Specimen coursework assignment

M98 – Marine hull and associated liabilities

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.

Contents

CII

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 M98 syllabus as follows:

Questions	Learning Outcomes	Chapter(s) in the Study Text	Maximum marks per answer
1	Learning Outcome 2	Chapters 2, 3, 4 & 5	10 marks
2	Learning Outcome 3	Chapter 6	20 marks
3	Learning Outcome 4	Chapter 7	20 marks
4	Learning Outcome 5	Chapters 8 & 9	20 marks
5	Learning Outcome 6	Chapter 10	20 marks
6	Learning Outcome 7	Chapter 11	10 marks
7	Across more than one Learning Outcome	Across more than one chapter	30 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	20 marks
10	Across more than one Learning Outcome	Across more than one chapter	20 marks

M98 specimen coursework questions and answers

Question 1 - Learning Outcome 2 (10 marks)

You are an insurance broker. One of your clients is a shipowner with a fleet of dry bulk carriers which it has operated for a number of years. Your client is considering expanding its business by purchasing very large crude carriers (VLCCs). Your client has asked you for legal liability advice which would influence their consideration of purchasing VLCCs.

(a) Identify, with justification, **one** significant legal liability exposure which might arise from the introduction of the VLCCs to the shipowner's fleet. (2)

(b) Explain, with justification, how the significant legal liability exposure you have identified in (a) above may differ depending on where the VLCCs are operating and the legal liabilities that apply. (8)

Answer to question 1 (Learning Outcome 2)

(a) Very large crude carriers carry large volumes of crude unrefined oil large distances in bulk. The most significant exposure for the ship owner is the legal liability that results from the escape of oil into the sea, and the subsequent clean-up operation.

(b) The international Convention on Civil Liability for Oil Pollution Damage 1992 (CLC) enforces strict liability for owners of ships that carry oil in bulk. This means that proof of fault or negligence does not need to be established for damage caused by the discharge or escape of any persistent oil in the exclusive economic zone (EEZ) of a state which is party to the CLC. The owners are also strictly liable for the reasonable pollution prevention expenses to minimise such damage. However, compensation is limited to loss of profit resulting from the damage to the environment and the cost of measures to reinstate the environment.

Under the CLC there are however, a number of circumstances where the ship owner is not liable if they can prove that damage for example arose from war, the actions of a third party or a government failing to maintain navigation aids.

The CLC is not however, ratified by all countries and the USA is a notable exception which passed its own law, the Oil Pollution Act 1990 (the OPA). Like the CLC the OPA provides strict liability on ship owners. However, it is not limited to vessels carrying oil in bulk, applying instead to all vessels travelling within the EEZ. The OPA allows a wider scope for claimants than the CLC including liability for removal costs, damages for injury to natural resources, loss of profits and impairment of earnings capacity. The OPA typically allows greater damages than the CLC.

Under the OPA shipowners are exempt from liability for an act of God, an act of war or the act or omission of a third party (except where there third party is in a contractual arrangement to the responsible party). Shipowners will not be liable to a claimant to the extent that the incident is caused by the gross negligence or wilful misconduct of that claimant.

Under the CLC the shipowner loses its right to limit its liability if the incident occurred as a result of its own personal act or omission committed with the intent to cause damage, or if it was recklessness, with the knowledge that such damage would result.

Under the OPA, however, limits are much more easily broken if the incident was caused by the gross negligence or wilful misconduct of the responsible party, its agents or employee or anyone that has a contractual relationship with the responsible party.

Question 2 - Learning Outcome 3 (20 marks)

You are a claims handler for DD plc, a marine hull insurer. One of the marine insurer's policyholders is the owner of a UK registered vessel. The hull and machinery insurance policy for the vessel was transferred to DD plc on the 1 September 2016.

An incident occurred on the 27 October 2016 that involved a fire on the vessel which resulted in the value of the vessel being reduced by more than 80%. A claim for this fire was reported to you.

Your investigation of the claim has established that the vessel has suffered two previous partial losses, which were not disclosed when the insurance was transferred:

- The first partial loss occurred on the 21 April 2016.
- The second partial loss occurred on the 30 May 2016.

(a) Explain, with justification, the potential effect that the reduction in the value of the vessel could have for the way the fire claim is settled. (8)

(b) Explain, with justification, the extent to which the non-disclosure of the two previous partial losses influences your consideration of the fire claim. (12)

Answer to question 2 (Learning Outcome 3)

(a) Following the fire, the residual value of the vessel is less than 20% of its market, or insured, value. The extent of this reduction begs the question whether the costs of repair exceed the reinstated value of the vessel after the costs of repair have been incurred. In the event that they do, the vessel could be treated as a constructive total loss (CTL). In determining whether a CTL is appropriate repair costs exceeding, say, 80% of the vessel's value, would suggest that a CTL would be declared.

Section 61 of the Marine Insurance Act 1906 states that in the event of a CTL, the owner is able to treat the loss as a partial loss but cannot subsequently claim for a CTL. Furthermore, if the owner decides to claim for CTL and is not accepted as such, a subsequent claim for a partial loss would be permitted.

Assuming that DD plc are prepared to accept the claim as a CTL, a notice of abandonment, issued by the assured owners of the ship, would trigger the process for starting the CTL. Before issuing the notice of abandonment, the owners of the vessel must be content that, if it is accepted by DD plc, it is then irrevocable. There is no longer an option to treat the loss as a partial one. DD plc would pay the agreed value of the vessel, which would then give them the right to sell it for whatever price DD plc can secure.

(b) At this point, we need to consider the ramifications of the Insurance Act 2015 which passed into English law on 12 August 2016. This Act applies to non-consumer contracts and so will almost certainly be relevant in this case. Insurers are no longer able to avoid a contract on the basis that utmost good faith has not been observed. Their position is now subject to the duty of 'fair presentation' of 'material circumstances'. This is subject to the proviso that DD plc has not 'opted out' of the Insurance Act 2015.

Material circumstances relate to special or unusual circumstances surrounding the risk proposed and matters of fact that should be drawn to an insurer's attention as part of the 'fair presentation' process.

Section 8 of the 2015 Act sets out the remedies available to an insurer where the duty of 'fair presentation' has been breached. The remedy available depends on the severity of the qualifying breach. The relative proximity of the claims in April and May 2016 to the proposal for insurance and subsequent acceptance of that proposal by DD plc, with cover commencing on 1st September 2016, may be strong evidence of a deliberate attempt to suppress the revelation of these claims by the assured or its agent.

DD plc's options are:-

1. It can avoid the contract as if it had never existed, keep the premium and refuse to pay all claims if the breach was either deliberate or reckless.

2. It has three options if the breach was neither deliberate nor reckless:

- It can return the premium, avoid the contract and refuse all claims if it would not have entered the contract at all.
- It can treat the contract as if different terms applied, if it would have entered the contract on different terms, or;
- it can proportionately reduce the amount it pays on a claim if it would have charged a higher premium.

In this case, DD plc would need to show that its response is proportionate to the owner's breach.

Question 3 - Learning Outcome 4 (20 marks)

You are an underwriter for a marine insurer. An insurance broker presents you with a new business submission from a long-established shipowner. The shipowner has a fleet of container vessels which sail between major global ports, particularly with regular sailings between Shanghai, China and Los Angeles, USA. The insurance broker has provided you with a copy of the current insurance policy and the claims experience for the fleet.

You are considering this new business submission.

Explain, with justification, **four** significant underwriting factors, in addition to those already provided by the insurance broker, which would influence your decision as to whether you would offer terms for this fleet. (20)

Answer to question 3 (Learning Outcome 4)

i. Underwriters will consider the classification society into which the shipowner has entered the vessel. The classification society surveys the vessels at regular intervals during a vessel's lifetime and post-accident. The underwriter will use the surveys and who the classification society is, to make an assessment into how well the vessels have been maintained and how well they will continue to be maintained into the future. Underwriters must agree to the classification society before the vessels can be insured and the class must be maintained for the duration of the policy.

ii. Underwriters will consider the flag state of the vessels that are being entered and whether the vessel is flagged by the home state or by a flag of convenience. The flag state is responsible for among other things, the safety standards on board, ship manning, labour conditions, crew training, the use of signals, maintenance of communications and the prevention of collisions. The underwriter will have a view based on experience regarding each particular state and will consider whether they pose a greater or lesser risk. Not all flag states are diligent in enforcing standards.

iii. Underwriters will consider the type of vessel being proposed. Container vessels are large, single deck vessels which can stack large numbers of containers on board which are slotted and stacked on top of each other. There is a large diversity of cargoes within the containers and this does bring about risks from the cargo. Cargo can be mis-declared and this can result in dangerous cargoes being inappropriately stacked next to other cargoes, increasing the risk of damage to other cargoes and the ship. Containers must be stacked correctly with heavy cargoes being stored at the bottom of the stack. In the event of a loss the large number of cargoes may mean that the salvage and wreck removal can be very expensive and difficult. There can be a significant aggregation of value within the cargo especially in comparison to the hull value.

iv. The type of machinery and engine used on board each vessel will be considered as this will affect the repair costs to each vessel. Container ships don't tend to have internal supporting structures (which would take cargo space up) in the hull relying on the hull strength to hold the ship together. Hull policies are valued on an agreed value basis and therefore possible repair costs could increase the likelihood of a total loss or constructive total loss if the value of the vessel is set at too low a value. With this in mind, the underwriter will also consider the age and condition of the vessels proposed as well as the individual loss history of each vessel.

Question 4 - Learning Outcome 5 (20 marks)

You are an insurance broker. One of your clients owns a very large crude carrier (VLCC) which transports crude oil directly between ports.

Your client advises you that it has secured a contract which requires it to transport crude oil to a new destination. The contract requires the VLCC to be partially unloaded at sea by transferring some of the crude oil into a smaller oil tanker for onward delivery to the destination.

The VLCC and the smaller oil tanker are each insured under the Institute Time Clauses – Hulls 01/11/95.

Your client has expressed concern to you about the implications should an error in navigation by the VLCC's Master cause the VLCC to collide with the smaller oil tanker, to which it was going to transfer crude oil.

Your client asks for advice regarding the insurance implications of the transfer of crude oil at sea.

(a) Explain, with justification, **four** significant legal liabilities for your client which could arise from a potential collision between the VLCC and the smaller oil tanker. (12)

(b) Identify, with justification, **two** changes required to the current insurance arrangements to accommodate the new contract. (8)

Answer to question 4 (Learning Outcome 5)

(a)

1. The very large crude carrier (VLCC) will incur a liability for damage to the other ship and its cargo if there is a collision which is in whole or part due to the fault of the VLCC. Liability will be involved if the collision occurs due to an error in navigation by the VLCC. With a VLCC manoeuvring close to a smaller vessel whilst at sea, this would be a significantly high risk for the marine hull insurers and the P&I Club. This risk would be improved, though it would still exist, if the smaller vessel was to manoeuvre up to the much larger VLCC. The hull policy Institute Time Clauses -

Hulls (ITCH) 1/11/95 cl 8.1.1 will pick up ¾ of the running down clause (RDC) liability with the remaining ¼ covered by protection and indemnity (P&I).

2. The client may also incur a liability for the loss of use of the smaller tanker which may have to undergo repairs before it is able to earn further freight or hire. Again the ITCH 95 policy cl 8.1.2 will pick up ¾ of the liability. The remaining ¼ may be covered by the Club.

3. The client may have a liability for general average (GA) or salvage of the other vessel. The collision may have necessitated GA sacrifice or expenditure or salvage.

4. The insured could incur pollution liabilities if there is a collision was between two tankers, giving rise to the risk of an escape of crude oil. If so, the owners of the respective vessels would be be held strictly liable for any damage caused by the discharge or escape of persistent oil. Liability for such an escape of oil and its subsequent pollution of the sea and its environs would be under the provisions of the Civil Liability Convention or the Oil Pollution Act 1990, unless the escape of oil occurred in the exclusive economic zone (EEZ) waters of the USA, in which case the US Oil Pollution Act 1990 liabilities would apply.

(b)

1. The action of partially unloading the oil from the VLCC into a smaller tanker – known as lighterage – is excluded from the Institute Time Clauses - Hulls 1/11/95 unless prior approval has been secured from the hull and machinery underwriters and that any additional terms have been accepted by the vessel owner, and any additional premium required by the underwriters has been paid.

2. The protection & indemnity (P&I) insurers must be informed of the lighterage operation. It is a significant material fact of which they must be informed in order that they may consider whether they should provide cover against the various P&I risks to which they would be exposed if they agreed to grant cover. Whilst the damage to either ships' hulls and machinery would be for the account of the hull and machinery insurers, there could be significant and costly liability exposures in respect of pollution from escaping oil arising from such a collision, whilst approaching and lying alongside during the transfer of oil from the VLCC to the smaller tanker, and leaving after the completion of the lighterage activity. In addition, there is also a potential liability in respect of injury, illness or death caused to crew members of either ship occurring during this operation.

Question 5 - Learning Outcome 6 (20 marks)

You are the Insurance Manager of a shipowning company. The company's vessels are currently entered into a protection and indemnity (P&I) Club.

The company:

- owns a mixed fleet of container vessels and harbour craft, together with a number of other types of smaller vessels;
- has not made any protection and indemnity (P&I) claims in at least five years;
- operates in competitive markets;
- is reviewing its P&I expenditure.

The P&I Club has made a number of substantial claims payments to its other members. These payments have required the P&I Club to make additional calls on all its members.

(a) Explain, with justification, the source(s) of P&I insurance which is, or are, most likely to give the company the best arrangements for its P&I cover. (12)

(b) Identify, with justification, **two** potential financial implications of transferring from the existing P&I arrangement to alternative P&I arrangement(s). (8)

Answer to question 5 (Learning Outcome 6)

(a) As the Insurance Manager I should obtain quotes from different sources of protection and indemnity (P&I) cover and possibly split the fleet over different P&I facilities depending on vessel type and quotes obtained.

A traditional International Group (IG) P&I Club entry arrangement would probably be the most suitable regarding the container vessels. Many large well maintained container fleets are entered with IGs. No P&I claims have been made in the last five years and so the container ships would be sharing/pooling risks with vessels of a similar type and risk profile. This should keep any premium to a minimum as the traditional Clubs are non-profit making unlike commercial insurers, i.e. no premium element is chargeable to cover profits/dividends to shareholders.

Having said the above, there is no good reason why commercial fixed premium P&I insurers and/or Clubs not belonging to the IG could not also be approached by P&I brokers for quotations, but there could be problems concerning pollution liability cover.

Concerning the cable laying specialist vessels and small craft, it would be sensible to look at other alternatives to the traditional P&I Club entry. The risks may not be as easily fit into the standard P&I cover compared with the container vessels. Specialist commercial fixed premium insurers can tailor coverage to the vessel type. For the smaller vessel there are Clubs and insurers which specialise in smaller tonnage.

(b)

1. The P&I Club, which the fleet is being transferred from, may charge a release call before the vessels can leave the Club. This may prove a deterrent to changing the P&I insurer. In addition, in the first year if the change is from one IG Club to another, then the new terms and initial premium on offer will be more or less the same as the Club that was left due to the effect of the International Group Agreement (IGA).

2. Unbudgeted supplementary/additional calls are a concern to a ship owning company as these can get expensive. By transferring the fleet to a Club which has a better record on charging additional/supplementary calls or a fixed premium facility, the uncertainty and expense of further unbudgeted calls can, hopefully, be avoided.

Question 6 - Learning Outcome 7 (10 marks)

You are a claims handler for a hull insurer. One of hull insurer's policyholder owns ship A. Ship A is in collision with ship B, which is insured by another insurer. Ship A is held 75% responsible for the collision and ship B is held 25% responsible.

A claim is notified to you and you establish the following:

- Ship A incurs USD3,000,000 of damage and has a hull insurance policy deductible of USD500,000.
- Ship B incurs USD2,000,000 of damage and has a hull insurance policy deductible of USD250,000.

You are considering the responsibility of your policyholder to make a contribution towards the claim payment made by the insurer of ship B.

Calculate, **showing all your workings,** how much the insurer of ship A would expect to pay in subrogation to the insurer of ship B. (10)

Answer to question 6 (Learning Outcome 7)

Ship A: USD3million damaged incurred and 75% responsible for the collision.

Ship B: USD2million damaged incurred and 25% responsible for the collision.

Ship A: Damage: A pays USD2.25million, B pays USD0.75million.

Ship B: Damage: A pays USD1.5million, B pays USD0.5million.

Ship B's damage costs are USD2million. However ship A is only liable for 75% of the costs, i.e. USD1.5million. However ship B is responsible for 25% of the costs to ship A, i.e. USD750,000. The balance of the two costs will be paid to the insurers of ship B, i.e. USD750,000, however this will be subject to the deductible of USD500,000 which will be paid by the owners of ship A. The insurers of ship A will therefore pay USD250,000 under the collision clause in addition to the hull damage.

Question 7 – Across more than one Learning Outcome (30 marks)

A collision between a container vessel and a bulk carrier occurred at sea. The bulk carrier is deemed to be three quarters responsible for the collision, whilst the container vessel is deemed to be one quarter responsible.

Each vessel is insured by separate insurers under Institute Time Clauses – Hulls 1/10/83.

The container vessel has:

- an insured value of USD75 million;
- a deductible of USD1.5million.

The bulk carrier has:

- an insured value of USD60million;
- a deductible of USD1.25million.

Each vessel is entered into a different P&I Club. Both P&I Clubs are members of the International Group. The P&I Club deductible for each vessel is USD1million.

Neither vessel limits liability. The container vessel has hull damage of USD5million. The bulk carrier has hull damage of USD1million.

(a) Explain, with justification, the effect of the Institute Time Clauses – Hulls 1/10/83 on the apportionment of losses between the two hull insurers. (10)

(b) Calculate, **showing all your workings**, the total payments that will be made by each of the relevant parties. *Please indicate all the assumptions you have made and **ignore** the effect of the cargo interests in your calculations.* (20)

Answer to question 7 (Across more than one Learning Outcome)

(a) The basic premise in this example is that each insurer involved will be liable to its own insured for its share of the loss. Liability is several, rather than joint, so if either insurer is unable to pay its insured's losses for any reason, one insurer will not make good the other insurer's loss.

Clause 8 of the Institute Time Clauses – Hulls 1/10/83 deals with matters concerning collisions creating a legal liability for the respective insureds. Cover is provided in addition to that on the vessel itself, up to three-fourths of that liability and is conditional upon an insured vessel being partially or totally to blame for the collision.

The principle of single liability applies as a matter of law, so when both vessels share liability for the collision in unequal proportions offsetting would not occur, although in practical terms the liabilities of each party could be set against the other and one payment made to the party with the smaller monetary liability.

Clause 12.1 states that any deductible applying applies to each occurrence, with a few minor exceptions. In this case, the deductible would be applied to include payments made for collision liability.

Liability for collisions is subject to the absolute cap of a calculation based upon the sum insured applying to the hull of the vessel insured.

It should also be noted that clause 8.2.2 provides that an insurer will not pay more than three-fourths of the stated hull value in respect of collision liability, even if the insured is obligated to pay more than this.

(b)

Bulk Carrier

Damage	1,000,000	Responsible for ¾ of container ship \$5m = 3.75milliion
Recovery	275,000	Recover from container ship ¼ of \$1m = 0.25million
Deductible	1,250,000	

Claim	Damage	¾ RDC	¼ RDC	
	1,000,000			Insurer pays particular average loss (PA)
		2,812,500		Insurer pays ¾ RDC
			937,500	P&I pays other ¼
Recovery	250,000			Recover ex-container ship
Net	750,000	2,812,500	937,500	

Insurance claim	
PA	750,000
RDC	<u>2,812,500</u>
	3,562,500
Deductible	<u>1,250,000</u>
	2,312,500

Container Ship

Damage	5,000,000	Responsible for ¼ of bulk carrier $1million = 0.25million
Recovery	3,750,000	Recover from bulk carrier ¾ $5m = 3.75million
Deductible	1,500,000	

Claim	Damage	¾ RDC	¼ RDC	
	5,000,000			Insurer pays PA
		187,500		Insurer pays ¾ RDC
			62,500	P&I pays ¼ RDC
Recovery	3,750,000			Recover from bulk carrier
Net	1,250,000	187,500	62,500	

Insurance Claim	
PA	1,250,000
RDC	187,500
	<u>1,437,500</u>
Deductible	1,500,000
	-62,500

Notes:

i. RDC = Running Down Clause.
ii. Collision liabilities are within respective sums insured limits.
iii. Pooling possibilities between members of the International Group have been ignored.
iv. Assume deductibles cannot be recovered from Clubs.
v. Assume assessment is not on a cross-liability basis affecting demurrage losses.

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

You are the claims handler for a protection and indemnity (P&I) Club. One of the P&I Club members is AZ plc, who have demise-chartered a vessel to transport crude oil on behalf on a third party. The vessel is a bulk crude carrier. AZ plc reports the following to you:

- The vessel was on passage from an oil port in Texas, USA.
- A hurricane caused structural damage to the vessel when it was 220 nautical miles off the coast of the USA.
- This structural damage resulted in a substantial escape of oil from the vessel.
- This oil that escaped spread into waters 190 nautical miles off the coast of the USA where clean-up operations were carried out by the USA authorities.
- During the clean-up operation the USA authorities prohibited the passage of all vessels through the affected area and banned any form of fishing.
- The USA authorities are claiming for damages, losses and clean up costs.

(a) Explain, with justification, the extent to which applicable legislation affects AZ plc's legal liability for this escape of oil. (7)

(b) Explain, with justification, **four** significant potential liabilities for AZ plc that arise from this escape of oil. (16)

(c) Identify, with justification, the extent to which a legal defence may be available to AZ plc in defending itself against claims arising from the escape of oil. (7)

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

(a) The US Oil pollution Act 1990 (OPA) was enacted by the US government to apply to all vessels that carry oil on board and spill or threaten to spill oil. The OPA imposes strict liability jointly and severally upon the owners, operators and bareboat/ demise charter. The oil spill occurs when the vessel is in international waters and is outside the exclusive economic zone (EEZ) of the US, beyond the 200 mile limit. However the oil has escaped from the vessel and has spread into the US EEZ where it has been cleaned up by the US authorities. The US will argue that the vessel travelled through US waters from Texas, and that the spill endangered US waters when the spill entered the US EEZ and therefore was subject to the US OPA.

The damage to the vessel occurred on the high seas and therefore the flag state will have jurisdiction for the oil pollution incident that occurs on board one of the vessels that is registered with it. Therefore, unless the flag state of the vessel is the USA, the OPA will not in the first instance be applicable to the loss. It is likely that the flag state will be a signature to the International Convention for Oil Pollution Damage 1992 (CLC).

Under a demise charter the charterers displace the owner of the vessel for the period of the lease and take possession, with complete control of the vessel. Therefore the charterer will be subject to the jurisdiction of the flag state. If the flag state is a signature to the CLC then the charterer will be strictly liable for the damage and preventative measures to minimise damage to the environment. Under the CLC however, liability is strict and liability does not need to be based on negligence. Liability only extends to the reasonable removal costs and is not subject to the OPA Natural Resource Damage Assessment (NRDA) which will estimate the theoretical loss of enjoyment of the environment while it was affected by the oil spill.

(b) As demise charterers of the vessel they will be liable for any claims made for the clean-up operations of the oil spill under the CLC. The extent of the liabilities will be for the reasonable clean up and removal costs of the oil including any preventative measures that a state may take. This will include the expenditure that the US authorities may have spent cleaning up the oil spill that entered into the US EEZ. The CLC will also cover any compensation claims from the damage to the environment that results and will be limited to the reasonable costs of clean up and pollution costs such as the cleaning of birds, mammals etc. which will have been affected.

The CLC also allows compensation to be paid to parties that have suffered a direct loss of profit as a result of the oil spill. Therefore, AZ plc will also be liable for the loss of profit of fishermen that occurs as a direct result of the oil spill. Any loss has to be sufficiently direct for it to fall under the convention and the injured parties will be limited to those that are in a close relationship to the oil spill geographically and causatively. Therefore, the loss of profit of fishermen fishing in the area at the time would be accepted, however this would not include claims for vessels that were planning on going to the area that subsequently went elsewhere.

There may also be claims accepted from other vessel owners that were directly affected by the oil spill and used the area that was closed by the authorities for the clean-up. However the extent of the compensation will depend on whether there was a direct loss of profit and that the losses were sufficiently caused by the oil spill. Any shipowner that has been directly affected by the oil spill will have to demonstrate that they have suffered loss of profit as a result of the oil spill (See *Tilbury v International Oil Pollution Compensation Fund 1971* (2003)).

AZ plc has a demise charter on the MV Dove and the loss has caused significant damage to the tanker itself in addition to the pollution. Initially the owner of the vessel will be responsible for the pollution damage caused by the oil spill. However as part of the charter party, AZ plc will have agreed to indemnify any losses that the shipowner may be liable for during the operation of the charter party while the charter has control of the vessel. The charterer will also be responsible for returning the vessel at the end of the charter in an agreed condition. AZ plc will therefore be liable for the reinstatement costs associated with the repair to the vessel.

AZ plc will also be liable for the salvage operation that will be required to return the vessel to a safe port for repairs. AZ plc should have hull and machinery insurance to cover this liability subject to an excess.

Under the demise charter AZ plc were contracted with a third party for the carriage of crude oil from Texas to another part of the world. As the demise charterer AZ plc will be responsible for damage to the cargo being carried under the bill of lading signed by the master. Initially the cargo owner will claim compensation from the owner of the vessel however as a charterer AZ plc will have agreed to indemnify the shipowner for any claims that may arise from the demise charter party. Typically AZ plc will have insured their liability as a charterer with a P&I Club which will cover loss and damage to a cargo as long as the bill of lading incorporates an agreed contract wording such as the Hague-Visby Rules.

(c) The CLC allows a vessel of an owner an exemption from liability if it can prove that the loss occurred from an act of war or civil strife or from an exceptional, inevitable and irresistible natural phenomenon. Nor is it liable if the damage arose from an act or omission of a third party done with the intent to cause damage to a third party or wholly from the negligence of a government or authority responsible for maintaining navigation aids. Therefore AZ plc may be able to argue that the loss occurred as a result of an exceptional inevitable and irresistible natural phenomenon if the hurricane can be linked to the loss, and that the loss was not because of another reason such as lack of maintenance of the vessel, nor that the vessel set sail in the knowledge of an impending hurricane.

Question 9 - Across more than one Learning Outcome (20 marks)

You are an insurance broker. One of your clients owns a bulk carrier. This vessel is insured under Institute Time Clauses - Hull 1/10/83 and Institute War and Strikes Clauses – Time 1/10/83.

You were advised by your client that:

- The Master of the vessel was aware, from weather forecasts, that a hurricane was expected, however the Master decided to maintain the course in order to meet the timetable for the voyage.
- The vessel experienced damage to its superstructure caused by hurricane force seas, however the voyage continued with the vessel transiting through a shipping canal.
- Hostilities suddenly broke out between two countries on either side of the canal. The vessel received damage from stray gunfire, however war has not been declared by either country.
- The hurricane and gunfire damage were not sufficiently serious to render the vessel unseaworthy.
- The vessel was subsequently trapped by a blockade of the canal.

Your client wishes to abandon the vessel to their hull and machinery insurer and claim a constructive total loss (CTL).

Your client asks you for advice regarding the two damage claims and the CTL claim.

(a) Explain, with justification, the extent to which the insurer will pay for the hurricane damage. (8)

(b) Explain, with justification, the extent to which the insurer will pay for the stray gun fire damage. (4)

(c) Explain, with justification, **two** significant considerations to be taken into account regarding the validity of a CTL declaration by the owner of the vessel. (8)

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

(a) Clause 6.1.1 of the Institute Time Clauses - Hulls (ITCH) 1/10/83 states that '*This insurance covers loss of or damage to the subject matter insured caused by … perils of the seas rivers lakes or other navigable waters*'. Therefore damage caused by heavy weather would be considered as a peril of the sea and covered by the policy. However, if the insured was in breach of any agreed navigation limits and had not informed the underwriter under clause 3 of the ITCH 1/10/83, the vessel is in risk of breaching the warranty. But there is no suggestion in this question that there has been a breach of this warranty. Therefore, the policy is likely to have been in force at the time of the damage.

The extent of the liability for the damage caused by the heavy weather is limited to the depreciation of the market value of this vessel in respect to this damage that arises from the unrepaired damage at the time the insurance terminates. However, if the vessel is considered a total loss regardless of whether the total loss is covered (Clause 18 of the ITCH 1/10/83) then there will be no cover for the unrepaired damage.

(b) Clause 1; 1.1 of the Institute War and Strikes Clauses – Time 1/10/83 provide cover for the damage to the vessel caused by stray gunfire. The clauses state:

'Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the Vessel caused by:

1.1, war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power'.

The cost of repairing the damage caused by the stray gunfire would therefore be paid by the underwriters under the war clauses when the vessel has been released from the canal and the repairs have been done.

(c) If the underwriters were to consider the constructive total loss (CTL) claim then the Marine Insurance Act 1906 section 62 considers a loss to be a CTL when the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable or because it cannot be preserved from actual total loss without an expenditure which would exceed the value of the subject matter. Where the assured is deprived of possession of his ship by a peril insured against and (a), and it is unlikely that he can recover the ship of (b), and the cost of recovering the ship would exceed the value when recovered, a CTL may be claimed.

The underwriters will therefore consider whether the insured has been deprived of the use of the vessel and the expected time taken before the insured is likely to get the vessel back. The Institute Time Clauses – Hulls 1/10/83 allows the owner of a trapped vessel to claim a CTL in the circumstances described in clause 3:

In the event that the vessel shall have been the subject of capture, seizure, arrest, restraint, detainment, confiscation or expropriation, and the Assured shall thereby have lost the free use and disposal of the vessel for a continuous period of 12 months, then for the purpose of ascertaining whether the vessel is a CTL the Assured shall be deemed to have been deprived of the possession of the vessel without any likelihood of recovery. This clause provides the owner of the vessel with a clear contractual right to claim a CTL provided the vessel has remained trapped for at least 12 continuous months. In agreeing to a CTL settlement, the underwriters will settle the claim with a payment representing the value of the vessel and the machinery but they will not pay for the hurricane damage, which is covered by the Institute Time Clauses - Hulls 1/10/83 nor will they pay for the damage from stray gunfire. The owners of the vessel cannot claim for either sets of damage because the vessel would still be unrepaired when the CTL claim is made.

<u>Question 10 - Across more than one Learning Outcome (20 marks)</u>

A UK registered cargo vessel received a distress call from a passenger vessel. The passenger vessel had a fire on board which caused it to come to a complete stop on the high seas. Some of the passengers suffered from smoke inhalation and severe burns and were in need of urgent specialist medical attention. The cargo vessel deviated from its intended course to assist in the transfer of the injured passengers to a port where the passengers received specialist medical attention.

Whilst berthing at the port, the cargo vessel made contact with the quayside, causing damage to both its hull and to the quayside. The cargo vessel remained seaworthy.

The cargo vessel was re-provisioned and re-bunkered to reflect the deviation and then left the port. The total time from assisting the passenger vessel to resuming its voyage was seven days.

Each vessel is covered under Institute Time Clauses – Hulls 1/10/83 and are also entered into protection and indemnity (P&I) Clubs.

(a) Explain, with justification, the extent to which the cargo vessel's P&I Club will meet the additional costs arising from the deviation. (12)

(b) Identify, with justification, the insurance that will meet the costs of repairing the damage to the hull of the cargo vessel. (4)

(c) Identify, with justification, the insurance that will meet the cargo vessel owner's liability for the costs of repairing the damage to the quayside. (4)

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

(a) The International Convention on Salvage 1989 provides that a salvor of human life who has taken part in the rendering of life salvage services is entitled to their fair share of salvage award. However, property is required to be saved and where no property is saved there is no reward. The cargo vessel was involved in the life salvage of the passengers and therefore will be entitled to its fair share of the salvage award assuming that the passenger vessel was salvaged by another vessel. However, the cargo vessel is registered in the UK and under the Merchant Shipping Act 1995 (MSA) a salvor may be able to claim a discretionary amount from the Secretary of State if no property was salvaged or the amount the salvor was entitled to was unreasonably low.

The cargo vessel will have incurred additional expenses in deviating from its planned voyage to render assistance to the passenger vessel and its passengers. It incurred additional bunkering and expenditure feeding, providing medical assistance, clothing and looking after the rescued passengers.

The P&I Club will provide cover for the additional cost incurred by the ship owner of providing the assistance and landing the passengers removed from the passenger vessel at the nearest available port.

While landing the passengers, the cargo vessel collided with the quay causing damage to the hull and the quay. The P&I Club will provide cover for the damage to the quayside, under the heading of Fixed and Floating Objects (FFO) cover. Under the FFO cover the Clubs will indemnify the shipowner for the loss, damages and compensation for loss of use as a result of the collision with the quayside.

Cover will not include the deductible for the hull damage and will exclude any liabilities that arose out of contract.

While the cargo was not damaged during the collision with the quayside there was a seven day delay to the planned voyage. The delivery to the cargo owner may have caused the owner of the cargo loss or expense. However, the UK registered vessel will be subject to the Carriage of Goods at Sea Act 1971 (COGSA 1971) which applies to any voyage starting from the UK under a bill of lading or any voyage starting from a state which is party to the Hague Visby Rules as long as it is covered by a bill of lading.

Deviation from a planned voyage is not permitted except in certain defined circumstances. Deviation of a ship's course in order to save life or property that is in peril is excused by virtue of section 4 of COGSA 1971. Therefore, the owner of the cargo vessel will not be liable for any claims from the cargo owner resulting from the deviation and delay. If the vessel owner has purchased freight, demurrage and defence cover from the P&I Club, the Club will decide whether they will assist the member if there was a claim from the cargo owner following the delay.

(b) The Institute Time Clauses - Hulls 1/10/83 claims 6.1.7 provides cover for all claims that result from loss of or damage to the subject matter insured caused by contact with aircraft or similar, or objects falling therefrom, land conveyance, dock or harbour equipment, or installation. Therefore the hull underwriter will cover the damage incurred following the contact with the dock. The damage will be repaired on the basis of clause 14 'Claims payable without deduction new for old' which means that depreciation will not be deducted from the repairs to the vessel. Any claim will be subject to a deductible stated in clause 12.

(c) While landing the passengers the cargo vessel collided with the quay causing damage to the hull and the quay. The P&I Club will provide FFO cover for the damage to the quayside. Under the FFO cover the Clubs will indemnify the shipowner for the loss, damages and compensation for loss of use of the property of the infringement of any right that results from the damage to the quayside.

Reference list

Paul A. C Jaffe FCII & Charlotte Warr LLB (hons) FCII - M98 *Marine hull and associated liabilities*, The Chartered Insurance Institute 2016.

Question deconstruction and answer planning

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

Question 1 - Learning Outcome 2 (10 marks)

You are an insurance broker. One of your clients is a shipowner with a fleet of dry bulk carriers which is has operated for a number of years. Your client is considering expanding its business by purchasing very large crude carriers (VLCCs). Your client has asked you for legal liability advice which would influence their consideration of purchasing VLCCs.

(a) Identify, with justification, **one** significant legal liability exposure which might arise from the introduction of the VLCCs to the shipowner's fleet. (2)

(b) Explain, with justification, how the significant legal liability exposure you have identified in (a) above may differ depending on where the VLCCs are operating and the legal liabilities that apply. (8)

Question deconstruction

- Review Learning Outcome 2 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? The legal environment and the safety aspect of the maritime world.
- The question in part (a) asks an identification of one significant legal liability exposure and a justification of why the exposure is significant – with only two marks available, a very short answer is required.
- In part (b) an explanation of the most significant legal liability you have identified in part (a) is required and a justification as to why it differs.

Answer plan

- Identify one legal liability exposure arising from this scenario. The question is quite specific and only two marks are available, one for the exposure and one for the justification.
- In part (b) a longer explanation is required for how the significant liability exposure you have identified in part (a) may differ depending on the where the VLCCs are operating.
- As this is a 10 mark question, your answer should be shorter than the answers to either a 20 or 30 mark question.

Question 2 - Learning Outcome 3 (20 marks)

You are a claims handler for DD plc, a marine hull insurer. One of the marine insurer's policyholders is the owner of a UK registered vessel. The hull and machinery insurance policy for the vessel was transferred to DD plc on the 1 September 2016.

An incident occurred on the 27 October 2016 that involved a fire on the vessel which resulted in the value of the vessel being reduced by more than 80%. A claim for this fire was reported to you.

Your investigation of the claim has established that the vessel has suffered two previous partial losses which were not disclosed when the insurance was transferred:

- The first partial loss occurred on the 21 April 2016.
- The second partial loss occurred on the 30 May 2016.

(a) Explain, with justification, the potential effect that the reduction in the value of the vessel could have for the way the fire claim is settled. (10)

(b) Explain, with justification, the extent to which the non-disclosure of the two previous partial losses influences your consideration of the fire claim. (10)

Question deconstruction

- Review Learning Outcome 3 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 fact that marine insurance covers a wide variety of topics.
- The marks in part (a) and (b) are more weighted to part (b) so spend some time and effort in explaining the potential effects of the reduction in the value and more time on the extent of the non-disclosure ensuring your explanations reflect the mark split as to why they are the most appropriate in this scenario.

Answer plan

Part (a): You need to offer an explanation and justify why your explanation is the most important in this scenario. The 8 marks are awarded for the combination of the explanation and justification.

Part (b): Requires an explanation and a justification as to why your explanation is the most important in this scenario. Like part (a) the 12 marks are awarded for the combination of the explanation and justification.

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 8 – Across more than One Learning Outcome (30 marks)

You are the claims handler for a protection and indemnity (P&I) Club. One of the P&I Club members is AZ plc, who have demise-chartered a vessel to transport crude oil on behalf on a third party. The vessel is a bulk crude carrier. AZ plc report the following to you:

- The vessel was on passage from an oil port in Texas, USA.
- A hurricane caused structural damage to the vessel when it was 220 nautical miles off the coast of the USA.
- This structural damage resulted in a substantial escape of oil from the vessel.
- This oil that escaped spread into waters 190 nautical miles off the coast of the USA where clean-up operations were carried out by the USA authorities.
- During the clean-up operation the USA authorities prohibited the passage of all vessels through the affected area and banned any form of fishing.
- The USA authorities are claiming for damages, losses and clean up costs.

(a) Explain with justification the extent to which applicable legislation affects AZ plc's legal liability for this escape of oil. (10)

(b) Explain, with justification, **four** significant potential liabilities for AZ plc that arise from this escape of oil. (16)

(c) Identify, with justification, the extent to which a legal defence may be available to AZ plc in defending itself against claims arising from the escape of oil. (4)

Question deconstruction

- Review Learning Outcomes 2, 5 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, being the carriage of crude oil, the consequences of causing pollution and the services provided by the P & I Clubs.

Answer plan

Part (a) is worth 10 marks and part (c) is worth 7 marks, so your answer should be in greater depth on part (a). Part (b) is worth 16 marks so your answer should be in greater depth than either part (a) and part (c).

In part (a) you are asked to explain with justification the legal consequences of an oil spill for the charterer of the vessel.

In part (b) you are asked to explain with justification four significant liabilities that arise from the escape of oil from the chartered vessel. Because part (b) is worth 16 marks you should pay close attention to your answer, to ensure you secure maximum marks.

In part (c) you are asked to identify with justification a legal defence the charterer may have for the oil spill.

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.