a potential exposure to the risks of war and piracy, although there has been a notable reduction in the number of incidents in recent years, the risk remains.

5. Finally, there is the risk of possible contamination to the cargo through contact with rain or seawater or through contact with other cargo, either during ocean transit or while being transported from the inland mine. Some ores contain moisture in their raw state while others react adversely to contact with water. Either way, the movement of the ship during the voyage can give rise to a condition known as bulk cargo liquefaction which, if it exceeds a certain level, can cause the carrying vessel to become unstable. Similarly, contact with or contamination by other chemicals during the voyage can initiate an adverse chemical reaction which could not only destroy the cargo but could also cause a fire on board.

Question 6 - Learning Outcome 6 (10 marks)

A machine is sent to a company in Singapore under Incoterms 2010®, Cost, Insurance and Freight (CIF). Upon arrival at the consignee's premises the machine is unpacked and found to be damaged.

(a) Identify, with justification, **three** important actions that the consignee must take in making a claim on the insurance policy. (6)

(b) Identify **four** important documents that the consignee would have to produce to the insurer in support of its claim (4)

Answer to question 6 (Learning Outcome 6)

(a) As the machine was sold Cost, Insurance & Freight (CIF) (2010) Incoterms, title in the machine will have transferred to the buyer once it was safely loaded onto the oversea vessel in the port of shipment. However, under the CIF 2010 Incoterm the seller is required to obtain insurance on the machine for the voyage, but only on

minimum coverage, Institute Cargo Clauses (C) 1/1/09 unless otherwise agreed in the contract of sale. In normal commercial practice cover should have been arranged under Institute Cargo Clauses (A) 1/1/09. This answer is based on the assumption that cover was granted under the terms of the Institute Cargo Clauses (A) 1/1/09.

In order for a claim to be made against the insurance policy, the consignee must:

i. Notify the local agent of the insurers, whose name and contact details are shown on the certificate of insurance, of the damage and make a formal claim against them, as local representatives of the marine cargo insurers.
ii. Place the machine in a safe secure location and to retain all packaging for examination by the surveyor. The point of this exercise is to ensure that no subsequent or unrelated loss or damage can be attributed to have been caused to the machine before the surveyor has visited, and to establish, if possible, whether the packaging shows corresponding signs of damage to that on the machine itself. This will also help the surveyor to establish whether the damage was caused in the course of transit or after the machine was unpacked from its crate.
iii. It is the consignee's responsibility to retain all the relevant shipping documents for inspection/collection by the surveyor in order to prove a valid title to the machine.

The consignee should therefore be instructed to mitigate their loss and act throughout as a prudent uninsured, bearing in mind the onus is on them to prove their claim both in terms of recoverability under the insurance policy and in terms of quantum.

(b) On the basis that there is a valid insurance policy in place and that a survey report has been commissioned directly by the insurer, the four most significant documents Seller Ltd would need to produce in support of a claim are the:-

i. Bill of lading.
ii. Certificate of insurance, duly assigned to the consignee.
iii. Commercial sales invoice & packing list.
iv. Outturn report together with any claused receipts.

Question 7 - Learning Outcome 6 (10 marks)

A road haulier is carrying cargo on a lorry from France to Italy. The cargo is worth €400,000. During its road transit some of the cargo is damaged. This damage is due to the driver's neglect. The cost of replacing the damaged cargo is €10,000. The weight of the damaged cargo is two tonnes. The road haulier is liable for the damage to the cargo.

(a) Identify, with justification, the legal regime under which the cargo was carried. (4)

(b) Calculate, **showing all your workings**, the compensation that the road haulier is liable to pay to the owner of the cargo. *Use a rate of 1.256 special drawing rates (SDRs) to the Euro.* (6)

Answer to question 7 (Learning Outcome 6)

(a) The terms of this transit between France and Italy would be under the CMR Convention, meaning the carrier is liable for loss or damage to the goods unless it can show that the cause was due to circumstances it could not foresee and the consequences of which it was unable to prevent (article 17.2).

(b) Compensation for such damage is as follows:

Compensation is payable at 8.33 special drawing rights (SDRs) per kilo.

Value of damaged goods: €10,000.

Weight of damaged goods: 2 tonnes.

Rate of exchange at the time is SDR1.256 – €1, €1 = 0.7968SDR.

8.33 SDR x 0.7968 = €6.6373 per kilo x 1,000 = €6,637.34 per tonne.

2 tonnes of damaged cargo = €13,274.68.

However under Article 25 of the CMR, the amount of the compensation cannot exceed the amount that would have been paid had the damaged goods been lost.

Therefore maximum payable under CMR would be €10,000, the cost of repairing the damage to the cargo.

Question 8 – Across more than one Learning Outcome 8 (30 marks)

A container ship, the MV Soda, with a hull value at £150 million, was carrying cargo valued at £75 million including the containers, on behalf of several thousand owners. The ship developed a list to port whilst in mid-Atlantic, due to a partial collapse of some containers. As a severe storm was forecast in the next six hours, the Master of the ship elected to jettison those containers, which with their cargo were valued at £10 million. The ship returned to the upright position after the containers were jettisoned. MV Soda then sailed successfully through the storm but still sustained serious damage, caused by the stormy seas, to her bridge and to some of the remaining containers.

The damage to the ship's bridge amounted to £10 million, and there was £5 million of damage to the containers and the cargo they contained.

Towards the end of the voyage the ship ran aground on a sandbank but was not damaged in this grounding. The Master of the ship accepted an offer of salvage from another vessel, which towed the ship off the sandbank and safely into port. The salvor put in a claim for salvage and a salvage arbitrator set the salvage award at 3%.

The majority of the owners of the cargo that was in the jettisoned containers had insured their cargo under Institute Cargo Clauses (A) 1/1/09. The other owners of the cargo in the jettisoned containers had insured their cargo under Institute Cargo Clauses (C) 1/1/09.

(a) Explain, with justification, the extent to which the Master's action in jettisoning the containers over the side of the ship can be justified. (10)

(b) Calculate, **showing all your workings**, the amount to be contributed by **each** of the parties towards the salvage award. (16)

(c) State, with justification, whether all the owners of the cargo which was in the jettisoned containers, are able to claim against their cargo insurers. (4)

Answer to question 8 (Across more than one Learning Outcome (30 marks)

(a) We have been told that the MV Soda developed a list to port in mid-Atlantic, due to the partial collapse of some containers, which were later jettisoned to enable the vessel to navigate safely through an impending storm, and the question to be decided is whether the Master's action in jettisoning the containers was justified and, if so, whether his declaration of general average will be upheld.

The acceptance of the principle of general average means that a Master is free to act solely in accordance with his judgement as a seaman as to what is best for the ship and cargo as a whole, without regard to the conflicting rights and interests of the various owners of the property in his charge.

Both the Marine Insurance Act 1906 and the York-Antwerp Rules provide a universally accepted means of sharing extraordinary sacrifice or expenditure, thus avoiding protracted and often costly argument over the correct allocation. In order to qualify for general average, therefore, the Master's actions in sacrificing the jettisoned containers must satisfy the following criteria:

i. The sacrifice must be extraordinary.
ii. The act must be intentional or voluntary.
iii. There must be a peril that is real, not imagined.
iv. The action must be for the common safety of the marine adventure, not merely for the safety of one of the interests involved.
v. The action must be reasonable.

The ordinary expenses incurred or losses suffered by the shipowner in fulfilment of his contract of affreightment are not admissible in general average. In the present example, however, it would be difficult to argue that the jettisoning of cargo was an ordinary as opposed to an extraordinary expense.

Similarly, property cannot in reality be said to have been 'sacrificed' if it was already lost at the time of the so-called sacrifice. In the example given, the Master's action was certainly intentional as he deliberately elected to jettison the damaged containers.

Further, although there was merely the threat of a storm at the time the Master took the decision to jettison the containers; it is known that the MV Soda had already developed a list to port. Given this information, the threatened storm would have comprised a real and substantial peril to the safety of the vessel and its crew, and would certainly be sufficient to justify the Master's actions.

The distinction between action taken for the common safety in time of peril, and a measure which is purely precautionary, is a very fine one that is often difficult to determine. From the circumstances described, however, it would be very difficult to consider the action of jettisoning some containers a purely precautionary measure. On any reasonable judgement it is fair to say that the action of the master, in the face of a ship listing and about to go through a severe storm and heavy seas did, on the balance of probabilities, save the ship from capsizing in the stormy conditions, having regard to the ship's instability and the damage which arose as she sailed, upright, through the stormy seas. Bearing in mind it is the Master's responsibility to preserve from peril all the property involved in a common maritime adventure his action in this case would support a declaration of general average.

(b) The subsequent running aground on the sandbank before actually making port renders the general average act null and void because its success was frustrated by the premature grounding on the sandbank, so it cannot be said that the jettisoning of the

containers saved the voyage. The jettisoning of those containers undoubtedly saved the ship from foundering in the storm and heavy seas. Had she made port safely without going aground, the contributions from the parties interested in the original adventure would have been liable in general average. As it is, the claim has to be treated as a salvage claim, with the respective parties' contributions being based on the salved value of the adventure, not on the whole value at the start of the voyage.

Value at Start of Voyage

Hull	£150,000,000.00
Cargo	£ 75,000,000.00
Total Value	£225,000,000.00
Less hull damage	£ 10,000,000.00
	£205,000,000.00
Less Jettisoned Cargo	£ 10,000,000.00
Nett Salved Value	**£205,000,000.00**

Salvage Award is

3% = £ 6,150,000.00

Hull Salvaged Value £140,000,000.00 x 100.00 = 68.293%
Nett Salved Value £205,000,000.00

Vessel Pays £ 6,150,000.00 x 68.293%% = £4,200,019.50

Cargo Salvaged Value £ 65,000,000.00 x 100.00 = 31.707%
Nett Salved Value £205,000,000.00

Cargo Pays £ 6,150,000.00 x 31.707% = £1,949,980.50

(b) We have been informed that the jettisoned containers were insured under Institute Cargo Clauses (C) 1/1/09. Consequently, it will be possible for the owners of those containers to recover from their cargo insurers as 'jettison' is a specified insured peril under the (C) Clauses. Conversely, if the ship had made port without grounding on the sandbank, the claim from the owners of the cargo and the containers which were jettisoned overboard before the storm hit, would have been dealt with as a general average sacrifice.

Question 9 - Across more than one Learning Outcome (30 marks)

You are an insurance broker. One of your clients is HVA Ltd who is a distributor of metal alloys. HVA Ltd have stored one thousand tonnes of metal alloys in the warehouse of XYZ Ltd. The metal alloys were stored by XYZ Ltd under the United Kingdom Warehousing Conditions for Logistics 2014 (UKWA).

It was agreed between the two companies that a compensation level of £1,000 per tonne would apply. As a consequence of this level of compensation, HVA Ltd did not arrange any insurance on the metal alloys in the warehouse of XYZ Ltd.

A serious fire in the warehouse resulted in the destruction of the metal alloys. The subsequent fire authority report given to XYZ Ltd cited possible defective electrical wiring as the cause of the fire. XYZ Ltd stated that it was not liable for the fire damage under UKWA. Furthermore, XYZ Ltd refused to provide to HVA Ltd any information, including the fire report, relating to the cause of the fire.

HVA Ltd now intends taking legal action against XYZ Ltd for the value of the metal alloys. HVA Ltd also wants to have the UKWA set aside, on the grounds that they are unfair. Additionally HVA Ltd state that the agreement between the parties means that XYZ Ltd must pay the agreed level of compensation per tonne to HVA Ltd.

Your client asks for your advice with regard to this situation.

(a) Explain, with justification, the extent to which XYZ Ltd are liable to HVA Ltd, using both contract law and common law in support of your answer. (20)

(b) Analyse in detail the extent to which information relating to the cause of the fire could be helpful to HVA Ltd in pursuing its legal action against XYZ Ltd. (10)

Answer to question 9 (Across more than one Learning Outcome)

(a) A warehouse keeper will be liable under UKWA conditions for claims arising from the neglect, or wilful act or default of the company, its employees (acting in furtherance of their duties as employees), or sub-contractors or agents (acting in furtherance of their duties as sub-contractors or agents).

On that basis HVA Ltd will have a valid claim against XYZ Ltd if they can prove that the fire was caused by the neglect or wilful misconduct of XYZ Ltd, its employees or sub-contractors, but only whilst those parties are acting within the terms of their duties as employees, sub-contractors or agents. This is an important distinction because it effectively excludes any act, for example, being a criminal act which causes loss or damage to the goods being stored, because such an act cannot be construed as an

act that is within furtherance of the duties of employees, sub-contractors or agents of the warehouse keeper.

In the case *of Blyth v Birmingham Waterworks Company* (1856) negligence was defined as:

'The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable would not do.'

Wilful misconduct was defined in *Horabin v BOAC Ltd* (1952) where the judge stated that the claimant had to satisfy the court that the person who did the act knew they were doing something wrong, knew it at the time and yet did it just the same.

However, the distinction between ordinary negligence and wilful misconduct will not make any difference to the outcome of any claim because HVA Ltd and XYZ Ltd contracted under terms which make the warehouse keeper liable for loss or damage to goods in its store, for the agreed amount per tonne, regardless of whether the cause is negligence or wilful misconduct. Accordingly, any such wilful misconduct by the warehouse keeper, its employees, sub-contractors or agents would not cause the UKWA conditions of contract to be set aside.

The fire itself is not an exclusion of liability for the loss of the alloys. It merely relieves the warehouse keeper of its obligation to fulfil the contract. The warehouse keeper can no longer provide storage of goods if the warehouse no longer exists.

On that basis, subject to sight of the report from the relevant fire authority, we believe that the Assured have a valid right of action against XYZ Ltd.

(b) The fire brigade report cited possible defective wiring as the cause of the fire but this is only cited as a possible cause. In effect, the fire brigade is saying that it doesn't know the cause of the fire. Instead, it is making an educated guess. This cited possible cause would be of no realistic value for evidential purposes to HVA Ltd if it chose to take XYZ Ltd to court.

Defective wiring may have caused a short circuit which resulted in the outbreak of fire but it will be for HVA Ltd to prove this unless *res ipsa locquitor* can be successfully completed. A similar effect can be produced if

HVA Ltd issue a writ against XYZ Ltd, alleging that the warehouse keeper is liable for the damage under the UKWA terms, as this will force XYZ Ltd to disclose documents relating to the maintenance of the electrical wiring.

Enquiries should be made with the warehouse keeper with regard to how often the wiring was checked by a qualified electrician. The standard requirement is to ask for a qualified electrician to test the system to see whether it complies with the current edition of the rules of the Institution of Electrical Engineers (I.E.E). A warehouse keeper should have the wiring checked periodically and at least every five years. An electrician would then provide a certificate confirming that the facility had been checked and also provide details of any faults found. If regular inspections had not been carried out, the warehouse keeper would probably be judged as being negligent in failing to have the facility regularly inspected.

If an inspection had been carried out and substandard wiring found, i.e. frayed or exposed wiring, the warehouse keeper should be asked for details of how and when the defective wiring was remedied. If the warehouse keeper chose to defer repairs in order to reduce costs then I believe that the warehouse keeper may be guilty of wilful misconduct because defect was brought to the attention of XYZ Ltd, which appears to have ignored the serious risk presented by the defective wiring.

In addition to the above, the appointment of a forensic scientist, specialising in the causes of industrial fires, might prove invaluable in helping HVA Ltd to win its case. The report would be much more detailed than the report from the fire authority and the forensic scientist could act as an expert witness should HVA Ltd choose to pursue this matter through the courts.

With regard to the Assured having UKWA set aside on the grounds that they are unfair, we would comment as follows:

The limit of liability under UKWA is £100 per tonne. Where a customer stipulates a limit above £100 per tonne the customer must pay an extra charge to cover the cost of the warehouse keeper insuring against the extra liability, or a reasonable sum to compensate the warehouse keeper for self-insuring. If insurance cannot be obtained or the customer does not pay for insurance the limit will remain at £100 per tonne.

If the warehouse keeper accepts the higher limit and a premium is paid them the Assured should be able to recover £1,000 per tonne as agreed, subject to the warehouse keeper, its employees, sub-contractors or agents being responsible for the cause of the damage by way of negligence or wilful act.

The current United Kingdom Warehousing Association (UKWA) conditions have been drafted to deal with the requirements of reasonableness as imposed by the Unfair Contract Terms Act 1977, which came into force in the United Kingdom on the 1 February 1978. They have also been registered with the Office of Fair Trading.

Furthermore, NAWK terms (the legacy terms of the UKWA) were tested by a court in the case of *Sonicare Ltd v East Anglia Freight Ltd* (1997). Judgement was given for the warehouse keepers – East Anglia Freight Ltd. The judge stated that both parties had equal bargaining power, which satisfied the test of reasonableness found in the Unfair Contract Terms Act 1977, and on that ground he refused to set the NAWK terms aside.

It is unlikely that the UKWA conditions of contract will be set aside, given the clear contractual agreement between the two parties in this case but, if they were, the warehouse keeper would then be put in the position of being a bailee of goods at common law. XYZ Ltd would be liable if the fire was due to its neglect and the outcome would be that it would be liable for the full value of the goods plus any foreseeable consequential loss. But if it was not negligent it would not have to pay anything to HVA Ltd.

Taking into account all the known facts, the best course of action for HVA Ltd to take is to force the disclosure of documentation relating to the electrical wiring, or to ask the court to allow it to plead *res ipsa locquitor*, thereby forcing XYZ Ltd to reveal all the circumstances surrounding the fire. XYZ Ltd undoubtedly had control of the management of the warehouse, which means that HVA Ltd could have no way of establishing how the fire occurred. XYZ Ltd must be forced to show that it didn't cause the loss through its negligence or wilful act and, if it cannot show this, it must pay HVA Ltd at the rate of £1,000 per tonne, in accordance with the agreed conditions of storage at the agreed tonnage level.

Question 10 - Across more than one Learning Outcome (20 marks)

You are a claims handler for a haulage contractor's liability insurer. The insurer's policy holders include two separate haulage contractors for haulage contractor's liability insurance. One of the contractors carries hazardous chemicals, whilst the other contractor is a general carrier of non-hazardous goods.

Two vehicles, one belonging to each of the above haulage contractors, are involved in a road traffic collision soon after leaving their respective depots. The vehicle carrying the chemicals was on a journey from Manchester, UK to Dublin, Republic of Ireland, whilst the other vehicle was en route from Manchester, UK to Mannheim, Germany.

As a result of this collision the haulage contractor's vehicle carrying the hazardous chemicals is badly damaged, causing the chemicals to leak into the drainage system of a nearby housing estate. The goods on the general carrier's vehicle are also substantially damaged in the collision.

The police have questioned the driver of the vehicle carrying the general goods on suspicion that his dangerous driving caused the accident.

Claims are made by the owners of the chemicals and the general goods, and by the local authority in respect of the cost of cleaning the drains.

(a) Identify the likely conditions of carriage under which **each** haulage contractor was operating. (4)

(b) Explain, with justification, the extent of the liability that the carrier of the general goods may have to the owner of the general goods. (6)

(c) Explain, with justification, the extent of liability that the carrier of the chemicals may have to the owner of the chemicals. (6)

(d) Explain, with justification, whether the haulage contractor carrying the hazardous chemicals can recover under its haulage contractor's liability insurance the claim made by the local authority for the cost of clearing the drains. (4)

Answer to question 10 (Across more than one Learning Outcome)

(a) The haulage contractor carrying the hazardous chemical will be liable to his principals for the chemicals lost as a result of the collision but only insofar as his conditions of carriage demand. There is no liability on this carrier under the CMR Convention because it does not apply to traffic between the UK and the Republic of Ireland.

In most cases haulage contractors in the UK operate under Road Haulage Association (RHA) conditions of carriage, which are the conditions that would probably apply in this case, provided they were incorporated in the contract of carriage. But the owner of the chemicals must seek the agreement of the haulage contractor to carry these goods before they are accepted for carriage. The owner is also responsible for ensuring that the hazardous chemicals are properly packed, labelled and documented for the road transit in accordance with such statutory regulations in force from time to time.

The situation for the general carrier, however, is somewhat different. As his contract of carriage was to transport goods from Manchester to Germany, the CMR Convention will certainly apply as his goods were to be carried for reward, on a road vehicle, and would cross the border between two countries, one of which is a signatory to the CMR Convention. Both the United Kingdom and Germany are signatories to CMR.

(b) Provided the carrier of hazardous chemicals was operating under RHA conditions of carriage, his liability would be limited to the value of chemicals lost, or by weight to an amount calculated at a rate of £1,300 per tonne, whichever is less.

The liability of the general carrier, however, will be calculated in accordance with Article 23 of the CMR Convention, which is to say that his liability for the goods in his custody will be limited to the value of goods lost or damaged, or by weight to 8.33 special drawing rights (SDR's) per kilogram, whichever is less.

(c) The time-bar provisions contained in Article 32 of CMR may also be of relevance to the haulier of non-hazardous goods, under which the carrier is relieved of liability if legal proceedings are not commenced against him within a period of one year from the date of delivery. If he is guilty of wilful misconduct, however, the limitation period is extended to three years and the defences to liability are set aside.

The only other defences available to the non-hazardous carrier would be those available under Article 17.2 where, for example, the accident was caused by a wrongful act on behalf of the owner of the goods, by wrongful instructions given by him, inherent vice of the goods themselves or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

The CMR haulage contractor could avail himself of the Article 17.2 defence if his driver was entirely innocent of the cause of the accident. If he was found to have contributed to it in even a minor way, it is unlikely that the Article 17.2 defence would be available to him. In that situation he would be liable for the cost of the damage to the goods he was carrying or to 8.33 SDRs per kilo, whichever is the less.

(d) While there is no obligation for the insurer of either haulier to pay compensation for damage caused by the spilled chemicals, they may have to pay for the damage to the goods being carried. The carrier of hazardous chemicals would probably have a liability under the Road Haulage Association Conditions of Carriage 2009, with liability set at £1,300 per tonne. The CMR carrier would have to compensate for the damage to the general goods unless he can successfully plead the Article 17.2 defence in CMR, in which case he will not be liable to pay anything for the goods.

The coverage provided under a haulier's liability policy is designed to indemnify the haulier for liability incurred to their principals under a contract of carriage for loss or damage to the principals' goods, and while some measure of cover may be offered for debris removal this is normally limited in amount to a percentage value of the goods carried and will normally exclude any costs incurred in order to mitigate pollution or contamination as well as any liability incurred under statutory powers exercised by local government. The costs of clearing the drains would be for the account of either the motor insurers or the public liability insurers of the hazardous chemicals haulage contractor.

Reference list

John C Potter ACII – P90 *Cargo and goods in transit insurances*, The Chartered Insurance Institute 2015.

How to plan an answer for a coursework question

The following three plans are based on 10, 20 and 30 mark questions respectively.

Question 6 - Learning Outcome 6 (10 marks)

A machine is sent to a company in Singapore under Incoterms 2010®, Cost, Insurance and Freight (CIF). Upon arrival at the consignee's premises the machine is unpacked and found to be damaged.

(a) Identify, with justification, **three** important actions that the consignee must take in making a claim on the insurance policy. (6)

(b) Identify **four** important documents that the consignee would have to produce to the insurer in support of its claim. (4)

Question deconstruction

- Review Learning Outcome 6 in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- What is the context? A machine being sent to Singapore and being found to be damaged when unpacked.
- Part (a) asks you to identify three actions.
- Part (b) asks you to identify four documents.

Answer plan

- In part (a) identify **three** actions arising from this scenario. With only six marks available - two marks per action - a very short answer is required. One mark will be for the identification and one mark for the justification. i.e. the reason as to why you have identified it.
- In part (b) the identification of four documents is required. With only four marks available - one mark per document - a very short answer will be required.
- As this is a 10 mark question, your answer should be shorter than the answers to either a 20 or 30 mark question.

Question 5 - Learning Outcome 5 (20 marks)

You are an underwriter for a marine insurer. You are approached by a company that imports iron ore in bulk. This product comes from inland India via the port of Mumbai, through the Suez Canal, to the UK port of Port Talbot at regular intervals throughout the year.

(a) Identify **five** significant potential risk factors, excluding the route, associated with the transportation of these commodities. (10)

(b) Explain, with justification, **five** significant potential risk factors, excluding these commodities, associated with this route that may concern you. (10)

Question deconstruction

- Review Learning Outcome 5 in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
  Consider the context which includes the type of goods and the route of the voyage. The question asks for five different potential risk factors for the goods being carried and, separately, for the route to be taken.
- The marks in part (a) and (b) are equally weighted so spend an equal amount of time and effort in identifying and explaining five risk factors and then in part (b) justify why they are the most appropriate in this scenario.

Answer plan

Part (a): You need to identify five potential risk factors excluding the route and that you must justify why these five factors are the most important in this scenario.

Part (b): requires an explanation of five risk factors associated with the route and that you must justify why these five factors are the most important in this scenario. Note with 10 marks available, this will be one mark for each of the factors and one mark for the justification of the factor chosen.

As this is a 20 mark question, your answer should be longer than the answer to a 10 mark question but shorter than the answer to a 30 mark question.

Question 9 - Across more than one Learning Outcome (30 marks)

You are an insurance broker. One of your clients is HVA Ltd who is a distributor of metal alloys. HVA Ltd have stored one thousand tonnes of metal alloys in the warehouse of XYZ Ltd. The metal alloys were stored by XYZ Ltd under the United Kingdom Warehousing Conditions for Logistics 2014 (UKWA).

It was agreed between the two companies that a compensation level of £1,000 per tonne would apply. As a consequence of this level of compensation, HVA Ltd did not arrange any insurance on the metal alloys in the warehouse of XYZ Ltd.

A serious fire in the warehouse resulted in the destruction of the metal alloys. The subsequent fire authority report given to XYZ Ltd cited possible defective electrical wiring as the cause of the fire. XYZ Ltd stated that it was not liable for the fire damage under UKWA. Furthermore, XYZ Ltd refused to provide to HVA Ltd any information, including the fire report, relating to the cause of the fire.

HVA Ltd now intends taking legal action against XYZ Ltd for the value of the metal alloys. HVA Ltd also wants to have the UKWA set aside, on the grounds that they are unfair. Additionally HVA Ltd state that the agreement between the parties means that XYZ Ltd must pay the agreed level of compensation per tonne to HVA Ltd.

Your client asks for your advice with regard to this situation.

(a) Explain, with justification, the extent to which XYZ Ltd are liable to HVA Ltd, using both contract law and common law in support of your answer. (20)

(b) Analyse in detail the extent to which information relating to the cause of the fire could be helpful to HVA Ltd in pursuing its legal action against XYZ Ltd. (10)

Question deconstruction

- Review Learning Outcomes 2, 4 and 6 in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- Consideration of the context: you are an insurance broker, whose client has been denied compensation for its goods which are stored by a warehouse keeper under agreed conditions of contract but at an increased compensation level over the standard limit for storage given by a warehouse keeper.

Answer plan

Part (a) is worth 20 marks and part (b) is worth 10 marks so your answer should be longer on part (a) than part (b).

In part (a) you are asked to explain the extent to which XYZ Ltd are liable and provide justification as to why they are. To gain high marks you also need to support your justification with examples of law.

In part (b) you are asked to analyse the extent to which information could be helpful to HVA Ltd. Although you need to do this in detail the analysis is worth less marks than part (a).

As this is a 30 mark question, your answer should be longer than the answers to 10 and 20 mark questions.

Glossary of key words

Analyse

Find the relevant facts and examine these in depth. Examine the relationship between various facts and make conclusions or recommendations.

Describe

Give an account in words of (someone or something) including all relevant, characteristics, qualities or events.

Discuss

To consider something in detail; examining the different ideas and opinions about something, for example to weigh up alternative views.

Explain

To make something clear and easy to understand with reasoning and/or justification.

Identify

Recognise and name.

Justify

Support an argument or conclusion. Prove or show grounds for a decision.

Recommend with reasons

Provide reasons in favour.

State

Express main points in brief, clear form.