

FEDERAL UNIVERSITY OF TECHNOLOGY, OWERRI
DEPARTMENT OF TRANSPORT MANAGEMENT TECHNOLOGY
2011/2012 RAIN SEMESTER EXAMINATION
TRP 508: TRANSPORT INSURANCE

DATE: 25/09/12

TIME: 9AM – 12NOON

INSTRUCTION: ANSWER QUESTIONS ONE, THREE AND ANY TWO OTHERS

QUESTION ONE

The M.V. 'Chris' was insured on Lloyd's Mar Policy for 12 months with the institute Time Clauses (ITC) Hull attached. She went on a voyage from the Clyde to New Zealand, and she was chartered, after arrival and discharge of her cargo there, to proceed to Calcutta and there load a cargo for Liverpool. An insurance covering the voyage to New Zealand and for thirty days after arrival there, was effected on the chartered freight to be subsequently earned on the homeward voyage. When the vessel arrived in New Zealand, she had sustained serious damage in consequence of heavy weather, and it was subsequently ascertained on the vessel's arrival at Calcutta, where complete examination and thorough repairs were practicable, that the cost of repairing her would exceed her value when repaired. The insured claimed for total loss of the chartered freight and subsequently gave notice of abandonment and claimed for constructive total loss of the vessel.

On the claim for the constructive total loss of the vessel, the insurers discovered that there was a deliberate over-valuation placed upon the vessel with the idea of cheating the Underwriters and refused the claim. The ship-owner did not disclose the over-valuation to the Underwriters insuring the ship.

Before giving notice of abandonment, the insured assigned the policy of the insurance to the charterer who proposed to buy the ship at the end of the voyage to Calcutta. Underwriters reject the assignment and referred the insured Ship-owner and the new Owners to the Marine Insurance Act 1906.

Advise the Ship-owner and the Underwriters with regard to the events above.

(22 marks)

QUESTION TWO

'Actual total loss is a total loss in law and in fact; constructive total loss is a loss in law but not in fact'. Discuss. (15 marks)

QUESTION THREE

During the First World War, the Steamer "Ikeria" owned by Leyland Shipping Co. Ltd was insured by Norwich Union Fire Insurance Society against marine perils, but warranted Free of all consequences of hostilities. She was torpedoed by a German Submarine near Le Havre and was seriously damaged. She managed, however, to get to that port, and was berthed alongside quay, where a salvage steamer commenced to pump water out of her. A gale sprang up and owing to the swell in the harbour which caused the vessels to range and bump against each one another, pumping operations had to be discontinued; furthermore, there was grave danger of the damaged steamer sinking along the quay, and she was therefore, by the order of the authorities shifted to an outer

berth. With the fall and rise of the tides the vessel alternately took the ground and floated, but on the third grounding two of her bulk heads gave way and broke her back and sank.

The underwriters argued that the proximate cause of the loss brought it within the exceptive warranty.

Advise the Underwriters of their legal position in the incident. (18marks)

QUESTION FOUR

As a consultant, the MD of ABC Transport PLC approached you for advice on the type of vehicle insurance suitable for their operation from Lagos, Nigeria to Accra, Ghana. The types of insurance, available are: Third Party insurance, Statutory insurance, Third Party liability insurance and comprehensive insurance, all for motor vehicles.

Explain in detail the advantages of the type you consider suitable for their operation. Reference to the Road Traffic Act 1934 will be an added advantage to support your advice. (15 marks)

QUESTION FIVE

- a. In the words of Lord Mansfield, in the case of *Carter v. Boehm* (1766), "the special facts upon which the contingent chance is to be computed most commonly in the knowledge of the insured only.....". Discuss disclosure by assured.
- b. A ship was insured under a time policy in the usual Mar form (including the risk of barratry) and was "warranted free from capture and seizure, and the consequences of any attempt threat". In consequence of smuggling (barratry) by the master, the ship was seized and detained by Spanish revenue officers. The insured Owners made a claim on the policy to recover expenses incurred to obtain the release of their vessel, the Underwriters declined to pay, saying they were exempted from liability by the warranty.

Advise the assured as regards their position. (15 marks)

QUESTION SIX

A tug had been insured against "the risk of collision with any object" but not against perils of the sea. The tug came into a contact with a snag sustaining a considerable injury to her engine room and machinery, and breaking the cover of the condenser. She commenced sailing to Liberia and there being imminent danger that water would get through the hole in the condenser cover, the ejection pipes were plugged from outside. Whilst being towed to a port of repair, one of the plugs fell out, they began to fill rapidly with water and she sank. The plaintiffs sued to recover for a total loss consequent on collision with the snag; the defendant underwriter maintained that his liability, if any, was limited to the damage actually sustained by such collision, and that the proximate cause of the sinking was not the collision, but the towing to a port for repair.

Advise the defendant underwriter as to his legal position. (15 marks)

