

**LL4043/LL5043/LLD5043/LL6043 Law of Marine Insurance  
Semester 2 AY2021/2022**

This course offers an excellent introduction whether you wish to specialise in maritime and insurance law or merely to widen your understanding of a key component of commercial law.

Insurance law is a dynamic and exciting aspect of commercial law that all young aspiring law practitioners would benefit from developing an understanding of to underpin their wider legal studies. London traditionally is the most important insurance market that developed insurance practice and law. Today Lloyd's of London and the London Company Market insure risks placed all over the World. Lloyd's has established itself as the leading marketplace for specialist insurance and reinsurance serving the Asia Pacific region. Lloyd's in Singapore is a market place and home to more than 200 expert underwriters representing 22 syndicates. One of the specialised types of insurance that is available through a Lloyd's underwriter is marine insurance.

English law historically influenced the establishment of marine insurance principles to a great extent. Many of the fundamental principles of insurance were historically established by the marine insurance cases and they apply both in marine and non-marine insurance.

On the other hand, some of the topics of marine insurance law are specific to this type of contract. Such topics include the definition of constructive total loss, principles applicable in calculation of partial loss and the sue and labour expenses.

This course will introduce the role of the London market (both company market and Lloyds) and Lloyd's in Singapore in insuring specialised types of risks – including marine. Moreover, the course will cover the fundamental principles that govern marine insurance law including the market specific procedure that is followed to conclude an insurance contract at Lloyd's, insurable interest, the role of insurance brokers in insurance contracts with a special focus on the rights and duties of insurance brokers at the pre- and post-contractual stages of insurance, duty of fair presentation of the risk, duty of utmost good faith, interpretation of insurance contract terms and significance of marine insurance warranties. When we analyse brokers we will also touch upon payment of the premium- in marine insurance, brokers play an unusual and important role in this regard. This course will also examine the significance of the burden of proof of what caused the loss and, in conjunction with that, the importance of defining the insured perils in marine insurance. Furthermore, the definitions and circumstances of actual and constructive total loss, aggregation of losses and the measure of indemnity in partial loss (particular average) will be examined. Finally, the course will explain the principles that govern sue and labour (particular charges) – cost of mitigating the insured loss and insurers' subrogation right.

Studying marine insurance law will improve your understanding of how insurance contracts are formed at the outset and are interpreted at the post-contractual stage – this will include a working understanding of standard form policies. You will widen your comprehension of risk assessments in every day business life. By doing so, you will be able to assess the terms of a marine insurance contract in a way enabling you to protect your interests at the contract making stage at the outset, or at the dispute stage by knowing your rights and responsibilities again to protect your interest in the best possible way.

I look forward to teaching this course at National University of Singapore and meeting you in person.

The topics are:

**SEMINAR ONE:** Formation of Marine Insurance Contracts

**SEMINAR TWO:** Insurable Interest and Introduction to the Duty of Utmost Good Faith

**SEMINAR THREE:** The Duty of Utmost Good Faith and the Duty of Fair Presentation of the Risk

**SEMINAR FOUR:** The Role of Insurance Brokers and Payment of the Premium

**SEMINAR FIVE:** Marine Insurance Warranties and Causation

**SEMINAR SIX:** Marine Perils

**SEMINAR SEVEN:** Actual Total Loss and Constructive Total Loss

**SEMINAR EIGHT:** Partial Loss and Sue and Labour

**SEMINAR NINE:** Subrogation and Revision

## **SEMINAR ONE: Formation of Marine Insurance Contracts**

### Readings

Gurses, Marine Insurance Law, Second Ed, Chapter 2

Please visit the Lloyd's of London website and try to find the meaning of the following terms:

Syndicate

Managing agent

Broker

Market Reform Contract (MRC)

Slip

Policy

Cover note

Scratching

Line

Leading underwriter

Line slip

Binding authority

Cover holder

Signing down

General Underwriters Agreement (GUA)

Open Market Placement

### **Contract formation**

When is a binding insurance contract concluded?

*Eagle Star Insurance v Spratt* [1971] 2 Lloyd's Rep. 116

*General Reinsurance Corporation v Forsikrings Fennia Patria* [1983] Q.B. 856

*Allianz Insurance Co Egypt v Agaion Insurance Co SA* [2009] Lloyd's Rep. I.R. 533

Requirement of a formal policy

Section 22 of the MIA 1906

Line slip

*Involnert Management Inc v Aprilgrange Ltd* [2015] 2 Lloyd's Rep. 289

## **The leading underwriter**

Is the leading underwriter an agent of the following underwriters?

*Mander v Commercial Union Assurance Co plc* [1998] Lloyd's Rep IR 93

*Roadworks (1952) Ltd v. Charman* [1994] 2 Lloyd's Rep 99

*Unum Life Insurance Co of American v Israel Phoenix Assurance Co Ltd* [2002] Lloyd's Rep IR 374.

*San Evans Maritime Inc v Aigaion Insurance Co SA* [2014] EWHC 163 (Comm)

Construction of the Leading Underwriter (or follow the leader) clause

*PT Buana Samudra Pratama v Maritime Mutual Insurance Association (NZ) Ltd* [2011] 2 C.L.C. 722

*San Evans Maritime Inc v Aigaion Insurance Co SA* [2014] EWHC 163 (Comm)

## **Alterations to the agreement**

GUA now seems to have resolved the problems which occurred in the past regarding the LU's authority to alter the terms of the policy.

In the MRC the parties may refer to GUA as GUA has schedules under which it identifies the types of changes the leading underwriter can agree without notifying the following underwriters. There are also changes listed under GUA that each of the following underwriters' consent is required to the change in question. Part 1 of GUA contains the list of "Alterations the Slip Leader may agree on behalf of all Underwriters each for its own proportion." Part 2 lists "Alterations the Slip Leader and Agreement Parties may, if unanimous, agree on behalf of all Underwriters each for its own proportion severally and not jointly" and finally Part 3 lists "Alterations which may be agreed only by all Underwriters each for its own proportion severally and not jointly". For instance any waiver of or amendment to any express or implied warranty or any condition precedent to the attachment of the risk is a type of change which is listed under Part 3.

## **SEMINAR TWO: Insurable Interest and Introduction to the Duty of Utmost Good Faith**

### **Insurable Interest**

#### Readings

Colinvaux's Law of Insurance, 11<sup>th</sup> ed, Chapter 4

Gurses, Chapter 3

MIA 1906 ss 4-9.

Indemnity Insurance: the policyholder is indemnified against a loss

Contingency Insurance: the amount of the payment is set at the time of the contract

## **Statutory requirement of insurable interest:**

### **Marine Insurance:**

The Marine Insurance Act 1745: The Act rendered void any marine policy made without interest, or by way of gaming. It also voided marine policies written on PPI terms.

The Marine Insurance Act 1788: requires the names of those interested in the insurance to be inserted into the policy. The Act was repealed by the Marine Insurance Act 1906, but only insofar as it affected marine insurance. The Act continues to apply to non-marine insurance on "goods, merchandizes, effects or other property", although it does not appear to have any practical effects.

The Marine Insurance Act 1906: repealed the Marine Insurance Act 1745 and the Marine Insurance Act 1788 (in so far as it applied to marine policies on goods)

The Marine Insurance (Gambling Policies) Act 1909: to date, no prosecutions under the Act.

### **Life Insurance**

The Life Assurance Act 1774 : any contracts of insurance taken without interest is null and void (and illegal *Harse v Pearl Life Assurance Co Ltd* [1904] 1 K.B. 558)

The 1774 Act does not apply to "ships, goods, or merchandises"

The 1774 Act is not confined to lives. It also applies to "other events".

The Gaming Act 1845: held that wagers were unenforceable: had the effect of making all contracts of insurance unenforceable where no interest could be demonstrated.

The Gambling Act 2005: to regulate certain types of licensed gambling activities. repealed section 18 of the Gaming Act 1845.

The Gambling Act 2005 s.335(1) and 335(2): the fact that a contract relates to gambling shall not prevent its enforcement, but without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness (other than a rule relating specifically to gambling). The Gambling Act 2005 s.3: gambling includes betting; "betting" is defined by s.9 so as to include the making or accepting of a bet on the outcome of an event or process or the likelihood of anything occurring or not occurring.

A wager policy might fall within the definition of betting and thus within the definition of gambling, at least where the assured had in fact no actual independent interest in the subject matter of the contract.

Do wager policies remain void under s.4 of the 1906 Act following the entry into force of s.335?

### **Definition of insurable interest:**

MIA 1906 s.5 (applies to marine insurance)

*Lucena v Craufurd* (1806) 2 Bos & PNR 269.

### **Types of insurable interest**

Ownership

*Stockdale v Dunlop* (1840) 6 M. & W. 224

Contingent interest

*Anderson v Morice* (1876) 1 App. Cas. 713

Mortgagor and mortgagee

*Hepburn v A Tomlinson (Hauliers) Ltd* [1966] A.C. 451

Profit

*Stockdale v Dunlop* (1840) 6 M. & W. 224

Shareholder

*Macaura v Northern Assurance Company, Ltd* [1925] A.C. 619

Valuable benefit

*Wilson v Jones* (1866-67) L.R. 2 Ex. 139

*Sharp v Sphere Drake Insurance (The Moonacre)* [1992] 2 Lloyd's Rep. 501

*Feasey v Sun Life Assurance Co of Canada* [2003] Lloyd's Rep. I.R. 637

Bailee

*Waters v. Monarch Fire and Life Assurance Co.* (1856) 5 E. & B. 870

Pervasive interest

*Petrofina (UK) Ltd v Magnaload Ltd* [1984] Q.B. 127

*Stone Vickers Ltd v Appledore Ferguson Shipbuilders Ltd* [1991] 2 Lloyd's Rep 288;

*National Oilwell (UK) Ltd v Davy Offshore Ltd* [1993] 2 Lloyd's Rep 582.

*Talbot Underwriting Ltd v Nausch Hogan & Murray Inc (The Jascon 5)* [2006] 2 Lloyd's Rep. 195

### **The timing of the interest**

Marine Insurance: MIA 1906 s.6

*Powles v Innes* (1843) 11 Meeson and Welsby 10

*Sutherland v Pratt* (1843) 11 Meeson and Welsby 296

### **The consequences of lack of insurable interest**

MIA 1906 s.4: without interest, a contract for marine insurance is void.

The 1909 Act: the writing of marine insurance without insurable interest is a criminal offence.

Draft Insurable Interest Bill

<https://www.lawcom.gov.uk/project/insurance-contract-law-insurable-interest/>

### **Duty of Utmost Good Faith**

#### Readings

MIA 1906 s.17 (please note some parts of section 17 was repealed by the Insurance Act 2015)

Gurses "What does 'utmost good faith' mean"? *Insurance Law Journal* 2016 (27), p.124

Hemsworth, "The fate of "good faith" in insurance contracts" L.M.C.L.Q. 2018, 1(Feb), 143-170

Consumer Insurance Disclosure and Representations Act 2012

Insurance Act 2015 – Part 2, Part 5 and Schedule 1

### **Duty of fair presentation of the risk – (Duty of utmost good faith in Singapore)**

#### Readings

Colinvaux's Law of Insurance, Chapters 6 and 7

Gurses, Chapter 4

### **Pre-contractual Duty**

MIA 1906 s.18-20 (repealed in the UK by the Insurance Act 2015)

Insurance Act 2015 Part 2

*Carter v Boehm* (1766) 3 Burr. 1905

### **Non-Disclosure**

MIA 1906 s. 18 (repealed in the UK)

IA 2015 s.3

There is a duty to disclose material facts to the insurer before the insurance contract is concluded

**NOTE** that the duty of disclosure was abolished by the 2012 Act in consumer insurance but retained in the Insurance Act 2015 for business assured.

### **Misrepresentation**

MIA 1906 s.20 (repealed in the UK)

IA 2015 s.3

Business Insurance: Duty not to misrepresent material facts

Consumer Insurance: Duty to take reasonable care not to misrepresent material facts (Consumer Insurance Act s.2(2))

*Pawson v Watson* (1778) 2 Cowp. 785

*Eagle Star Insurance Co Ltd v Games Video Co, The Game Boy* [2004] Lloyd's Rep IR 867

*International Lottery Management v Dumas* [2002] Lloyd's Rep IR 237

### **Materiality**

MIA 1906 s.18(2) and 20(2) – repealed

IA 2015 s.7(3)

Objective test: the court would ask the prudent underwriter's view on materiality

Mere Influence test:

*Pan Atlantic Ins Co Ltd v Pine Top Ins Co Ltd* [1995] 1 A.C. 501.

### **Material Facts**

Physical hazard

Previous loss experience:

*Marc Rich v Portman* [1996] 1 Lloyd's Rep. 430

*Sealion Shipping Ltd v Valiant Insurance Co* [2012] Lloyd's Rep. I.R. 141. The case was appealed but the materiality issue was not disputed at the Court of Appeal.

#### Moral Hazard

Allegations of misconduct: *Brotherton v Aseguradora Colseguros SA* [2003] 1 Lloyd's Rep IR 746

Pending Criminal/Civil Charges: *North Star Shipping Ltd v Sphere Drake Insurance Plc.* [2006] 2 Lloyd's Rep. 183

Dishonesty of the assured: *Insurance Corp of the Channel Islands v Royal Hotel Ltd* [1998] Lloyd's Rep. I.R. 151

Previous refusals to insure: *Glasgow Assurance Corp v Symondson*(1911) 16 Com. Cas. 109

Previous criminal convictions: *Brotherton v Aseguradora Colseguros (No 2)* [2003] Lloyd's Rep IR 758

Rumours: *Strive Shipping v Hellenic Mutual* [2002] Lloyd's Rep IR 669

*International Management Group (UK) Ltd v Simmonds* [2004] Lloyd's Rep. I.R. 247

#### **Facts that not need be disclosed**

MIA 1906 s.18(3)- repealed

IA 2015 s.3(5)

Facts which diminish the risk:

*Decorum Investments Ltd v Atkin (The Elena G)* [2001] 2 Lloyd's Rep. 378

Facts which are or ought to be known by the insurer – *knowledge of insurer* see IA 2015 s.5

*Brotherton v Aseguradora Colseguros (No 2)* [2003] Lloyd's Rep IR 758;

Facts in respect of which the insurer has waived disclosure.

*HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2001] Lloyd's Rep IR 191

*WISE Underwriting Agency v Grupo Nacional Provincial SA* [2004] Lloyd's Rep IR 962

#### **Time at which and by reference to what materiality is assessed**

*Brotherton v Aseguradora Colseguros (No.2).* [2003] Lloyd's Rep. I.R. 746

*North Star Shipping Ltd v Sphere Drake Insurance Plc* [2006] 2 Lloyd's Rep. 183

## **SEMINAR THREE: The Duty of Fair Presentation of the risk (Duty of Utmost Good Faith in Singapore) (Continued)**

### **Inducement**

Subjective test: the underwriter who insured the risk has to prove inducement

In business insurance the test is implied into MIA 1906 (see *Pan Atlantic*)

IA 2015 s.8

*Involnert Management Inc v Aprilgrange Ltd* [2015] 2 Lloyd's Rep. 289

### **Proof of Inducement**

*Lewis v Norwich Union Healthcare Ltd* [2010] Lloyd's Rep. I.R. 198

*Drake Insurance Plc v Provident Insurance Plc* [2004] 1 Lloyd's Rep. 268

### **Presumption of Inducement**

Does the proof of materiality create a presumption of inducement?

*Assicurazioni Generali SpA v Arab Insurance Group* [2002] EWCA Civ 1642

*St Paul Fire and Marine Insurance Co (UK) Ltd v McConnell Dowell Constructors Ltd* [1995] 2 Lloyd's Rep 116

*Aneco v Johnson & Higgins* [1998] 1 Lloyd's Rep 565

*International Lottery Management v Dumas* [2001] Lloyd's Rep IR 237.

*International Management Group (UK) Ltd v Simmonds* [2003] EWHC 177 (Comm).

*Pawson v Watson* (1778) 2 Cowp. 785

### **Role of brokers and agents**

MIA 1906, s 19 (repealed in the UK)

IA 2015 s.4

### **Remedy for Breach of the Duty**

MIA 1906 s 17 (this part of section 17 was repealed in the UK)

Insurance Act 2015 Schedule 1

### **Contracting Out of the Insurance Act 2015**

IA 2015 s.16 and s.17



## **Waiver of disclosure**

### Express waiver:

*HIH Casualty v Chase Manhattan Bank* [2001] Lloyd's Rep IR 191

### Asking limited questions:

*Synergy Health (UK) Limited v CGU* [2011] Lloyd's Rep. I.R. 500

### Failure to make further inquiries:

IA 2015 s.3(4)(b)

*WISE Underwriting Agency Ltd v Grupo Nacional Provincial SA* [2004] EWCA Civ 962

### Waiver by affirmation:

*WISE Underwriting Agency Ltd v Grupo Nacional Provincial SA* [2004] EWCA Civ 962

*Argo Systems FZE v Liberty Insurance (Pte)* [2011] EWHC 301 (Comm)

*Spriggs v Wessington Court School Ltd* [2005] Lloyd's Rep. I.R. 474

## **Post-contractual Duty of Good Faith**

MIA 1906 s.17

*K/S Merc-Scandia XXXXII v Lloyd's Underwriters (The Mercandian Continent)* [2001] 2 Lloyd's Rep. 563

*Drake Insurance Plc v Provident Insurance Plc* [2004] 1 Lloyd's Rep. 268

## **Insurers' Duty of Good Faith**

MIA 1906 s.17

*Banque Financiere de la Cite SA v Westgate Insurance Co* [1990] 2 Lloyd's Rep. 377

*Drake Insurance Plc v Provident Insurance Plc* [2004] 1 Lloyd's Rep. 268

## **SEMINAR FOUR: Insurance Brokers**

### Readings

Gurses, Chapter 14

Colinvaux's Law of Insurance, Chapter 16

Merkin, "The Duties of Marine Insurance Brokers" in *The Modern Law of Marine Insurance*, R Thomas (ed), (LLP 1996,) Ch 9, 275

**Duties of intermediaries.** Irrespective of contract, the law imposes certain minimum obligations upon intermediaries. An outline of their general scope is as follows:

- the agent must obey his principal's instructions precisely, although he will not necessarily fall foul of this rule if the instructions are ambiguous or cannot be obeyed lawfully;
- the agent must exercise the degree of care and skill reasonably to be expected of an agent with the qualifications which the agent has held himself out as possessing; and
- as a fiduciary, the agent must not allow his duty to his principal to conflict with any other interest. In particular, he must not make secret profits' or accept bribes.

**Rights of intermediaries.** Subject to contract, an agent has a number of basic rights against his principal:

- the right to remuneration, which is normally payable in the form of commission – if the agent is paid by commission, he must demonstrate that his conduct has brought about the contract upon which commission was payable, and the right to commission will be lost where the agent is in breach of any of his primary duties or if the policy is avoided;
- the right to be indemnified in respect of any expenditure reasonably incurred by him on behalf of the principal; and
- the right to a lien on his principal's property to secure sums owing to him.

**Liabilities of intermediaries.** Where an agent has a contract with his principal, misconduct is likely to be a breach of contract and the agent may be dismissed and sued for any loss caused to the principal. The agent will also owe a parallel tortious duty to the principal as regards conduct which is fraudulent or negligent.

### ***The role of brokers***

Brokers are independent agents appointed by the assured to carry out various functions, including advice and placement, post-contractual assistance and claims handling services.

Do brokers act for insurers?

*General Accident v Tanter, The Zephyr* [1984] 1 Lloyd's Rep 58 (Hobhouse J)

*Goshawk Dedicated Ltd v Tyser & Co Ltd* [2006] 1 Lloyd's Rep. 566

### **Agents of Insurers**

The agent may, according to the circumstances, be required either to perform an act on behalf of the insurer or to receive information on behalf of the insurer. The only question in every case is whether the agent has the requisite authority, actual or ostensible, to act or to receive information.

### ***Illustrations of authority***

Payment of the premium

Receipt of information

Completion of proposal forms

### **Sub-brokers**

#### Assured and producing broker

*Tudor Jones II v Crawley Colosso Ltd* [1996] 2 Lloyd's Rep 619

*Dunlop Heywards (DHL) Ltd v Barbon Insurance Group Ltd* [2010] Lloyd's Rep. I.R. 149

#### Assured and placing broker

*BP plc v Aon Ltd* [2006] 1 C.L.C. 881 s for imposing a duty of care on the placing broker.

*Dunlop Heywards (DHL) Ltd v Erinaceous Insurance Services Ltd* (Tomlinson J)[2008] Lloyd's Rep. I.R. 676

#### Producing broker and placing broker

*Dunlop Heywards (DHL) Ltd v Barbon Insurance Group Ltd* [2010] Lloyd's Rep. I.R. 149

*Tudor Jones II v Crawley Colosso Ltd* [1996] 2 Lloyd's Rep 619

### **Remuneration**

Any expenditure reasonably incurred by the broker in performing his tasks is recoverable from the assured.

A broker who is the effective cause of the placement of the risk is entitled to commission. If the policy is cancelled after the risk has incepted, the commission is fully earned and is not returnable to the assured.

The broker has a lien over both the policy and on the policy moneys – should they be paid to him – by way of security for any sums due to him by the assured. Marine Insurance Act 1906, s 53(2)

### ***Duties of brokers on placement***

#### Obtaining cover

*Waterkyn v Price Forbes & Co* (1920) 5 LI LR 42

*Standard Life Assurance Ltd v Oak Dedicated Ltd* [2008] 1 C.L.C. 59

### ***Duty of fair presentation of the risk***

*Avondale Exhibitions Ltd v Arthur J Gallagher Insurance Brokers Ltd* [2018] EWHC 1311 (QB)

*Jones v Environcom Ltd* [2010] Lloyd's Rep. I.R. 676

### ***Assistance during the currency of the policy***

#### Advising the assured as to coverage issues

*HIH Casualty and General Insurance Ltd v JLT Risk Solutions Ltd* [2007] 2 C.L.C. 62

*Eurokey Recycling Ltd v Giles Insurance Brokers Ltd* [2014] EWHC 2989 (Comm)

### ***Remedies for breach of duty***

#### *Basis of liability.*

Contractual relationship between the assured and his broker

In the event of negligence, the assured may choose whether to sue in contract or in tort

*Henderson v Merrett Syndicates Ltd* [1994] 3 All ER 506

*Dalamd Ltd v Butterworth Spengler Commercial Ltd* [2018] EWHC 2558 (Comm)

### **Defences open to brokers**

*Contributory negligence.*

*HIH Casualty and General Insurance Ltd v JLT Risk Solutions Ltd* [2007] 2 C.L.C. 62

*Standard Life Assurance Ltd v Oak Dedicated Ltd* [2008] 1 C.L.C. 59

### **The Premium**

Gurses, Chapter 6

Colinvaux's Law of Insurance, Chapter 9

The consideration required of the assured in return for which the insurer undertook his obligation under the contract of insurance.

### **Forms of payment**

The form in which payment is required will generally be provided for in the proposal form, renewal notice or policy itself.

Payment may be made by a single premium or by instalments.

### **Mutual insurance.**

MIA 1906 s.85

### **Role of brokers.**

Is it broker's personal liability to pay the premium?

MIA 1906 s.53

### **Consequences of Non-Payment**

#### Non-marine insurance

Possible remedies

*Figre Ltd v Mander* [1999] Lloyd's Rep IR 193

- Actions for the premium: the insurers under a contract of insurance are entitled to bring an action for its payment. *Solvency Mutual Guarantee Co. v York* (1858) 3 H & N 588
- Rejection of claims: it is a matter for the contract
  - o Postponement of the contract or risk
  - o Forfeiture clauses: premium warranties

#### Marine Insurance

Premium payment warranty

*J A Chapman & Co Ltd v. Kadirga Denizcilik Ve Ticaret* [1998] Lloyd's Rep IR 377.

*Heath Lambert Ltd v Sociedad de Corretaje de Seguros* [2004] Lloyd's Rep IR 905

The International Hull Clauses 2003 cl.35

### **Return of Premium**

#### Agreement

Marine Insurance: MIA 1906 s.83

International Hull Clauses 2003, cl.25, cl.39

#### Total failure of consideration

If the insurers have never been on risk they have not earned the premium and ought to return it.

*Stevenson v Snow* (1761) 3 Burrow 1237

*Moses v Pratt* (1814) 4 Camp 297

*Clydesdale Financial Services Ltd v Smailes* [2010] Lloyd's Rep. I.R. 577

In both marine and non-marine insurance the principle is subject to contrary agreement.

#### Apportionment

*Tyrie v Fletcher* (1761) 3 Burr 1237

*Meyer v Gregson* (1784) 3 Doug 402

*Swiss Reinsurance Co v United India Insurance Co Ltd* [2005] Lloyd's Rep IR 341

### **Liability for return of premium**

Marine insurance: the broker is responsible to the insurer for payment of the premium: s.53(1). The insurer remains liable to the assured for the return of the premium.

*Velos Group Ltd v Harbour Insurance Services Ltd* [1997] 2 Lloyd's Rep 461

### **Return of premium in specific cases**

#### No valid contract

*Jackson v. Turquand* (1869) LR 4 HL 305

#### Avoidance of the contract by the insurer

Insurance Act 2015, schedule 1, part 1

Marine Insurance : MIA 1906, s.84(3)(a).

This provision is equally applicable in non-marine insurance.

*Anderson v Fitzgerald* (1853) 4 HLC 484, 507

*Biggar v Rock Life* [1902] 1 KB 516

#### Breach of warranty by the assured

*J A Chapman & Co Ltd v. Kadirga Denizcilik Ve Ticaret* [1998] Lloyd's Rep IR 377.

## **SEMINAR FIVE: Marine Insurance Warranties and Causation Marine Insurance**

### **Warranties**

#### Readings

Colinvaux's Law of Insurance, Chapter 8

Gurses, Chapter 5

MIA 1906 ss 33-41

Insurance Act 2015 ss.10-11

Merkin/Gurses "The Insurance Act 2015: Rebalancing The Interests of Insurer and Assured", *Modern Law Review*, 2015, Vol.78, 1004-1028.

Merkin/Gurses, "Insurance Contracts after the Insurance Act 2015", *Law Quarterly Review*, 2016, 132(Jul), 445-469

### **Principles of construction**

The construction of shipping and marine insurance contracts: why is it so difficult? *L.M.C.L.Q.* 2016, 2(May), 220-235

#### Extraneous considerations: factual matrix

*Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896

#### Contra proferentem

*Youell v Bland Welch (No 1)* [1990] 2 Lloyd's Rep 423

*Pratt v Aigaion Insurance Co SA (The Resolute)* [2009] 1 Lloyd's Rep. 225

### **Types of warranty**

Marine insurance : express or implied

Non-marine insurance: express only

MIA 1906, s 33(1)

#### Creating a warranty

MIA 1906, s 35

*Eagle Star Insurance Co Ltd v Games Video Co, "The Game Boy"* [2004] Lloyd's Rep IR 867

*Amlin Corporate Member Ltd v Oriental Assurance Corp* [2013] EWHC 2380 (Comm)

*Seashell of Lisson Grove Ltd v Aviva Insurance Ltd* [2012] Lloyd's Rep. I.R. 356

*HIH Casualty & General Insurance Ltd v New Hampshire Insurance Co* [2001] 2 Lloyd's Rep. 161

#### Basis of the Contract Clauses

IA 2015 s.9

*Genesis Housing Association Ltd v Liberty Syndicate Management Ltd* [2014] Lloyd's Rep. I.R. 318

*Dawsons Ltd v Bonnin* [1922] 2 A.C. 413

### Compliance with warranties

MIA 1906, s 33(3) –repealed in the UK

IA 2015 s.10

### **(b) Effects of breach of warranty**

MIA 1906, s 33(3) –repealed in the UK

*Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd, The Good Luck* [1991] 3 All ER 1 (repealed in the UK)

IA 2015 s.10

### **Strict compliance**

Remedying breach

MIA 1906, s 34(2) –repealed in the UK

*Quebec Marine Insurance Co v Commercial Bank of Canada* (1870) LR 3 PC 234 –repealed

IA 2015, s.10

### Waiver of breach

MIA 1906, s 34(3)

It is important to distinguish election from equitable estoppel

*Motor Oil Hellas (Corinth) Refineries SA v Shipping Corp of India (The Kanchenjunga)* [1990] 1 Lloyd's Rep. 391, 399:

“There is an important similarity between the two principles, election and equitable estoppel, in that each requires an unequivocal representation, perhaps because each may involve a loss, permanent or temporary, of the relevant party's rights. But there are important differences as well. In the context of a contract, the principle of election applies when a state of affairs comes into existence in which one party becomes entitled to exercise a right, and has to choose whether to exercise the right or not. His election has generally to be an informed choice, made with knowledge of the facts giving rise to the right. His election once made is final; it is not dependent upon reliance on it by the other party. On the other hand, equitable estoppel requires an unequivocal representation by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee as will render it inequitable for the representor to go back upon his representation. No question arises of any particular knowledge on the part of the representor, and the estoppel may be suspensory only. Furthermore, the representation itself is different in character in the two cases. The party making his election is communicating his choice whether or not to exercise a right which has become available to him. The party to an equitable estoppel is representing that he will not in future enforce his legal rights. His representation is therefore in the nature of a promise which, though unsupported by consideration, can have legal consequences; hence it is sometimes referred to as promissory estoppel.”

*Samuel Co Ltd v Dumas* [1924] AC 431

*J Kirkaldy Sons v Walker* [1999] Lloyd's Rep IR 410

### **Contracting out of IA 2015**

Section 15-17

## Causation

### Readings

Gurses, Chapter 7

Whether or not a loss is covered by a marine policy depends on ascertaining its proximate cause. An insurer usually only contracts to indemnify the insured against loss or damage caused by the perils specified in the policy, and it is therefore essential that the loss is shown to have been brought about by an insured peril.

### Proximate cause

Marine Insurance Act 1906 s.55(1)

Proximate cause is not closest in time to the loss, but is proximate in efficiency:

*Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd* [1918] A.C. 350

*Whiting v New Zealand Insurance Co Ltd.* (1932) 44 Ll L Rep 179

### Concurrent causes

*Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd* [1918] A.C. 350, Lord Shaw

"Where various factors or causes are concurrent, and one has to be selected, the matter is determined as one of fact, and the choice falls upon the one to which may be variously ascribed the qualities of reality, predominance, efficiency."

*Wayne Tank and Pump Co Ltd v Employers Liability Assurance Corporation Ltd* [1974] QB 57

Where there were two causes which were equal or nearly equal in their efficiency in bringing about the damage

- one of which renders the insurer liable and the other exempts them from liability : exception prevails
- one of the causes is an insured and the other is uninsured, but not expressly excluded: the insured peril prevails

*Sheehan v Lloyds Names Munich Re Syndicate Ltd* [2017] FCA 1340 (17 November 2017) – you can access this case through Westlaw International as it is a case decided by the Federal Court of Australia.

### Burden of proof

Is there a presumption that the vessel was lost by perils of the sea?

*Green v Brown* (1743) 2 Strange 1199

Where the court is left in doubt

### The Sherlock Holmes exception

*Rhesa Shipping Co SA v Edmunds (The Popi M)* [1985] 2 Lloyd's Rep. 1

Lord Brandon: If the conclusion is that the occurrence of an event is extremely improbable, a finding that it is nevertheless more likely to have occurred than not, does not accord with common sense.

Thus, with regard to determination of the proximate cause of a marine loss, referring to the Sherlock Holmes exception in *The Sign of Four* would be an erroneous approach.

*Ace European Group Ltd v Chartis Insurance UK Ltd* [2012] 2 Lloyd's Rep. 117

Popplewell J: If the judge is left in doubt, such that even if he rejects the insurer's explanation, he cannot say that the assured's explanation is more probable than any alternative (uninsured) explanation.

*Nulty v Milton Keynes BC* [2013] Lloyd's Rep. I.R. 243.

*Orient-Express Hotels Ltd v Assicurazioni Generali SpA (UK) (t/a Generali Global Risk)* [2010] Lloyd's Rep. I.R. 531

*Compania Martiaru v Royal Exchange Assurance Corp* [1923] 1 K.B. 650

### War risks clauses

*Navigators Insurance Co Ltd v Atlasnavios-Navegacao Lda (formerly Bnavios-Navegacao Lda)* [2018] Lloyd's Rep. I.R. 448



## SEMINAR SIX: MARINE PERILS

### Readings

Gurses, Chapter 7

MIA 1906, Schedule, para 7:

Perils of the seas : refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

*Thomas Wilson Sons & Co v Owners of Cargo of the Xantho (The Xantho)* (1887) 12 App.Cas. 503

### Ordinary action of the wind and waves

*Mountain v Whittle* [1921] AC 615.: ordinary action of the wind and waves refer to degree of bad weather faced by the vessel

*The Xantho* (1887) 12 App.Cas. 503, Lord Herschell: it is beyond question, that if a vessel strikes upon a sunken rock in fair weather and sinks, this is a loss by perils of the sea.

*JJ Lloyd Instruments v Northern Star Insurance Co (The Miss Jay Jay)* [1985] 1 Lloyd's Rep 264: Mustill J added that the word 'ordinary' attaches to 'action', not to 'wind and waves'.

*Global Process Systems Inc v Syarikat Takaful Malaysia Bhd (The Cendor Mopu)* [2011] 1 Lloyd's Rep. 560: fortuitous external accident or casualty, whether identified or inferred, is necessary, but it need not be associated with extraordinary weather.

### Entry of seawater

*Seashore Marine SA v Phoenix Assurance Plc (The Vergina) (No.2)* [2001] 2 Lloyd's Rep 698

*Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* [2013] 2 Lloyd's Rep. 131

### Perils of the sea and unseaworthiness

Voyage policy: no issue of perils of the sea

Time policy: proximate cause is a question of law, not fact.

*Dudgeon v Pembroke* (1877) 2 App. Cas. 284

*Frangos v Sun Insurance Office Ltd* (1934) 49 Ll L Rep 354

*JJ Lloyd Instruments v Northern Star Insurance Co (The Miss Jay Jay)* [1985] 1 Lloyd's Rep 264:

(i) initial unseaworthiness; (ii) adverse weather; (iii) loss of watertight integrity of the vessel; (iv) damage to the subject matter insured – is treated as a loss by perils of the sea, not by unseaworthiness.

### **Exceptions**

MIA 1906 s.55(2)(c)

### Burden of proof

It is for the insurers to prove that the loss was proximately caused by an excluded peril.

*Global Process Systems Inc v Syarikat Takaful Malaysia Bhd (The Cendor Mopu)* [2011] 1 Lloyd's Rep. 560

### Inherent vice

*Soya GmbH Mainz KG v White* [1983] 1 Lloyd's Rep 122

*Noten v Harding* [1990] 2 Lloyd's Rep 283.

Inability of the subject matter insured to withstand the ordinary conditions of the voyage

### Perils of the sea or inherent vice? :

*Mayban General Assurance BHD v Alstom Power Plants Ltd* [2004] 2 Lloyd's Rep 609.

*Global Process Systems Inc v Syarikat Takaful Malaysia Bhd (The Cendor Mopu)* [2011] 1 Lloyd's Rep. 560 (*Mayban* was overruled).

Where a proximate cause of the loss was perils of the sea, there was no room for the conclusion that the loss was caused by inherent vice.

### Ordinary wear and tear

*The Miss Jay Jay* [1985] 1 Lloyd's Rep. 264: '... the purpose of the policy is to secure an indemnity against accidents which may happen, not against events which must happen.'

#### Negligence and misconduct of the assured or his employees or agents

MIA 1906 s.55(2)(a)

The insurer will be liable for the loss which was caused by the perils of the sea but would not have occurred but for the negligence of the assured or his servants or agents.

*Venetico Marine SA v International General Insurance Co Ltd* [2014] Lloyd's Rep. I.R. 243

*Trinder Anderson & Co v Thames and Mersey Marine Insurance Co* [1898] 2 Q.B. 114:

The wilful default of the owner inducing the loss will debar him from suing on the policy.

*Samuel v Dumas* [1924] A.C. 431

#### Delay

MIA 1906 s.55(2)(b)

*Tatham v Hodgson* (1796) 6 Term Reports 656

*Lawrence v Aberdein* (1821) 5 B. & Ald. 107

*Pink v Fleming* (1890) 25 Q.B.D. 396

#### The Inchmaree Clause

*Thames and Mersey Marine Insurance Co. v. Hamilton, Fraser & Co* (1887) 12 App. Cas. 484

*Hutchins Bros v Royal Exchange Insurance Corp* [1911] 2 K.B. 398

The International Hull Clauses 2003 cl.2.2.

#### Bursting of boilers or breakage of shafts

*Oceanic SS Co v Faber; Hutchins Bros v Royal Exchange Insurance Corp* [1911] 2 KB 398

#### Latent defect in the machinery or hull

*Prudent Tankers SA v Dominion Insurance Co (The Caribbean Sea)* [1980] 1 Lloyd's Rep 338

*Oceanic SS Co v Faber; Hutchins Bros v Royal Exchange Insurance Corp* [1911] 2 KB 398

*Hutchins Bros v Royal Exchange Insurance Corp* [1911] 2 K.B. 398

Damage to hull or machinery caused through a latent defect in the machinery is something different from damage involved in a latent defect in the machinery itself. If a latent defect has existed at the commencement of the policy period and all that has happened is that the assured has discovered the existence of that latent defect then there has been no loss 'through a latent defect'.

*Scindia Steamships (London) Ltd v London Assurance* [1937] 1 K.B. 639

*CJ Wills & Sons v World Marine Insurance Co Ltd (The Mermaid)* [1980] 1 Lloyd's Rep. 350

IHC 2003 clause 2.3.

"Where there is a claim recoverable under Clause 2.2.1, this insurance shall also cover one half of the costs common to the repair of the burst boiler or the broken shaft and to the repair of the loss or damage caused thereby."

*Promet Engineering (Singapore) Pte Ltd v Sturge (The Nukila)* [1997] 2 Lloyd's Rep. 146

See also IHC 2003 cl.2.4 and cl.41.

#### Unseaworthiness and latent defect

*Martin Maritime Ltd v Provident Capital Indemnity Fund Ltd (The Lydia Flag)* [1998] 2 Lloyd's Rep. 652

#### Due diligence

*Sealion Shipping Ltd v Valiant Insurance Co* [2012] 1 Lloyd's Rep 252

#### Collision Liability Clause

IHC 2003 Cl.6.1.

#### Barratry of Master, Officers or Crew

*Vallejo v Wheeler* (1774) 1 Cowp. 143

Rule 11 of the MIA 1906 Schedule 1

## CARGO RISKS

2009 Institute Cargo Clauses (A) (B) (C)

ICC (A): The goods are insured against 'all risks' subject to the exclusions listed in the standard clauses.

*British & Foreign Marine Insurance Co Ltd v Gaunt* [1921] 2 A.C. 41

*Berk v Style* [1955] 2 Lloyd's Rep. 382

*Soya GmbH Mainz KG v White* [1983] 1 Lloyd's Rep. 122:

'This insurance is to cover against the risks of heat, sweat and spontaneous combustion only . . .'

ICC (B)(C) :

Restricted coverage

Piracy is not an insured risk.

ICC (A)(B)(C): Both to Blame Condition Clause.

## SEMINAR SEVEN: Actual Total Loss

Gurses, Chapter 8

Colinvaux's Law of Insurance, Chapter 25

MIA 1906 s.57

Three forms:

1) Where the subject matter insured is destroyed.

Loss of the voyage

*Anderson v. Wallis* (1813) 2 M. & S. 240

*Manning v Newnham*(1782) 3 Douglas 130

Partial loss or total loss of part of the cargo?

MIA 1906 s.76(1)

Where perishable goods are insured for a lump sum and in bulk:

*Ralli v Janson* (1856) 6 Ellis and Blackburn 422

Where the policy provides separate valuation for different parts of the cargo:

*La Fabrique de Produits Chimiques Société Anonyme v Large* [1923] 1 K.B. 203

2) Where the subject matter insured is so damaged as to cease to be a thing of the kind insured.

*Barker v Janson* (1867–68) LR 3 CP 303:

'If a ship is so injured that it cannot sail without repairs, and cannot be taken to a port at which the necessary repairs can be executed, there is an actual total loss, for that has ceased to be a ship which never can be used for the purposes of a ship.'

It became impossible to carry the hides in a saleable state to the port of destination:

*Roux v Salvador* (1836) 3 Bingham New Cases 266

Goods became unmerchantable which no buyer would buy and no honest seller would sell: *Asfar v Blundell* [1896] 1 Q.B. 123

The particular characteristics of the insured property before the casualty is to be considered: *Fraser Shipping Ltd v Colton* [1997] 1 Lloyd's Rep. 586

*Venetico Marine SA v International General Insurance Co Ltd* [2014] 1 Lloyd's Rep. 349

(3) Where the assured is irretrievably deprived of the insured subject matter.

Meaning of irretrievable deprivation

*Fraser Shipping Ltd v Colton* [1997] 1 Lloyd's Rep. 586  
*George Cohen Sons & Co v Standard Marine Insurance Co Ltd* (1925) 21 Ll. L. Rep. 30

#### Capture

*Marstrand Fishing Co Ltd v Beer* (1936) 56 Ll. L. Rep. 163  
*Masefield AG v Amlin Corporate Member Ltd* Rix LJ, [2011] 1 Lloyd's Rep. 630  
*Andersen v Marten* [1908] A.C. 334

#### Actual total loss of freight

Has the right to receive the freight been lost by peril of the sea?  
*Atty v Lindo* (1805) 1 Bos. & P. N.R. 236  
*Carras v London & Scottish Assurance Corp Ltd (The Yero Carras)* (1935) 53 Ll. L. Rep. 131

### **Constructive Total Loss**

#### Readings

Gurses, Chapter 9

Colinvaux's Law of Insurance, Chapter 25

MIA 1906 s.60 (1):

CTL is a total loss in law but not in fact.

There is a constructive total loss where

- a) the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or
- b) because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

'Abandonment' within the meaning of s.60(1) is "the abandonment of any hope of recovery" *Masefield AG v Amlin Corporate Member Ltd* [2010] 1 Lloyd's Rep. 509

The test is "if a prudent man not insured, would decline any further expense in prosecuting an adventure, the termination of which will probably never be successfully accomplished".

*Roux v Salvador* (1836) 3 Bingham New Cases 266  
*Venetico Marine SA v International General Insurance Co Ltd* [2014] 1 Lloyd's Rep. 349

#### Deprivation of Possession of Ship or Goods

MIA 1906 s.60(2)(i)(a)

*Polurrian Steamship Company, Limited v Young* [1915] 1 K.B. 922  
*Panamanian Oriental Steamship Corp v Wright (The Anita)* [1970] 2 Lloyd's Rep. 365  
*Bayview Motors Ltd v Mitsui Marine & Fire Insurance Co Ltd* [2002] 1 Lloyd's Rep. 652

#### The cost of repairing the damage would exceed the value of the ship when repaired

MIA 1906 s.60(2)(i)(b)

#### What would it cost to make the vessel as good as she was before the casualty.?

*Pitman v Universal Marine Insurance Company* (1882) 9 Q.B.D. 192  
IHC 2003 cl 21: 80% of the insured value of the vessel shall be taken as the repaired value  
MIA 1906 s.60(2)(ii)

#### Recovery from third parties as

- a general average contribution

- cost of salvage

*Kemp v Halliday*(1865-66) L.R. 1 Q.B.520

#### Contractual clauses

*Suez Fortune Investments Ltd v Talbot Underwriting Ltd* [2015] 1 Lloyd's Rep. 651

#### Constructive Total Loss of Goods

The MIA 1906 s.60(2)(i): there is a CTL of goods where the assured is deprived of the possession of his ship or goods by a peril insured against, and

- (a) it is unlikely that he can recover the ship or goods, as the case may be, or
- (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered.

In the case of damage to goods, there is a CTL where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival (s.60(2)(iii)).

Clause 13 of the Institute Cargo Clauses

#### Date at which CTL to be assessed

*Royal Boskalis Westminster NV v Mountain* [1997] L.R.L.R. 523  
*Polurrian Steamship Company, Limited v Young* [1915] 1 K.B. 922  
*Atlasnavios-Navegacao, LDA v Navigators Insurance Company Ltd* [2015] 1 Lloyd's Rep. 117

#### Notice of Abandonment

MIA 1906 s.62(1)

*Bank of America National Trust and Savings Association v Christmas (The Kyriaki)* [1993] 1 Lloyd's Rep. 137

In the absence of notice of abandonment the assured could only claim for a partial loss.

*Knight v Faith* (1850) 15 Queen's Bench Reports 649  
*Involnert Management Inc v Aprilgrange Ltd* [2015] 2 Lloyd's Rep. 289

Form of notice and acceptance of abandonment

MIA 1906 s.62(2), 62(5)

#### Timing of Notice of Abandonment

Notice was too late: *Anderson v Royal Exchange Assurance Company* (1805) 7 East 38  
*Involnert Management Inc v Aprilgrange Ltd* [2015] 2 Lloyd's Rep. 289

#### Circumstances at which notice of abandonment is not needed

MIA 1906 s.62(7)(8)(9)  
*Kastor Navigation Co Ltd v AXA Global Risks (UK) Ltd* The "Kastor Too" [2004] 2 Lloyd's Rep. 119  
*Bayview Motors Ltd v Mitsui Marine & Fire Insurance Co Ltd* [2002] 1 Lloyd's Rep. 652

#### Acceptance of Notice of Abandonment

MIA 1906 s.62(6)  
 Very rare: *The WD Fairway*, [2009] 2 Lloyd's Rep. 191

#### Successive Total Losses

MIA 1906 s.77

*Fooks v Smith* [1924] 2 K.B. 508  
*Kastor Navigation Co Ltd v AXA Global Risks (UK) Ltd* The "Kastor Too" [2004] 2 Lloyd's Rep. 119

### **SEMINAR EIGHT: Partial Loss (Particular Average)**

#### Readings

Gurses, Chapter 10

Colinvaux's Law of Insurance, Chapter 25

MIA 1906 s.64(1)

#### Measure of indemnity

MIA 1906 s.67-78

MIA 1906 s.67(1):

The sum which the assured can recover:

- in the case of an unvalued policy to the full extent of the insurable value, or,
- in the case of a valued policy to the full extent of the value fixed by the policy is called the measure of indemnity.

Section 67 has to be read in conjunction with section 16 of the Act.

*Aitchison v Lohre* (1878) 3 Q.B.D. 558, 564

The object is to provide an indemnity placing the assured in the same position as he was in at the beginning of the risk.

#### Partial loss of goods

MIA 1906 s.71

*Pitman v Universal Marine Insurance Co*(1882) 9 Q.B.D. 192, 212

#### Partial loss of the ship

MIA 1906 s.69

*Pitman v Universal Marine Insurance Co*(1882) 9 Q.B.D. 192, 212

*Suez Fortune Investments Ltd v Talbot Underwriting Ltd* [2015] 1 Lloyd's Rep. 651

#### Reasonable cost of repair

*The Medina Princess* [1965] 1 Lloyd's Rep. 361

#### Successive losses

MIA 1906 s.77

*Livie v Janson*(1810) 12 East 648

*British & Foreign Insurance Co Ltd v Wilson Shipping Co Ltd* [1921] 1 A.C. 188

## **SUE AND LABOUR**

### Readings

Gurses, Chapter 11

The duty comes into play in insurance in terms of claiming the expenditure incurred by the assured to prevent or minimise the insured loss from the insurer.

MIA 1906 s.78

ICC 2009 (A)(B)(C) Cl. 16

#### Is the duty implied?

Non-marine insurance:

*Yorkshire Water v Sun Alliance & London Insurance* [1997] C.L.C. 213

*AstraZeneca Insurance Co Ltd v XL Insurance (Bermuda) Ltd* [2013] EWHC 349 (Comm)

Marine Insurance:

Policies normally contain a sue and labour clause.

#### Elements of Sue and Labour

*Aitchison v Lohre* (1879) 4 App. Cas. 755

*Royal Boskalis Westminster v Mountain* [1997] L.R.L.R. 523

#### How immediate the risk of loss has to be?

*Aitchison v Lohre* (1879) 4 App. Cas. 755

*Integrated Container Service v British Traders Insurance Co* [1984] 1 Lloyd's Rep. 154

#### To avert or minimise a loss which would otherwise be covered by the terms of the policy

*Great Indian Peninsula Railway Company v Saunders*(1862) 2 Best and Smith 266

*Kidston v Empire Marine Insurance Company*(1866-67) L.R. 2 C.P. 357

*Cunard Steamship Company, Limited v Marten* [1903] 2 K.B. 511

### Unusual or extraordinary expenditure

*Lee v Southern Insurance Company* (1869-70) L.R. 5 C.P. 397  
*Royal Boskalis Westminster v Mountain* [1997] L.R.L.R. 523

### Ransom

*Masefield AG v Amlin Corporate Member Ltd* [2011] 1 Lloyd's Rep. 630  
*Royal Boskalis Westminster v Mountain* [1997] L.R.L.R. 523

### Apportionment

*Cunard Steamship Company Ltd. v Marten*[1902] 2 K.B. 624  
*Royal Boskalis Westminster v Mountain* [1997] L.R.L.R. 523  
*Standard Life Assurance Ltd v ACE European Group*[2012] EWCA Civ 1713  
*Atlasnavios-Navegacao, LDA v Navigators Insurance Company Ltd* [2015] 1 Lloyd's Rep. 117

### Supplementary payment

MIA 1906 s.78(1)  
IHC 2003, cl 9.5

### Breach of s.78(4)

*Netherlands v Youell* [1998] C.L.C. 44

### Negligence in taking reasonable steps to avert or minimise the loss

MIA 1906 S.55(2)(a)  
*British and Foreign Marine Insurance Co v Gaunt* [1921] 2 AC 41  
*Astrovlanis Compania Naviera SA v Linard (The Gold Sky)* [1972] 2 Lloyd's Rep. 187  
ICC 2009 cl.16  
*Noble Resources and Unirise Development v George Albert Greenwood (The Vasso)* [1993] 2 Lloyd's Rep. 309

### The date at which the duty to sue and labour terminated

*Atlasnavios-Navegacao, LDA v Navigators Insurance Company Ltd* [2015] 1 Lloyd's Rep. 117  
*Suez Fortune Investments Ltd v Talbot Underwriting Ltd* [2015] 1 Lloyd's Rep. 651

## **SEMINAR NINE : Subrogation**

### Readings

Colinvaux's Law of Insurance, Chapter 12

Gurses, Chapter 13

MIA 1906 s.79

### Insurer's rights in respect of the proceeds of the assured's recovery

The principle of indemnity does not allow the assured to have a double recovery. Thus, any recovery by the assured after indemnification by the insurer will be for the benefit of the insurer.

*Yates v Whyte* (1838) 4 Bingham New Cases 272  
*Castellain v. Preston*, (1883) 11 QBD 380

### Insurer's rights in respect of the assured's rights against the third party

*Mason v. Sainsbury* (1782) 3 Douglas 61  
*Caledonia North Sea Ltd v British Telecommunications* [2002] 1 Lloyd's Rep. 553  
*Schiffahrtsgesellschaft Detlev von Appen GmbH v Voest Alpine Intertrading GmbH (The Jay Bola)* [1997] 2 Lloyd's Rep. 279

### **Elements of subrogation**

#### 1) The insurer must pay

*Castellain v. Preston*, (1883) 11 QBD 380

Consider this wording :

“the insurer shall be subrogated...before or after any payment under this policy”.

*Rathbone Brothers Plc v Novae Corporate Underwriting* [2013] EWHC 3457 (Comm), Court of Appeal: [2014] EWCA Civ 1464

2) A subrogation action is required to pursue the claim in the name of the assured

*London Assurance Company v Sainsbury* (1783) 3 Doug. K.B. 244

3) The insurer can recover only up to the amount he paid to the assured

*Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1961] 1 Lloyd's Rep. 479

### **The juridical basis of subrogation**

Common law and equity:

*Darrell v Tibbitts* (1880) 5 Q.B.D. 560

Implied term:

*Yorkshire Insurance Co. Ltd. v Nisbet Shipping Co. Ltd* [1961] 1 Lloyd's Rep. 479

A principle of equity:

*Castellain v Preston* (1883) 11 Q.B.D. 380

*Napier and Ettrick v RF Kershaw Ltd (No. 1)* [1993] 1 Lloyd's Rep. 197

### **Limitations on subrogation**

The assured is the party that has suffered loss but is also the party responsible for that loss.

*Simpson v Thomson* (1877) 3 App. Cas. 279

Broad nature of subrogation

*Castellain v Preston* (1883) 11 Q.B.D. 380

*Assicurazioni Generali de Trieste v Empress Assurance Corporation Ltd* [1907] 2 K.B. 814

Gifts (Voluntary payments)

*Burnand v Rodocanachi Sons & Co* (1882) 7 App. Cas. 333

*Colonia Versicherung AG v Amoco Oil Co (The Wind Star)* [1995] 1 Lloyd's Rep. 570

### **Obligations of the assured**

Permission to use his name by the insurer

*Esso Petroleum Co Ltd v Hall Russell & Co Ltd (The Esso Bernicia)* [1989] 1 Lloyd's Rep. 8

Acting in good faith (not to prejudice the insurers' subrogation rights)

*Tate & Sons v Hyslop* (1885) 15 Q.B.D. 368

*Horwood v Land of Leather Ltd* [2010] Lloyd's Rep. I.R. 453

Institute Cargo Clauses (A) 1963 cl.9 (2009 Clauses, cl 16)

*Netherlands Insurance Co Est 1845 Ltd v Karl Ljungberg & Co AB (The Mammoth Pine)* [1986] 2 Lloyd's Rep. 19

IHC 2003 cl 49

### **Subrogation action against co-assured**

In composite insurance several assureds may insure their own interests which are not necessarily the same.

Does a co-assured fall outside the insurance contract or is he regarded as a third party when the injured party who has a claim against the assured is the other co-assured?

Principle of circuity:

*The Yasin* [1979] 2 Lloyd's Rep. 45

*Petrofina (U.K.) Ltd. v Magnaload Ltd* [1983] 2 Lloyd's Rep. 91

Implied in the underlying contract:

*Cooperative Retail Services Ltd v Taylor Young Partnership Ltd* [2002] Lloyd's Rep. I.R. 555, Lord Hope (obiter)

*Gard Marine & Energy Ltd v China National Chartering Co Ltd* [2015] 1 Lloyd's Rep. 381 (Appeal is pending)



Implied term in insurance contract:

*National Oilwell (UK) Ltd v Davy Offshore Ltd* [1993] 2 Lloyd's Rep 582

Emphasis on the true construction of the underlying contract

*Tyco Fire & Integrated Solutions (UK) Ltd (formerly Wormald Ansul (UK) Ltd) v Rolls Royce Motor Cars Ltd (formerly Hireus Ltd)*. [2008] Lloyd's Rep. I.R. 617

**Allocation of recovery from the third party between the assured and the insurer**

*Commercial Union Assurance Co v Lister* (1873-74) L.R. 9 Ch. App. 483

Valued policy:

*North of England Iron Steamship Insurance Association v Armstrong* (1869-70) L.R. 5 Q.B. 244

Insurance in layers

*Napier and Ettrick v RF Kershaw Ltd (No. 1)* [1993] 1 Lloyd's Rep. 197

**Subrogation and abandonment**

MIA 1906 s.79(1)

*Simpson v Thomson* (1877) 3 App. Cas. 279

**REVISION**

**Some revisions questions will be provided whilst the course is being taught in January.**