

LL4043 / LL5043 / LLD5043 / LL6043 Law of Marine Insurance

International trading by sea has, for centuries, been fraught with risk because of the potentially dangerous environment of the sea. The incentive for participating in this risk was devised in northern Italy in the twelve and thirteenth centuries when the practice emerged of insuring against certain specified perils in return for the payment of a premium. The expense of the premium was passed on to customers of the assured as one of the elements of the cost of the freight (consideration for carriage) or the price of the goods. In due course this practice was taken up in London, most notably in Mr Edward Lloyd's Coffee House, and in what is now the dominant modern marine insurance institution, Lloyd's of London.

This course aims to provide students with a thorough knowledge of the law and practice of marine insurance, while also providing a grounding in the principles applicable to contracts of insurance (though the principles applicable to other forms of insurance are not studied in this course). Marine insurance is an essential complement to the study of substantive maritime law, which may be studied in courses on the **Carriage of Goods by Sea, Multimodal Transport Law, Charterparties, Maritime Law** and in courses on procedure, such as **Admiralty Law and Practice**, and **Maritime Conflict of Laws**. Marine insurance will answer the question of who pays for the misfortunes identified in the substantive courses, i.e. the insurer, provided that the ship owner, mortgagee, charterer, sub-charterer or cargo owner has in place valid and appropriate insurance coverage.

The course begins with an overview of the history and sources of marine insurance law. We shall encounter the leading codifying statute, the Marine Insurance Act 1906 (cap. 387), derived from the English Act of the same name, and be introduced to the various types of policy (valued and unvalued, voyage, and time). We then consider issues related to the formation of the contract of marine insurance, including an understanding of the market and how insurance is effected through the Market Reform Contract (MRC) slip and an introduction to the various standard forms of policy. We then consider the main elements of insurance as a contract of indemnity, namely the requirement of having an insurable interest, the subject matter of the insurance, and assignment of insurance.

The duty of utmost good faith has for long been central to contracts of marine insurance. In essence the principle is concerned with the information that must be disclosed by the parties who are involved in the insurance contract. Failure to adhere to the principle may affect the outcome of the claim and has generated a very considerable body of case law. The new English Insurance Act 2015 which comes into force in August 2016 makes substantial changes on this topic and this course will cover the law both pre- and post-2015 Act

We then turn to consider the topic of warranties in marine insurance. Unlike in general contract law, breach of a warranty amounts to a breach of a condition to be complied with. Again, the English Insurance Act 2015 effects major changes to the old law and both the old and new law will be covered. We shall concern ourselves with both express and implied warranties in the marine insurance context.

We then consider the insured perils for which the marine insurer is liable; we first consider those perils which are covered in typical "hull and "machinery" contracts, starting with those traditionally covered under the hull policy and the second set of perils introduced following *The Inchmaree*. We also consider here the topic of proximate cause; in order to be indemnified under a contract of marine insurance, the assured must prove that the loss insured against was proximately caused by the perils insured against.

As all shipowners also have indemnity insurance, we consider next the role of Protection and Indemnity Insurers (P & I Clubs) and the differences between the cover provided and that in traditional hull and machinery insurance.

Marine insurers are not liable to extend cover for certain losses; in the marine insurance context the losses excluded include the wilful misconduct of the assured, losses proximately caused by delay, ordinary wear and tear, ordinary leakage and breakage, inherent vice, or nature of the subject-matter insured. On the theme of losses, we consider next the various losses covered in marine insurance: these are total and partial losses. Each of these types breaks down into further categories, namely actual total losses and constructive total losses (total losses) and particular average losses and general average losses (partial losses).

The final part of the course is concerned with two topics. The first concerns certain savings acts, such as to sue and labour, under which the insurer undertakes to indemnify the assured for all reasonable expenditures undertaken to avert or minimize losses recoverable. We also consider general average

losses, which are payable by the cargo insurer in the case of cargo and hull insurers in the case of hull and machinery insurance, and salvage which is payable by the hull and machinery insurer (in the case of liability salvage) and the P & I insurer (in the case of special compensation under Art 14 of the Salvage Convention 1989).

The second concerns subrogation, which applies once the insurer has paid for the loss; in these circumstances the insurer is subrogated to the rights and remedies of the assured in and in respect of the subject matter insured. The insurer is thus entitled to take over all the rights of the assured, whether in contract or tort, and whether legal or equitable, against the person responsible for the loss.

The course requires a willingness to engage with domestic statute, insurance policies, and a not insignificant body of case law.

After successfully completing this course you should be able to:

1. *Demonstrate an understanding* of the main sources of marine insurance law, including the Marine Insurance Act and English Insurance Act 2015 together with the various types of policy.
2. *Describe and explain* the making of a contract of marine insurance and nature of the duty of utmost good faith under the pre and post 2015 Act.
3. *Have an understanding* of the different express and implied warranties in the contract of marine insurance as well as the various marine perils covered and the role of P & I insurance.
4. *Be familiar with* the losses excluded from coverage and the different types of losses covered (including actual total loss, constructive total loss, and partial losses).
5. *Develop an awareness and understanding* of sue and labour expenses, general average, and salvage.
6. *Demonstrate an understanding* of subrogation.

The expected topics are:

SEMINAR 1: INTRODUCTION: HISTORY AND BACKGROUND OF MARINE INSURANCE; WHAT IS MARINE INSURANCE? ; TYPES OF POLICIES (VALUED, UNVALUED, VOYAGE, TIME)

SEMINAR 2: FORMATION OF THE MARINE INSURANCE CONTRACT. THE DUTY OF UTMOST GOOD FAITH: NATURE; SCOPE; NON-DISCLOSURE; PRECONTRACTUAL / POST-CONTRACTUAL; INSURANCE ACT 2015.

SEMINAR 3: CONTRACT OF INDEMNITY: INSURABLE INTEREST; SUBJECT MATTER; ASSIGNMENT

SEMINAR 4: WARRANTIES: EXPRESS; IMPLIED; HELD COVER CLAUSES; INSURANCE ACT 2015.

SEMINAR 5: MARINE PERILS (1) (HULL): PERILS OF THE SEAS; FIRE AND EXPLOSION; VIOLENT THEFT; PIRACY ETC; THE INCHMAREE CLAUSE: MARINE PERILS (2) (CARGO): CONTD.; PROXIMATE CAUSE

SEMINAR 6: P & I INSURANCE: NATURE AND HISTORY; CLUB RULES; CALLS, INTERNATIONAL GROUP; RISKS INSURED; DEFENCE COVER; EXCLUDED LOSSES: WILFUL MISCONDUCT; DELAY; ORDINARY WEAR AND TEAR; FRAUD

SEMINAR 7: TYPES OF LOSS: ACTUAL TOTAL LOSS; CONSTRUCTIVE TOTAL LOSS; PARTIAL LOSS (PARTICULAR AVERAGE)

SEMINAR 8: SAVINGS ACTS: SUE AND LABOUR EXPENSES; GENERAL AVERAGE; SALVAGE

SEMINAR 9: SUBROGATION AND RETURN OF PREMIUM: RIGHTS AGAINST THIRD PARTIES; BENEFIT DIMINISHING LOSS; SUMMING UP THE COURSE.