COURSE GUIDE

CLL 809
LAW OF MARINE INSURANCE I

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INTRODUCTION

The maritime industry is very important in the conduct of the business of the carriage of persons, goods and services. It is feasibly the most cost-effective way to move large cargoes from one country to another over a large distance. According to the International Maritime organisation (IMO) over 90% of the worlds trade is carried by sea. The contribution of marine transport in the movement of industrial plants, machinery, equipment, goods and services across long distance is indeed immense. The associated challenges of maritime mishap can be quite ruinous without a hedging scheme to protect maritime stakeholders. Maritime activities would simply be impossible without the risk mitigating presence of marine insurance.

WORKING THROUGH THIS COURSE.

The course is divided into two: Law of Marine Insurance 1(CLL805) and Marine Insurance 11(CLL815). Law of Marine Insurance 1 provides a basic understanding of the regulatory framework for marine insurance law in Nigeria. Law of Marine Insurance 311 is an expose on the legal issues in marine insurance. Right and obligations of parties to marine insurance contracts and the legal relationship of marine insurance intermediaries are discussed. These are undertaken as specific issues under the various study units in very simple and digestible language.

COURSE MATERIALS

The major components of the course are.

a) Course Guide
b) Study Units
c) Textbooks
d) Assignment File/Seminar Paper
e) Presentation Schedule

STUDY UNITS

This course is divided into four (4) module and broken down to 12 study units as follows –

Module 1-Nature of Marine Insurance Law

Unit 1 Importance of Marine Insurance
Unit 2 Meaning of Marine Insurance Contract
Unit 3 Nature of Marine Insurance Contract

Module 2 Historical Development of Marine Insurance

Unit 1 Pre-colonial Era
Unit 2 Post-Colonial Era
Unit 3 Institutional Framework for the Regulation of Marine Insurance Law in Nigeria

Module 3 Classification of Marine Insurance
Unit 1 Mutual Insurance and Commercial Insurance
Unit 2 Kinds of Marine Policies

Module 4 General Principles of Marine Insurance
Unit 1 Good Faith (Uberrimae Fidei)
Unit 2 Insurable Interest
Unit 3 Subrogation
Unit 4 Double Insurance and Contribution

All these units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods, you may require several hours for each.

We suggest that the modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you have first carried out work on the law of contract. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises *(SAE).* Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units and of the course.

REFERENCES / FURTHER READING

References and further reading materials are provided at the end of each study unit. The need to consult these materials cannot be overemphasised to deepen and broaden understanding of the issues at stake. You should read them where so directed before attempting the exercise.

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor-Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score

SELF-ASSESSMENT EXERCISES

Self-assessment questions are raised at the end of each module to measure the level of successful engagement with the legal issues covered. The answers in the body of the main text are distilled and put up at the end of the course material. This will enable you to understand and apply legal principles to practical situations in resolving legal matters in the field of marine insurance law.

FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

COURSE SCORE DISTRIBUTION

The following table lays out how the actual course marking is broken down.

Assessment	**Marks**
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four counts at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

Course Overview and Presentation Schedule

Module / Unit	Title of Work	Weeks Activity	Assessment (End of Unit)
MODULE 1	**NATURE OF MARINE INSURANCE LAW**		Assignment 1
Unit 1	Importance of Marine Insurance		
Unit 2	Meaning of Marine Insurance Contract		

Unit 3	Nature of Marine Insurance Contract		
MODULE 2	**HISTORICAL DEVELOPMENT OF MARINE INSURANCE**		Assignment 2
Unit 1	Pre-Colonial Era		
Unit 2	Post-Colonial Era		
Unit 3	Institutional Framework for the Regulation of Marine Insurance Law in Nigeria		
MODULE 3	**CLASSIFICATION OF MARINE INSURANCE**		Assignment 3
Unit 1	Mutual Insurance and Commercial Insurance		
Unit 2	Kinds of Marine Policies		
MODULE 4	**GENERAL PRINCIPLES OF MARINE INSURANCE**		Assignment 4
Unit 1	Good faith (Uberrimae Fidei)		
Unit 2	Insurable Interest		
Unit 3	Subrogation		
Unit 4	Double Insurance and Contribution		

HOW TO GET THE MOST FROM THE COURSE

It is very important that the discussion on this course is participatory. It is equally important that the references are consulted. The effusive references to provisions of the Marine Insurance Act, 2004 in the course guide is to enable you become very familiar with the law.

TUTORS AND TUTORIALS

There are 11 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Your tutor will mark and comment on your assignments. Keep a close watch on your progress and on any difficulties you might encounter. Your tutor may help and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Please do not hesitate to contact your tutor by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.

- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

MAIN COURSE

MODULE 1 NATURE OF MARINE INSURANCE LAW

UNIT 1 IMPORTANCE OF MARINE INSURANCE

UNIT STRUCTURE

1.1 Introduction

Generally, this module shows why the law of marine insurance occupies a pride of place in Nigeria's legal system and in the legal systems of all serious nations of the world Maritime adventure has tremendous benefits to nations of the world. It is however fraught with risks that are mitigated by marine insurance.

1.2 Learning Outcome

By the end of this unit, you will be able to:

- discuss the contributions marine insurance makes to a country's economy and global relations.

1.3 Importance of Marine Insurance

Marine insurance has everything to do with maritime activities. Coastal nations are directly in the frontline of marine insurance business. Nigeria is a coastal country with large inland waterways to complement. The ocean and waterways provide marine transport for goods, services and hospitality. The country is a major player in global maritime industry. Nigeria's major export earning is from crude oil sales transported across the sea to trading partners. Plants, machinery and technological equipment are imported through the country's waterways. There is no gainsaying the fact that marine insurance bears directly on Nigeria's economy as a maritime hub. What then are the benefits of marine insurance?

1.3.1 Benefits

1.3.1 Marine Insurance is a Major Boost to Maritime Activities through Loss Mitigation

It enables the ship owner, buyer and seller of goods and financiers to carry on their business while relieving themselves of the profound fear of burdensome financial consequences of assets loss. Hull and machinery coverage is designed to insure risks to the vessel itself. Modern commercial ships are larger and more valuable than before in terms of financial outlay. These vessels are often mortgaged and the financial entities that financed the purchase or construction may require the ship owners to maintain highly rated hull and machinery insurance covering the vessel and its equipment. The cargo carried on the vessel is often highly valuable. Modern container vessels can carry large numbers of containers, bulk carriers may carriers may hold hundreds of thousands of tons of commodities, and supertankers may store up millions of barrels of oil. Such high value cargo underscores the need for insurance coverage. Considering what is involved, insurers may syndicate the coverage by the involvement of others through co-insurance or re-insurance especially when the value is high and consequently the risks for one firm to adequately provide a cover. Commercial maritime voyages also carry risks to third parties, including the possibility of collision, personal injury, marine pollution and other open liabilities. Marine insurance safeguards against these perils.

1.3.2 The nation's maritime sector is a major employer of labour and contributor to the country's gross domestic product. Stevedoring companies and allied businesses engage labour and stimulate economic activities thereby. Credit financiers are directly and indirectly impacted upon as a result of maritime activities through the provision of letters of credit and different financial accommodation rendered to the sector. All these exist and play their distinctive economic roles because the indeterminate risks of maritime life are hedged by marine insurance.

1.3.3 Nations operating port activities with commercial and hospitality travels into each other's port have mutual interest to protect and respect for each other's economic interests. This aids international relations and co-operations. Marine insurance provides a leverage and backup for international investments. The assurance of indemnity makes international trade worth the risk and provides an encouragement for trade and finance. Modern marine insurance is more than a tool of risk management.

1.3.4 Marine insurance has become a tool for preserving international order and peace. Recently the international community has resorted to marine insurance prohibitions to address security concerns emanating from Iran and North Korea. In 2002 and 2006, Iran publicly announced progress in building nuclear reactor and enriched uranium. This was followed with missile tests which were randomly condemned as threat to world peace. In 2010, the United Nations Security Council issued a wide variety of sanctions against Iran in Resolution 1929. The resolution banned the supply of enrichment related technology to Iran and called on all States to inspect and seize vessels reasonably believed to be involved in the prohibited nuclear activities. The resolution also called on States to prevent the provision of financial services, including insurance or reinsurance when there are reasonable grounds to believe these services would contribute to Iran's weapon's programme. A United Kingdom Treasury Order in 2009 banned all persons operating in the UK financial sector from transacting any business with the Iranian national carrier, the Islamic Republic of Iran Shipping Lines. This effectively shut out the liner's access to the Lloyds of London marine insurance market. This had a considerable impact on the vessel's ability to maintain adequate insurance and engage in lucrative maritime trade. In like manner, the European Union in Article 11, EU Council Regulation 267/2012 states "It shall be prohibited…to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran" This had considerable impact on the Iranian economy and the country had to return to the negotiating table on the matter leading to the Joint Comprehensive Plan of Action (JCPOA) with the UN in 2015 requiring the country to cease uranium enrichment, dismantle its nuclear programme and allow inspection by the UN International Atomic Energy Agency in return for lifting of sanctions. In Arash **Shipping v. Groupama** [2011] EWCA (Civ) 620(Eng.) a composite insurance policy over the Iranian fleet of oil tankers, one of the largest oil tankers in the world, was cancelled five months after the policy was affected following the coming into effect of the European Union Council Regulation (EU No.961, 2010 imposing sanctions on Iran. The notices of cancellation of policies served by the co-insurers of the policies were held valid and effective.

1.3.5 In the 1990s, North Korea up scaled plutonium enrichment in apparent pursuit of nuclear weapon, began to engage in the testing of weapons of mass destruction and threatened to withdraw from the nuclear non-proliferation treaty. In response the UN Security Council in Resolution 2094 in 2013 mandated "Member States shall not provide public financial support for trade with the Democratic People's Republic of Korea including granting of export credits, guarantees or insurance to their national or entities involved in such trade if the support would contribute to North Korea's weapon development. Following North Korea's recalcitrance in 2016 when it announced a further test of hydrogen bomb, the UN Security Council by Resolution 2270 prohibited member States from registering any vessel or ensuring any vessel carry the Flag of the DPRK. This was extended by Resolution 2321 requiring member States to prohibit "insurance or reinsurance services to vessels owned, controlled or operated, including through illicit means, by the DPRK" Resolution 2397 directed member states to prohibit its nationals or entities registered under its laws from providing insurance or re-insurance services to vessels having business relations with the DPRK.

1.3.6 The rationale for the use of marine insurance prohibitions for sanctions purposes is that by limiting access to this integral source of risk management, the countries find it more difficult to access maritime transport or to generate trade revenue to meet strategic national development. These marine insurance prohibitions have had hurtful economic impact on these countries that have shown willingness to return to negotiations on the issues at stake.

1.4 Risk and Features of Marine Insurance

1.4.1 The associated risks of maritime adventure are very huge and unless hedged, successful maritime activities are at risk. Here, the subject of insurance comes to the rescue. The subject of insurance is concerned with risks management and risks financing. Its primary function is risk transference and distribution. By effecting insurance, the insured/assured transfers the risk of economic losses to the insurer who in turn redistributes the risk through investment and reinsurance. The insured is actually buying an invisible product called "peace of mind". With huge financial outlay in vessels acquisition, commodities and manufactured goods/plants, owners and creditors contemplate, for good reasons, some protection to mitigate possible losses in the event of accident. Marine insurance provides that financial cushioning in the event of loss or damage.

1.4.2 A distinctive feature of marine insurance is its international dimensions. The coverage on goods shipped by sea usually involves transport between one country and another. The consignor/seller of the goods and the consignee/buyer are often in different countries. The insurer of the vessel (hull) or goods (cargo) may be in a third country having no contact with the shipment except the provision of the contract only. For reasons of capacity the assured, especially in developing countries may prefer to deal with insurers in developed countries (UK, US, Germany) with the capacity to assume the weight of the financial risk involved. Consequently, the regulation of maritime and marine insurance is a subject of national and international interests. In **Arash Shipping v. Groupama** [2011] EWCA (Civ) 620(Eng.) the composite insurance policy taken out on Iranian fleet of oil tankers was underwritten by a syndicate of insurance firms in France, Cyprus, Sweden, UK, Bermuda and Republic of Korea.

1.4.3 Furthermore, the Article VII (1) International Convention on Civil Liability for Oil Pollution Damage 1992 provides that the owner of a ship registered in a contracting State and carrying more than 2,000 tons of oil as cargo shall be required to maintain insurance to cover his liability from Oil pollution damage under the circumstance. The import of this convention is that ship owners in Nigeria are compelled to procure the necessary protection and Indemnity insurance cover for their vessel that are engaged in the carriage of oil as cargo in order to undertake the liability that could arise from any oil spill from the vessel operation. Also, the Bunkers Convention 2001 requires registered owner of a ship having gross tonnage greater than 1000 to maintain insurance to cover the liability of the registered owner for pollution damage. These conventions are applicable in Nigeria by virtue of part XXIII, Merchant shipping Act, 2007. The subject of marine insurance in Nigeria has national and international implication for the country and thus deserving of serious engagement with.

1.5 Summary

Marine insurance fosters maritime adventure. Consequently, Nigeria and other nations of the world take marine insurance seriously. In addition to providing enabling environment, it is also the subject of legal regulation.

Marine insurance is a major boost to maritime activities through loss mitigation. It sustains the maritime sector which is a major employer of labour and contributor to a country's gross domestic product. Marine insurance prohibition has become a tool for preserving international order and peace. It has also enabled Nigeria comply with her international obligations with respect to some maritime activities.

1.6 References/Further Reading/Web Sources

Richard L. Kilpatrick, Jr "Marine Insurance Prohibitions in Contemporary Economic Warfare" International Law Series, Stockton Center for International Law, Volume 95,2019, 272.

Dr. Oluwole Akinyeye "Evaluating Potentials of the Legislative Framework Impacting on the Nigerian Marine Insurance Industry" The Maritime Newsletter, Olisa Agbakoba Legal, https://oal.law.2018/01

Birds, J. Birds Modern Insurance Law, Sweet & Maxwell. 2004(ISBN 0-42187800-2)

Nwokoro I.A and Ndikom Obed B.C. "An Assessment of the Condition of Marine Insurance to the Development of Insurance Markets in Nigeria" Journal of Geography and Regional Planning, Vol.5 (8), April, 2012. Available on line http://www.academicjournals.org/JGRP.

Prof. Marko Pavliha Overview of Maritime Insurance Law, IMO International Maritime Law Institute.

UNIT 2 MEANING OF MARINE INSURANCE

UNIT STRUCTURE

2.1 Introduction

Marine insurance is an arrangement where at an agreed price, a party called the insurer undertakes a risk of marine adventure on behalf of another called the insured or assured. Marine insurance is essentially about risk management.

2.2 Learning Outcome

By the end of this unit, you will be able to:

- state the nature of the obligations exchanged between the parties to a marine insurance.

2.3 Meaning of Marine Insurance

2.3.1 Generally, an insurance contract can be described as a contract whereby the party called the "insurer" promises in return for a money consideration called the "premium" to pay to the other party called the "insured" or the "assured" a sum of money or to provide him with some corresponding benefit upon the occurrence of one or more specified events. It is largely driven by the principles of contribution and the law of large numbers. It may be defined with emphasis on its financial or legal nature. Because insurance allows losses to be predicted in advance of its occurring, it allows the cost to be financed and redistributed in advance of their occurring by collecting premium payment from the assured/insured in exchange for promise to be indemnified in the event of a loss. In most cases only a small percentage of the losses do occur.

2.3.2 Etymologically, 'marine' is derived from the Latin word 'mare' which literally means 'sea'. Marine is an adjective, meaning 'of or pertaining to the sea'. Marine insurance is a specie of insurance. It has been variously defined.

2.4 Definitions of Marine Insurance

2.4.1 Definition by Text Authors

According to Agomo

> "Insurance is a contract where one party called the insurer for a consideration called premium paid by another called insured, agrees to pay money or to provide compensation in kind to the insured or his beneficiary on the happening of the insured event"

To R. Thomas (Cited in "Overview of Marine Insurance Law" by Prof. Dr. Marko Pavliha)

> "The Contract of Marine Insurance is a special (insurance) contract of indemnity which protects against physical and other losses to moveable property and associated interests, as well as against liabilities occurring or arising during the course of a sea voyage"

In the words of Dr. Oluwole Akinyeye

> "Marine insurance can rightly be described as the matriarch of all insurance. It can be defined as a contractual relationship in which an insurer agrees to undertake the liability flowing from maritime risks or perils that could arise from the entrepreneurial activities of an insured ship owner or maritime trader, upon the payment of a consideration referred to as a premium"

2.4.2 Statutory Definition

According to Section 3, Marine Insurance Act, CAP M2, Laws of the Federation, 2004

> *"A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure*[1]

This definition mirrors section 1, UK Marine Insurance Act, 1906 and the Indian Marine Insurance Act, 1963. A more detail definition is to be seen in the old Indian Insurance Act, 1938. Section 2 (13-A) defines marine insurance business as

> "The business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interest, goods, wares, merchandise and property whatever description insured for any transit by land or water or both, and whether or not including warehouse risks or similar risks in addition or incidental to such transit, and includes any other risk customarily included among the risk insured against in marine insurance policies"

As stated under the Marine Insurance Act, 2004 (MIA), it has so much to do with losses incidental to marine adventure. Marine adventure is a voyage where the ship or goods on board/freight are exposed to maritime perils. Maritime perils mean the perils consequent on or incidental to navigation on the sea. This includes the risks of fire, war, pirates, thieves, barratry, loss or damage caused by any latent defect in the machinery of hull, negligence of the master, officers, crew or pilot, repairers, charterers; pollution Hazards; and collision liability. The risk of loss may extend to financial losses, such as those resulting from loss of freight, passage money, commission or profit as well as certain types of liabilities incurred to third parties. These risks are subjects of marine insurance coverage. Marine insurance in terms of scope may be ocean marine insurance or inland marine insurance.

2.5 Summary

Marine insurance can be severally defined from the perspectives of textbook authors, case law and legislation. Central to the various definitions is the fact that it is a contract between the assured and the insurer, where for a price called the premium, the insurer undertakes to indemnify the assured against losses associated on a maritime adventure. Marine insurance hedges against risks in maritime adventures. The risks contemplated may relate to the ship, consignments or related risks.

2.6 References/Further Readings/Web Sources

Robert H. Brown, Witherby Encyclopedic Dictionary of Marine Insurance: Insurance Terms and Clauses, Dictionary of Marine, 2003, Witherby & Co. Ltd, ISBN 978-1856092227

Prudential Insurance Company v. IRC (1904)2KB 558; Lead way Assurance Co. Ltd v. J.U.C. Ltd (2005) 5 NWLR, Pt.919,539: Ajaokuta Steel Co. v. Corporate Insurers Ltd (2004) 16 NWLR,Pt.899,369: Sun Insurance Nig. PLC v. Umez Engineering

Construction Company Ltd. (2015). 11 NWLR,Pt.1471, 576.

1) C.K.Agomo (2003) Modern Nigerian Law of Insurance (University of Lagos Press, Lagos) p.11.

UNIT 3 NATURE OF MARINE INSURANCE

UNIT STRUCTURE

3.1 Introduction

Marine insurance has certain peculiar features which confers on its justiciability. These features also distinguished it from other legal relationship.

3.2 Learning Outcome

By the end of this unit, you should be to:

- identify and differentiate marine insurance from other legal relationships.

3.3 Nature of Marine Insurance

3.3.1 Marine Insurance is Contractual

The general principles of the law of contract apply and parties can negotiate their terms. The immediate parties to the contract are the insured/assured and the insurer. The parties must have contractual capacities. The insured must have the legal capacity to enter into the contract. The insurer must also have the legal capacity. In Nigeria, the insurer must be an incorporated limited liability company and duly registered by the National Insurance Commission or a statutory corporation for the purpose.

3.3.2 Contracts of Insurance are Aleatory

The happening of the event insured against is uncertain. They are, however, not wagering, gambling or investment contract where the insured may contemplate a profit from the arrangement.

3.3.3 Marine Insurance is Contract of Indemnity

The basic principle of insurance is that the insured is to be indemnified for the pecuniary loss suffered under the contract. In the words of Lord Ellenborough in **Brotherston v. Barber** (1816) 5 M & S, 418, 425

> "The great principle of the law of insurance is that it is a contract for indemnity. The underwriter does not stipulate under any circumstance, to become the purchaser of the subject matter insured; it is not supposed to be in his contemplation: he is to indemnify only"

The assured is to be placed in the same position or near as possible as he was before the happening of the event insured against. Explaining the underlying philosophy, Brown stated:

In theory, the purpose of any form of insurance is to replace that which has been lost. It is not intended that the assured should make a profit from his loss. But that he should merely be in no worse position than he was before the loss occurred…it is not practicable to expect the insurer to replace an object which is lost, nor is it reasonable to expect him to remove the damage thus restoring the damaged object to the whole sound object. As a compromise, any recompense must be of a monetary nature and this system of reimbursement is called "Indemnity"

Ideally, the insured should be compensated only to the extent of his loss. In practice, however, this is not always the case. Thus, the policy of insurance is not a perfect contract of indemnity. In **Irving v. Manning** (1847) 1 HLC 287, a valued policy of insurance put the agreed value of the vessel, General Kyd, at 17,000 pounds. The vessel was severely damaged by storms and the owner deemed the ship a total loss because it was estimated that the cost of repairs would have amounted to 10,500 pounds, while her market value, on being repaired was 9,000 pounds. The Court held that the assured was entitled to the insured value of 17,000 pounds. According to Patteson J

> "A policy of insurance is not a perfect contract of indemnity. It must be taken with this qualification that the parties may agree beforehand in estimating the value of the subject assured, by way of liquidated damages, as indeed they may in any other contract to indemnify".

In **Richards v Forestal Land, Timber and Railway Co. Ltd** [1941]3 All ER 62, HL, goods on the board of a German vessel were lost at the outset of the second world war when the ship was scuttled in order to avoid capture. On the purpose of the Insurance Act, Lord Wright stated:
The law is merely dealing with a particular branch of the law of contracts-namely, those of marine insurance. Subject to various imperative provisions or prohibitions and general rules of the common law, the parties are free to make their own contract and to exclude or vary the statutory terms. The object both of the legislature and of the courts has been to give effect to the idea of indemnity, which is the basic principle of insurance, and to apply it to the diverse complications of fact and law in respect of which it has to operate. In this way, the law merchant has solved or sought to solve the manifold problems which have been presented by insurances of marine adventures.

While the overriding principle of insurance is that of indemnification for losses sustained, the parties are free to contract on whatever terms they think fit. Common law and the Act endorse the fact that the value fixed by the policy is conclusive of the insurable value of the subject matter insured. This allows the parties to set the insurable value at the figure they so wish, provided that any over valuation does not offend the duty of good faith, the rule on disclosure of material fact, fraud, misrepresentation or the rule against wager. In practice, a contract of insurance is by no means a complete indemnity but indemnity is always the basis of the contract. In fact, it is around it that the other fundamental principles of marine insurance like double insurance, the right to contribution, return of premium, and subrogation coalesce.

3.3.4 Marine Insurance Contract is Regulated by Law

The agreement of the assured and insurer is core to marine insurance. This is however within the context of enabling laws. The Marine Insurance Act, 2004 (MIA) is the primary legislation on the subject of marine insurance in Nigeria. The Insurance Act 2003 and the National Insurance Commission Act, 2004 provide prudential and conduct of business regulations for the entire insurance industry in Nigeria, of which marine insurance is subset. Although there is absence of international law on marine insurance, several countries have enacted domestic legislation on the subject. In some countries, the regulation exists primarily in the form of specific enactment on marine insurance or as a section contained in a larger insurance enactment. In some civil law countries, the law exists as a chapter in the national commercial or maritime code. Several countries have substantially adopted the UK Marine Act 1906, complemented by the general law of contract. In these jurisdictions, their exact content may vary; certain fundamentals of marine insurance constitute their subjects of coverage. These include insurable interest, disclosures and representations, form and content of policy, double insurance, premium, nature of policies, types of risks, assignment of policy, claims etc. Considering the contractual nature of marine insurance, the law gives large discretion to the parties in drawing up the terms and conditions of their contract. This allows industry practice to guide the parties in the formation of marine insurance.

SELF-ASSESSMENT EXERCISE 1

What is peculiar about marine insurance and why should a developing Country like Nigeria attach importance to the subject of marine insurance?

3.4 Summary

Marine insurance is contractual; the rules of contract apply. The assured and insured must have requisite legal capacities to enter into the contract. The obligation is essentially hinged on the happening of uncertain event but marine insurance is not gambling, wagering or investment contract. On the happening of the risk(s) insured against, the assured can only be indemnified to the extent stipulated by law. The Marine Insurance Act, Cap M2, 2004 regulate the subject of marine insurance in Nigeria. Marine insurance is a legal relationship between the assured and the insurer. This relationship has some distinct features. It is based on the happening of uncertain event(s) such that the assured may be restored to the position he was before the happening of the event in what is called indemnity.

3.5 References/Further Reading/Web Sources

Marine Insurance Act, 1906 UK; The Marine Insurance Act, 1963 India.

Chapter 11, Marine Insurance in the Insurance Act,1914, Philippines.

Title VIII, Commercial Code, Venezuela.

Insurance Act, 1977, Iran.

Noussia, K. (2007) The Principle of Indemnity in Marine Insurance Contract: a comparative approach

R.H.Brown, Marine Insurance-The Principles (London: Witherby and Co.Ltd,1970) p.19.

3.6 Possible Answer to Self-Assessment Exercise 1

i. Nigeria is a coastal country and a major player in global maritime industry. Marine insurance enhances this industry and thus a major contributor to her GDP.
ii. Marine Insurance aids international trade. Nigeria's major export earning is from crude oil sales transported across the sea to trading partners.
iii. Marine insurance impacts on balance of trade.
iv. Marine insurance industry is a major employer of labour.

MODULE 2 HISTORICAL DEVELOPMENT OF THE LAW OF MARINE INSURANCE

UNIT 1 PRE –INDEPENDENCE ERA

UNIT STRUCTURE

1.1 Introduction

Law of Marine Insurance in Nigeria has ancient origin. By facts of history the UK Marine Insurance Act, 1906 has influence the development of the law on the subject in so many other jurisdictions. By the same token the British insurance market as largely represented by the Lloyds of London has had great impact in the practice and dominance of marine insurance globally. The history of marine insurance is inextricably tied to activities of sea farers and maritime adventurers. At various times the marine insurance industry has been subject to some form of regulation. The UK Marine Insurance Act, 1906 has become the watershed in the history of the law of marine insurance.

1.2 Learning Outcome

By the end of this unit, you will be able to:

- discuss the source of the Marine Insurance Act, 2004.

1.3 Pre-Independence Era

1.3.1 Marine insurance is the oldest form of welfare indemnity scheme, and it is known to have been practiced for over 800 years. According to Dr. Pomintr Sooksripaisarnkit “Marine insurance is one of the most primitive forms of any insurance arrangements on earth”. There are several claims to the origin of marine insurance. The practice has been linked to the practice of Bottomry in the ancient records of Babylonians and the Code of Hammurabi where manufacturers of goods advanced their materials to traders who gave them receipts for the materials and a rate of interest was agreed upon. If the trader was robbed during the journey, he would be freed from the debt but if he came back, he would pay both the value of the materials and the interest. The early maritime merchants in Greece, the Carthaginians, Phoenicians, Romans and the Lombards secured vessels and goods carried on board of their vessels. There is evidence that around the 7th Century BC, there was a Phoenician maritime law covering general average and marine insurance. Traces of marine voyage insurance were found in the Talmuds of Jerusalem and Babylon. A credible account suggests that the Jews in Lombardy around the 12th Century had a scheme for the protection of their properties in France. In 1601 "An Act concerning Matters of Assurances Amongst Merchants" was the first statute on marine insurance in UK and the Act dared to establish a court of insurance for marine insurance disputes.

The growth in ocean trade provided the needed impetus for marine insurance. In the pre-colonial times very wealthy merchants alone or in consortium with others undertook continental expeditions for military and trade purposes.

1.3.2 It was quite common for merchants to exercise political power in trust for their home government over the territories they were granted monopolies by charter. A familiar example was the East India Company which in its hey days was said to have conquered a sub-continent, ruled over 250 million people, raised and supported the largest standing army in the world, deployed 43 war ships and employed its own bishops. Another example was the Royal Niger Company which administered a large part of today's Nigeria.

1.3.3 British merchant fleets dominated world tonnage at the time. The UK's prominence in general commerce and finance gradually made London the international market centre for marine insurance. For this reason, a distinctive feature of marine insurance is the profound impact the British market have had on the conduct of marine insurance internationally. The UK Marine Insurance Act, 1906 is the main law from which so many jurisdictions have sourced their laws on this subject.

1.3.4 Legal and documentary aspects of marine insurance were the subject of consideration by the United Nations Commission on Trade and Development (UNCTAD) at its very first session of its conference in Geneva 1964. It was recommended that the competent international organisations should examine the question of the adoption of uniform clauses for marine, land and air transport insurance. At the second UNCTAD Conference in New Delhi in 1968, developing countries expressed concerns of neglect in the body of shipping laws at the time and thus the need for review. Marine insurance was an area contemplated for drafting appropriate conventions or revising existing legislation. Consequently, the UNCTAD Committee on Shipping set up a Working Group on International Shipping Legislation in 1969 to consider the simplification and unification of clauses in marine Insurance policies. The Working group prepared two separate reports; one on Marine cargo Insurance presented in 1975. The report contained descriptive analysis of marine cargo insurance, institutional aspects, role in world trade, analysis of the commercial and economic problems experienced by marine cargo insurance business in developing countries and recommendations for improvements to improve the balance of payment positions of the economies of developing countries. The second report considered hull and cargo insurance. It analysed marine insurance contractual relationship, the legislation, policy, conditions and practices that affects the process of obtaining insurance, system of rating, rights and duties of parties, an analysis of the effects of the absence of international legislation, particularly in developing countries and considers the possibility of developing an international legal base for marine insurance contract. The attempt by the UNCTAD Model Clauses on Marine Hull and Cargo Insurance 1984 to water down the monopoly of the London market and its Institute Clauses have not been effective and marine insurance stakeholders still prefer the Lloyd's S.G Form (developed from the practice of Lloyds of London) and the Institute Clauses (developed from the practice of the Institute of London Underwriters).

1.3.5 Traditionally the British insurance market has been considered to be the main marine insurance market in the world. The market consists of private entitles carrying on business in some major cities in UK especially in London and Liverpool. Prominently is the Lloyds of London. This is an association of insurers with unlimited personal liability for the risks underwritten. These insurers are grouped into syndicates with each under an underwriting agency who is responsible for appointing a specialist underwriter to accept risks on behalf of the other members. All risks are brought to the Lloyds syndicate through authorised intermediaries called Lloyds brokers. The London market also comprised of insurance corporations most of whom are members of the Institute of London Underwriters (ILU) formed in 1884 which furthers the interest of members in matters of marine insurance.

1.3.6 The British market dominated for quite a while in international maritime and marine insurance and was later joined by the United States and Netherlands, France, Japan, Norway and Russia. This growth has also witnessed internationalisation of risk management. National markets in marine insurance may share risk coverage with the markets in other jurisdictions especially between developing and developed economies. This has given birth to international reinsurance companies carrying on wholesale insurance business and dealing with national market that undertake retail insurance businesses. Consequently, marine insurance now involves increasingly complex contractual relationships of assureds, assurers, co-insurers and reinsurers spread across numerous national boundaries raising issues of contract enforcement and conflict of laws.

1.3.7 Currently there are no uniform international conditions for marine insurance; instead, varied policy forms produced by numerous national marine insurance markets are used. Of the variety, the policy form produced by the London Insurance market for hull and cargo insurance has gained some notoriety. The reason for this is the historical economic predominance of the British market for insurance placement on both direct and reinsurance basis particularly for developing countries and the high level of expertise existing on the subject and established precedent from practice over the years.

1.4 Summary

There is no gainsaying the fact that colonialism indeed gave the British a head starts in maritime adventure complemented by marine insurance business. Consequently, the law and practice of marine insurance have greatly been impacted upon by the British precedent. Marine Insurance is the oldest form of insurance business. As early as the 7^{th} century, maritime adventures enjoyed some form of marine insurance protections. The Marine insurance Act, 1906 have become the main source of legislation on the subject from where other jurisdictions have drawn their laws on the subject. While the history of the law of marine insurance can be traced to different times and practices of different countries, the effect of the UK Marine Insurance Act, 1906 and the business of the Lloyd’s market underwriters are profound.

1.5 References/Further Readings/Web Sources

Dr. Pomintr Sooksripaisarnkit, Marine Insurance, Maritime Law and Practice in Hong Kong, (Dec.2015) Sweet and Maxwell, Asia, Chapter 8

Nicholas Berketis The history of Marine Insurance-Its Origin Athen University of Economics & Business https://eclass.aueb.gr>file.php

Professor Dr. Marko Pavliha(2010) "Overview of Marine Insurance Law" IMO International Maritime Law Institute (marko.pavliha@fpp.edu)

The UK Marine Insurance Act,1906 came into force on 1st January, 1907, had 96 sections and First Schedule- which is the Form of Policy: Lloyds S.G. policy and Rules for Construction of policy) Second Schedule (Enactments Repealed)

The United Nations Commission on Trade and Development (UNCTAD) was established on December 30, 1965 by a United Nations General Assembly Resolution as a permanent organ of the General Assembly to promote international trade especially in emerging nations.

See the Norwegian Marine Insurance Plan of 1964 and the Norwegian Insurance Plan for the Carriage of goods of 1967.

http://www.lloydsoflondon.com

The drafting of clauses for hull and cargo is carried out through the Institute of London Underwriters (ILU) Technical & Clauses Committee. Its 1982 Clauses significantly make clear and accurate some fundamental marine clauses possibly amending the old SG Form Clauses. The 1982 Clauses have further been reviewed by the Joint Cargo Committee of members of the International Underwriting Association and the Lloyds Market in 2009.See www.imalloyds.com: www.rhlg.com

UNIT 2 POST–INDEPENDENCE ERA

UNIT STRUCTURE

2.1 Introduction

Shortly after independence, Nigeria enacted a Marine Insurance Act to regulate insurance business in Nigeria. This has been followed by the establishment of an institutional body charged with regulating the insurance sector.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

- state the law regulating marine insurance in Nigeria
- discuss the conduct of business regulations of the insurance industry in Nigeria.

2.3 Post-Independence Era

2.3.1 Nigeria is a coastal nation with very big waters to attract maritime activities. Slave trade and the exportation of raw materials were largely carried out through marine expeditions. Marine Insurance debuted in Nigeria around the early 20th century by the British colonialists to cater for risks that accompanied commercial activities of the European adventurers at the time. These persons effected their insurance policies with established insurers in the London insurance market. As time went on some British insurers appointed Nigerian representatives in the country as agents. This later gave way to full branch offices in Nigeria of parent companies in Britain. The first insurance company to open a full branch office in Nigeria was the Royal Exchange Assurance Company in 1921. Others companies followed subsequently. In 1969 and 1977 the National Insurance Corporation of Nigeria (NICON) and the Nigeria Reinsurance Corporation were established respectively. The first indigenous law on the subject was the Marine Insurance Act, 1961. This was followed by the Insurance Decree 1976 and the Insurance Decree 1991. In 1997, the

Insurance Decree No.1 and National Insurance Commission Decree No. 2 were promulgated and later became known as Insurance Act, 1997 and the National Insurance Commission Act,1997.

2.3.2 The Insurance Act, No.1, 1997 provided body of regulation for the entire insurance industry and the National Insurance Commission Act, No.2. 1997 established the National Insurance Commission as the apex regulatory body for insurance in Nigeria. These two enactments were subsequently integrated into the Laws of the Federation, 2004 as Insurance Act, Cap I18 and the National Insurance Commission Act, Cap N53. Instructively, section 67(1) of the Insurance Act compelled domestic insurance of goods to be imported into Nigeria. This was calculated to boost the domestic marine insurance market. The Insurance Act, 1997 which was integrated into the laws of the Federation, 2004 was repealed and replaced by the Insurance Act, 2003 which is the current law on the subject of insurance in Nigeria.

2.3.3 The Insurance Act 2003 divides insurance businesses in Nigeria into two main classes: life Insurance business and general insurance business. Specifically, marine and aviation insurance business is a category of general insurance business. Section 67(1) of the repealed Insurance Act, 1997 was retained under the Insurance Act, 2003. The section provides in full:

(1) *Subject to subsection 4 of this section, an insurance in respect of goods to be imported into Nigeria shall be made with an insurer registered under this Act.*

(2) *Accordingly, the provisions of any law, contract or instrument shall be construed with such modifications, amendments and omissions, as would bring them into conformity with the general intendment of this section.*

(3) *Without prejudice to the generality of the foregoing, every letter of credit or such similar document issued by any bank or other financial institution in Nigeria in respect of such goods shall be on a carriage and freight basis only.*

(4) *An importer, broker or agent who effects any insurance otherwise than in compliance with the provisions of this section commits an offence and is liable on conviction to a fine of ₦500,000 Naira.*

This provision insists on domestic insurance of all goods imported into the country. For the bulk of cargo imported through ocean liners, such consignments must be insured with insurance firms registered under the Insurance Act, 2003. Insurance is an item on the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 as amended. Specifically, items

33 and 36 are insurance and maritime shipping and navigation. Only the national Assembly can legislate on these matters.

2.3.4 The legal regimes governing marine insurance are greatly impacted upon by the agreement of the parties in the marine insurance contract. In several countries applicable statutory rules are capable of being displaced by the parties' contractual terms. In such cases, the national legislation is overridden on regular basis, either in large part or in its entirety, by provisions in the marine insurance contracts: the UK marine Insurance Act, 1906 is an example. The Nigerian Marine Insurance Act, 2004 allows the parties a lot of discretion in the formation of marine insurance contract. Under French law however the rules on Insurable interest, representation and disclosure, fraud in the making of a contract, double insurance, negligence of the assured, disputes as to whether loss was caused by maritime or war perils, consequence of failure to pay premium are not alterable by contracts.

2.4 Summary

The Marine Insurance Act, 1961 was the first law on the subject after independence. This was subsequently replaced by the Marine Insurance Act, 2004 which is the current law on marine insurance in Nigeria. The Marine Insurance Act, 2004 is the current law on marine insurance in Nigeria. The Insurance Act, 2003 and the National Insurance Commission Act, 2004 provide prudential and conduct of business regulation over the entire insurance industry in Nigeria.

2.5 References/Further Readings/Web Sources

Nicholas Berketis The history of Marine Insurance-Its Origin Athen University of Economics & Business https://eclass.aueb.gr>file.php

Professor Dr. Marko Pavliha (2010) "Overview of Marine Insurance Law" IMO International Maritime Law Institute (marko.pavliha@fpp.edu)

Nwokoro I.A and Ndikom Obed B.C. "An Assessment of the Condition of Marine Insurance to the Development of Insurance Markets in Nigeria" Journal of Geography and Regional Planning, Vol.5 (8), April, 2012. Available on line http://www.academicjournals.org/JGRP.

See Dr Oluwole Akinyeye "Evaluating Potentials of the Legislative Framework Impacting On the Nigerian Marine Insurance

Industry" February 2018, Maritime Newsletter, OAL Https://oal.law

Item 33, Exclusive Legislative List, Part 1,Second Schedule, Constitution of the Federal Republic of Nigeria,1999 (as amended)

UNIT 3 INSTITUTIONAL FRAMEWORK FOR THE REGULATION OF MARINE INSURANCE IN NIGERIA

UNIT STRUCTURE

3.1 Introduction

The National Insurance Commission (NAICOM) has been charged with regulating the entire insurance industry including the marine insurance subsector. The NAICOM as gate keeper regulates the industry using various regulatory tools.

3.2 Learning Outcomes

By the end of this unit, you will be able to:
- describe how the marine insurance subsector of the economy is supervised
- discuss the limits of the powers of NAICOM over insurers and intermediaries are understood and appreciated.

3.3 Institutional Framework for the Regulation of Marine Insurance in Nigeria

3.3.1 Insurance Act 2003

The Insurance Act, 2003 provides the body of regulation for the insurance industry in Nigeria. The National Insurance Commission provides the institutional regulation. Section 1, National Insurance Commission Act, 2004 establishes the NAICOM. It is a body corporate with perpetual succession and a common seal. The Commission has a governing board which is responsible for managing and superintending the affairs of the commission. The governing body consists of a part time chairman and representatives of the Federal Ministry of Finance and he Central Bank of Nigeria not below the rank of Director. A representative of the Chartered institute of Insurance and the Federal ministry of Commerce and Tourism are also on the board. Three part time members on the board shall represent the interest of the public. The commissioner of Insurance and two Deputy Commissioners of the Commission are also members of the governing board. All the members except the ex-officio members are appointed by the President for an initial renewable term of 4 years.

3.3.2 National Insurance Commission (NAICOM)

The principal object of the Commission shall be to ensure the effective administration, supervision, regulation and control of insurance business in Nigeria. The Commission shall have the following functions:

(a) Establish standards for the conduct of insurance business in Nigeria:

(b) Approve rates of insurance premiums to be paid in respect of all classes of insurance business:

(c) Approve rates of commissions to be paid in respect of all classes of insurance business in Nigeria:

(d) Ensure adequate protection of strategic government assets and other properties:

(e) Regulate transactions between insurers and reinsurers in Nigeria and those outside Nigeria:

(f) Act as adviser to the Federal Government on all related insurance matters:

(g) Approve standards, conditions and warranties applicable to all classes of insurance contracts:

(h) Protect insurance policy holders and beneficiaries and third parties to insurance contracts:

(i) Publish for sale and distribution to the public, annual reports and statistics on the insurance industry:

(j) Liaise with and advise Federal Ministries, Extra Ministerial Departments, Statutory bodies and other Government agencies on all matters relating to insurance contained in any technical agreement to which Nigeria is a signatory;

(k) Contribute to the educational programmers of the Chartered insurance Institute of Nigeria and he West African Insurance Institute; and

(l) Carry out such other activities connected or incidental to its functions under the Act.

3.3.3 Conduct of Insurance Business in Nigeria

For the conduct of any business of insurance in Nigeria, section 3, Insurance Act, 2003 stipulates that no person shall commence or carry on any class of insurance business in Nigeria except: a company duly incorporated as a limited liability company under the Companies and Allied Matters Act,1990; or a body duly established by or pursuant to any other enactment to transact the business of insurance or reinsurance [i.e. National Insurance Corporation of Nigeria or Nigeria Reinsurance Corporation]. This effectively shut the door against sole proprietor or partnership carrying on the business of marine insurance or any insurance business in Nigeria. Is this all that is required to operate as an insurance company in Nigeria? No, there are other important requirements.

By section 4-

(1) Subject to the provisions of this Act, no insurer shall commence insurance business in Niger unless the insurer is registered by the Commission under this Act

(2) The commission shall not grant approval if it is satisfied that it is not in the public interest or the interest of policy holders or persons who may become policyholders for it to be granted.

According to section 5

(1) An application for registration as an insurer shall made to the Commission in the prescribed form and be accompanied by a business plan and such other documents or information as the Commission may from time to time direct or require.

(2) For the purpose of this Act, life insurance and general insurance business shall be subject to separate application and registration.

Section 6

(1) The Commission shall before registering an insurer be satisfied that-

(a) the class or category of insurance business shall be conducted in accordance with sound insurance principles;

(b) the applicant being one of the persons referred to under section 3 of this Act is duly established under the applicable law and has a paid-up share capital and statutory deposit for the relevant class of insurance business;

(c) the arrangements relating to reinsurance treaties in respect of the class or category of insurance business to be transacted are adequate and valid;
(d) the proposal forms, terms and conditions of policies are in order and acceptable;
(e) There shall be competent and professionally qualified persons as may be determined from time to time by the Commission to manage the company.

3.3.4 Right to Engage in Insurance Business

Under Part VII, Insurance Act, 2003, no person can carry on business as insurance agent, brokers and loss adjusters unless such person has been duly registered with the National Insurance Commission. Prudential and conduct of business guidelines for these professionals are set by the NAICOM.

SELF-ASSESSMENT EXERCISE 2

Where can the law of marine insurance in Nigeria be found?

3.3.5 Nigerian Reinsurance Corporation Act Cap N131 LFN 2004

The law establishes the Nigerian Reinsurance Corporation to undertake the business of reinsurance within and outside Nigeria. The Corporation has corporate personality and is empowered to carry on reinsurance of any class of insurance business and to reinsure against loss of any kind arising from any risk or contingency in respect of any matter whatsoever.

According to section 7(1) registered insurer shall in respect of every insurance policy issued or renewed by it reinsure with the corporation an amount equal to twenty percent of the sum insured in the policy and the registered insurer shall forthwith pay over to the corporation an amount equal to twenty percent of the premium received by the registered insurer on the issue or renewal of the policy. In respect of reinsurance business above the twenty percent legal cession, the corporation shall have the right of first refusal of any reinsurance business from Nigeria before such business is placed in the international market. Where the corporation exercises the right of first refusal, it shall issue a certificate to this effect to the insurer before such reinsurance is placed in the international market. This law has effect on domesticating reinsurance business in Nigeria by increasing the risk retention capacity of the country's insurance industry.

3.3.6 The National Insurance Corporation of Nigeria Act, Cap N54 LFN 2004

This legislation establishes the National Insurance Corporation of Nigeria (NICON) as a body corporate. By section 4 of the Act, the Corporation shall have power within or outside Nigeria to carry on any class of insurance and to insure and reinsure against loss of any kind arising from any risk or contingency and in respect of any matter whatsoever. The corporation is empowered to insure any property of the Government of the Federation or of the Government of any state in the Federation or of any statutory corporation; to insure any property in which any of the said governments has interest; to accept on reinsurance any part of risks undertaken by any other person and to retrocede any part of such risks; to act as insurance agent or insurance broker in relation to any insurance, and in particular in relation to the insurance of any property in which Government of the Federation or of the Government of any state in the Federation or of any statutory corporation has interest.

These bodies no doubt can undertake marine insurance or reinsurance businesses and are important institutions to have recourse to on a serious discussion on the subject of marine insurance in Nigeria.

3.4 Summary

Institutional bodies are necessary to provide the enabling environment and supervise the enforcement of standards in the entire insurance industry. Aside from regulation, some statutory bodies are empowered to undertake insurance businesses to deepen and create liquidity in the market. The NAICOM is the apex regulatory body of insurance business in Nigeria. It has been charged with providing prudential regulation and conduct of business regulation for the insurance business in Nigeria. Thus, no person can carry out the business of marine insurance or as a marine insurance intermediary without registration by the NAICOM. Nigerian Reinsurance Corporation and the NICON can also carry out marine insurance business.

3.5 References/Further Readings/Web Sources

Chibuike U. Uche & B. E. Chikeleze "Reinsurance in Nigeria: The Issue of Compulsory

Legal Cession" The Geneva Papers on Risk and Insurance, Vol. 26, No.3 (July2001) 490-504

3.6 Possible Answers to Self-Assessment Exercise 2

a) By reason of historic fact, the Marine Insurance Act, 1906.
b) The Constitution of the Federal Republic of Nigeria 1999 (as amended)
c) The Marine Insurance Act, LFN,CAP M2, 2004.

MODULE 3 CLASSIFICATION OF MARINE INSURANCE

UNIT 1 MUTUAL INSURANCE AND COMMERCIAL INSURANCE

UNIT STRUCTURE

1.1 Introduction

There are several marine insurance companies undertaking a variety of insurance businesses tailored to meet the needs of their clients and the market. This provides the client with flexibility in their choices. Marine insurance business can be undertaken for profit or non-profit motives. It may be organised on collaborative basis as well very often defined by the size of risk in view.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- discuss how marine insurance businesses are organised
- state the motive for setting out mutual or commercial insurance.

1.3 Mutual Insurance and Commercial Insurance

Broadly speaking, the business of marine insurance can be divided into mutual Insurance and commercial insurance.

1.3.1 Mutual Insurance

According to section 86 (1) of the Act "*Where two or more persons mutually agree to insure each other against marine losses, there is said to be mutual insurance*" In mutual marine insurance a group of ship owners agree in advance to contribute to offset each other's losses. If and when a member sustains a loss, the others contribute ratably to mitigate the impact of the loss (hull &Liability) on the member; no profit is intended by this transaction. Mutual associations offering insurances for these liabilities are called protection and indemnity (P & I) Clubs. This mutual scheme came into prominence after the 1835 case of **De vaux v. Salvador** 111 ER 85 (KB 1836). Since marine risks are indeterminate, historically, it was more difficult to find insurers willing to underwrite all specie of risks under one policy. As for collision risk, underwriters at Lloyds were only willing to insure three-fourths of the risk, requiring the ship owner to cover the remaining one-fourths. This contributed to the development of ship owner organisations known as protection and indemnity clubs (P&I) where members annually contribute a call to a risk pool. Club members can then make withdrawals from the pool to cover liabilities in accordance with the P&I club rules.

1.3.2 Commercial Insurance

The commercial marine insurers accept premium to provide risk coverage and have profit motive. Here, underwriters pool the premium received from the insured to pay the few claims and expenses, build reserve funds against future expenses and secure a small margin for profit. The commercial marine insurance market may be dominated by private companies or a combination of public and private sectors and by government agencies in the case of the socialist State. The Lloyds of London is composed of private companies grouped together in various underwriting syndicates. In view of the international contractual relationships undertaken by national insurers, some national insurance markets are members of the International Union of Marine Insurance which serves as an annual international forum for the exchange of ideas and sharing of experiences.

1.4 Capital Requirements

1.4.1 Maritime business is capital intensive and considering the huge financial exposure risk, the burden of bearing the risk may be shared. Marine insurance be undertaken under co-insurance or Reinsurance arrangements. An insurance company may spread their potential liabilities in relatively small amount in order to profit from the probability that only a limited percentage of the risks would occur. Different insurers may provide risk covers on different parts under a “co-insurance” arrangement. The insurance is in effect by a number of insurers based on the principle of joint and several liability. Although each insurer contracts individually on his own part for a portion of the total risk, he does so on the same contractual terms and conditions as the first insurer called the lead insurer.

1.4.2 On the other hand, the insurer may accept the entirety of the risk and then approach another underwriter to accept the entire or portion of the risk which the original insurer does not want to bear or want ceded. This is called reinsurance. It is the insuring of a risk or part of it by the principal insurer with another insurer. Reinsurance contract undertaken on case-by-case basis is called "Facultative Reinsurance". A reinsurance that is general in nature to cover all or a designated category of subsequent reinsurances is called Treaty Reinsurance.

1.5 Summary

Commercial reason and the size of risks may inform the various classification and choice of insurance business. This classification has to do with conduct of business by the insurer. There are several classifications of marine insurance, namely mutual, commercial, co-insurance or Reinsurance business.

1.6 References/Further Reading/Web Sources

Howard Benneth, The Law of Marine Insurance. (2nd ed.). Oxford: University Press, 2006.

De Vaux v. Salvador 111 ER 85 (KB 1836): Bank of Nova Scotia v Mutual War Risks Association (Bermuda) Ltd [1991] 2 WLR 1279.

UNIT 2 KINDS OF MARINE POLICIES

UNIT STRUCTURE

2.1 Introduction

Marine insurance policies differ based on the different subject matters or purpose of the contract. This classification to some extent bears on measure of indemnity.

2.2 Learning Outcome

By the end of this unit, you will be able to:

- list the various covers the insured can provide to the assured in marine insurance
- describe to a large extent the size of the premium payable by the assured and the scope of liability of the insured to the assured in the event of the happening of the peril insured against.

2.3 Kinds of Marine Insurance

2.3.1 Voyage Policy and Time Policy

(Section 27, M.I.A.) A voyage policy relates to one particular voyage. It is common for covering cargo in international trade transactions. A time policy on the other hand relates to the subject matter being covered for a specified time period. A specific date for the commencement and termination of the risk must be stated in the policy. It is generally understood that a day starts from 00;00 and ends at 23:59:59. This is suitable for haulage and machinery cover.

2.3.2 Valued Policy and Unvalued Policy

(Sections 29 & 30, M.I.A) A valued policy is one where the agreed valued of the subject matter is specified and in the absence of fraud, conclusive of the insurable value of the subject matter as between the insurer and the insured. This policy is very common in marine insurance globally. The agreed valued does not necessarily reflect the real value of the goods in question. It could include for example an element of anticipated profit which however must be disclosed.

In the case of unvalued policy, the value of the subject matter is not specified in the policy but left to be computed in accordance with the insurable value which is, the prime cost of the property insured, plus the expenses of and incidental to shipping and the charge of insurance upon the whole.

2.3.3 Floating and Open Cover Policy

Floating and open cover policies are used by merchants who ship on regular basis. A floating policy is intended to cover a number of consignments setting out the general conditions of the insurance but no particulars of the goods to be covered. The particulars are provided by the insured to the insurer by way of a declaration. The declarations then form an endorsement on the policy. The floating policy will cover consignments up to an aggregate value. As each consignment is declared, the cover is incrementally reduced. The insured is under a statutory obligation to honestly declare the value. It allows the insured to insure an unascertained cargo on an unascertained vessel. According to section 31, M.I.A. "A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration"

An Open cover is similar except that the insurer does not issue a policy; he merely undertakes to issue a policy. What is provided instead is a certificate. An open cover may be time specific or perpetual subject to termination by either party by giving of notice.

SELF-ASSESSMENT EXERCISE 3

What informs the various classification of marine insurance business?

2.4 Summary

The subject matter of the insurance may determine the kind of insurance policy to be initiated. The insurance policy may be voyage policy, time policy, valued policy, unvalued policy, floating or open policy. These policies may attach to hull or cargo.

2.5 References/Further Reading/Web Sources

Irving v. Manning (1847)1 HL Cas 287

Mathie v. The Argonaut Marine Insurance Co. (1925) 21 Ll.l.Rep.145.

Berger & Light Diffusers Property Ltd v. Pullock (1973)2 Lloyds Rep 442

2.6 Answers to Self-Assessment Exercise 3

a) Member society providing protection for members in the event of a loss or damage in their business for instance protection and indemnity Clubs through Mutual Insurance Business

b) Insurance business for profit by charging and collecting premiums Commercial insurance Business (alone/co insurance)

c) Insurance companies ensuring the risk undertaken by them through Reinsurance Business

MODULE 4 - GENERAL PRINCIPLES OF MARINE INSURANCE

UNIT 1 GOOD FAITH (UBERRIMAE FIDEI)

UNIT STRUCTURE

1.1 Introduction

Some fundamental principles underlie marine insurance. In addition to giving the subject its unique feature, these principles distinguish marine insurance from other relationships. The presence or otherwise of these principles determine the justiciability of a transaction as marine insurance. Marine Insurance is a fiduciary contract. It is a relationship of confidentiality, and the insured is under a duty to disclose material facts about the risk he desires another to assume on his behalf.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

- explain why the breach of the duty of disclosure can avoid the contract of marine insurance
- state that the fact of information asymmetry compels the parties to be of good faith in dealings with each other hence the characterisation of marine insurance as a fiduciary relationship.

1.3 Principle of Good Faith (Uberrimae Fidei)

1.3.1 Common Law Position on the Principle

1) Contracts of insurance are fiduciary contracts of utmost good faith. The utmost good faith is required from both the insurer and the assured. This overriding principle requires that the parties to marine insurance must be honest to themselves. Good faith forbids either party concealing crucial information at his disposal on a particular subject to induce the other into a bargain on the same subject by the other from his ignorance of the fact and his believing the contrary. The onus of showing lack of good faith is on the party alleging it. The reason for this doctrine is to prevent overreaching, taking undue advantage owing to information asymmetry or even fraud.

2) Uberrimae fidei is a fundamental principle of insurance law generally and finds expression in the requirement for disclosure. The duty to disclose means the assured must disclose all material circumstance within his knowledge which include those he knows and those he ought to know by the exercise of due diligence. A circumstance is material if it was one which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would take the risk. It is not necessary to show that the disclosure would have had a decisive or conclusive influence. The underwriter must also show that he was in fact induced to enter the contract on the relevant terms.

3) The common law doctrine of good faith in insurance contract originated in the 18th Century. Lord Mansfield is credited with first articulating this concept in the case of **Carter v. Boehm** (1766) 3 Burr 1905 where a Governor had taken out an insurance policy against the loss of Fort Malbourugh on the island of Sumatra but did not disclose the extent of its vulnerability to aggression or attack. According to his lordship

> "The reason for the rule which obliges parties to disclose is to prevent fraud, and to encourage good faith. It is adapted to such facts as vary the nature of the contract; which one privately knows, and the other is ignorant of, and has no reason to suspect"

4) A failure to disclose a material fact renders the policy avoidable at the instance of the insurer. The policy is liable to be avoided whether the non- disclosure is due to fraud, carelessness, mistake, error of judgment, etc. The insurer is at liberty, after becoming aware of the truth, waive the non-disclosure and affirm the policy. Fair and square, the obligation to disclose is primarily at the domain of the insured. In the **Container Transport**

International v Oceanus Mutual Underwriting Association [1984] 1 Lloyds Rep 476 Kerr J stated:

> The principle is that if a certain fact is material … so that a failure to draw the underwriter's attention to it distorts the fairness of the brokers presentation of the risk, then it is not sufficient that this fact could have been abstracted by the underwriter from material to which he had access or which was cursorily shown to him. On the other hand, if the disclosed facts give a fair presentation of the risk, then the underwriter must inquire if he wishes to have more information.

5) This decision was thought to have inclined too heavily in favour of the insurer who would be at liberty to avoid any policy with relative ease for non-disclosure of what he considers material fact. To strike some balance it was considered fair to establish a connection between the risk and the information thought to be material. Justice Mustill in the case of **Pan Atlantic Insurance Company Limited v Pinetop Insurance Company** [1994] 2 Lloyds Rep 427,453 stated:

> I have concluded that it is an answer to a defence of misrepresentation and non-disclosure that the act or omission complained of had no practical effect on the decision of the actual underwriter. As a matter of common sense however even where the underwriter is shown to have been careless in other respects the assured has an uphill task in persuading the court that the withholding or misstatement of circumstances satisfying the test of materiality has made no difference. There is ample material both in the general law and in the specialists' works on insurance to suggest that there is a presumption in favour of a causative effect.

6) The right to rescind enables the innocent party to rescind the contract ab initio thereby totally nullifying the contract and requiring everything done under the contract to be undone, including any adjustment of the parties' financial positions. This is appropriate where the lack of good faith preceded the formation of the contract. However, where the lack of good faith arises after the making of the contract and during its performance, the aggrieved party would not be entitled to avoid the contract from its inception. Where the parties are in litigation, it is the procedural rules of court that governs the extent of disclosure which should be given in the litigation and not the marine insurance Act provisions on disclosure.

1.3.2 Statutory Position on the Principle

1) The principle of good faith and fair dealing in marine insurance was prescribed in section 17, Marine Insurance Act, 1906 under the heading ‘Disclosure and Representations’. Instructively, under the Act, the standard was raised from “good faith” as stated in case law to “Utmost Good Faith” indicating the highest degree of good faith. In determining good faith, the court must strike a balance between the interest of the policy holder in having his legitimate claim paid and the interest of the insurer in accepting responsibility for the risk they bargained for. The insurer cannot keep the policy alive and seek to avoid paying a claim on the ground of want of good faith or non-disclosure **(West v National Motor and Accidental insurance 19551 Lloyds Rep 207)**. To constitute a valid avoidance the insurer must return the premium paid by the insured.

2) According to section 19, M.I.A. “a contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith is not observed by either party, the contract may be avoided by the other party”

3) Section 20, M.I.A. lays out the scope and substance of the disclosure regime.

(1) Subject to the provision of this section, the assured shall disclose to the insurer before the contract is concluded, every material circumstance which is known to the assured and the assured shall be deemed to know every circumstance which in the ordinary course of business ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) In the absence of inquiry, the following circumstances need not be disclosed namely:

(a) Any circumstance which diminishes the risk

(b) Any circumstance which is known or presumed to be known to the insurer, and for the purpose of his paragraph, the presumptions shall extend and apply to matters of common notoriety or knowledge, and to matters which an insurer in the ordinary course of his business, as such, ought to know;

(c) Any circumstance as to which information is waived;

(d) Any circumstance which is superfluous to disclose by reason of any express or implied warranty.

For the purpose of this section, "circumstance" includes any communication made to, or information received by, the assured; and whether any particular circumstance which is not disclosed, is material or not is, in each case of a question of fact.

1.4 Summary

The insured is under a duty to disclose in good faith material circumstances on the risk sought to be insured. Failure to disclose required material circumstances will enable the insurer to rescind the insurance contract. The insured must disclose all such material information that would enable the insurer to decide whether to accept the risk or not and the price to undertake the risk.

1.5 References/Further Readings/Web Sources

Manifest Shipping Co Limited v Unipolaris Insurance Co. Ltd. (The Star Sea case)[2001]1Lloyd's Rep.1

Pan Atlantic Insurance Co. v Pine Top Insurance Co. Ltd (1995) 1 AC 501 (HL)-

UNIT 2 INSURABLE INTEREST

UNIT STRUCTURE

2.1 Introduction

A policyholder must stand to benefit from the preservation of a subject matter or suffer a direct financial loss in an event that certain undesired event insured against occurs. The insured must have a certain legal connection to the subject matter of the insurance to insure any risk touching on it.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

- state that insurable interest differentiates marine insurance from gambling, wagering or investment schemes
- explain that marine insurance differs from the other forms of insurance on the requirement of when insurable interest must exist.

2.3 Insurable Interest

2.3.1 The Nature of Insurable Interest

Insurable interest in the subject matter for which insurance cover is sought or provided is the cornerstone of the insurance contract. The origin of this fundamental concept dates back to the Life Assurance Act,1774 which made insurable interest a prerequisite for obtaining a life policy. This requirement founds its way into the Marine Insurance Act, 1788 and later to the Marine Insurance Act,1906. The absence of insurable interest renders the transaction a wagering or gambling transaction which is expressly prohibited in insurance law. According to section 6 M.I.A.

> *1) Every contract of marine insurance by way of gambling or wagering is void.*
>
> *2) A contract of marine insurance shall be deemed to be a gaming or wagering contract*
>
> *a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest, or*
>
> b) *where the policy is made "interest or no interest" or without further proof of interest than the policy itself' or "without benefit of salvage to the insurer" or subject to any other like term.*

Insurable interest in any instance of marine insurance is the interest which an assured has in the proposal taken out by him. An assured is said to have an insurable interest in a thing if he has a benefit from its existence or suffers a prejudice from its destruction. Such interest must be an enforceable one. Mere hope of acquiring an interest is not enough. The interest must also be real and of a pecuniary nature. Insurable interest cannot be said to exist where the assured does not stand to suffer any loss from the transaction or event.

In **Broadgrain Commodities Limited v. Continental Casualty Company** 2017 ONSC 4721: 2018 ONCA 438 the plaintiff sold 26 containers of sesame seeds to be transported from Nigeria to Xingang, China. The sale was on terms "CIF Xingang" meaning the plaintiff was to obtain insurance but the risk of loss or damage passed to the buyer upon shipment. The goods were insured under an open cargo policy with the defendant and were declared under the open policy. During the course of carriage of the goods from Nigeria to China, the good were damaged. All the 26 containers were declared unfit for human consumption and were sold for salvage. Even though the plaintiff had been paid in full by the buyer, it filed a claim with the defendant insurer which denied liability on the basis that the cause of the damage was condensation or sweat, a non-transit related fortuity. At the plaintiff's suit, the insurer contended that the plaintiff had no insurable interest in the subject matter having been paid in full by the buyer. The court held that the plaintiff having received payment for the consignment had no insurable interest to protect.

2.3.2 Insurable Interest and the Statute

Under the provisions of the M.I.A, every person has an insurable interest who is interested in a marine adventure. By section 7(2)

> *"In particular a person is interested in marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss or damage thereto, or by the detention thereof or may incur liability in respect thereof.*

For the purpose of insurable interest, insurance contracts are categorised into three-Indemnity, non-indemnity and Marine insurance contracts. In marine insurance, it is sufficient if the insured has interest in the subject matter insured at the time of the loss and it is immaterial whether or not he has interest at the time when the contract was gone into. However, where the subject matter is insured "loss or not lost" the insured may recover although he may not have acquired his interest until after the loss. Defeasible, contingent or partial interests are insurable. A reinsurer has insurable interest in the risk reinsured. (See sections 9,10,11 M.I.A)

2.3.3 Insurable Interest in International Marine Insurance

It is not unusual practice in international marine insurance practice to find issued policies which do not require the need for proof of insurable interest. P.P.I (Policy Proof of Interest) or F.I.A (Full Interest Admitted) contracts are used to insure interests where it is difficult to prove that insurable interest exist or difficult to prove the amount at risk. Despite their commercial convenience, they are equated with gambling or wagering and thus considered void under the M.I.A.

2.4 Summary

In marine insurance, the insured must have insurable interest in the subject matter insured at the time of the loss. An insured must have an insurable interest in the marine insurance contract. A person has insurable interest where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, damage, detention or incur any liability in respect thereof

2.5 References/Further Reading/Web Sources

Oyeniyi Ajiboye, "A Review of the Doctrine of Insurable Interest under the Marine Insurance Act in Nigeria" The Gravitas Review of Business and Property Law, Sept. 2016, Vol.7, No.3, 15.

UNIT 3 SUBROGATION

UNIT STRUCTURE

3.1 Introduction

Where the insured has been indemnified, the insurer succeeds to his rights against the wrong doer. This is an exception to the rule of privity of contract.

3.2 Learning Outcome

By the end of this unit, you will be able to:

- to explain that a third party who may have caused the peril insured against could still be liable for the wrong done notwithstanding the fact that the insurer has assumed the responsibility to make good the loss.

3.3 Subrogation

3.3.1 This is a procedure where the insurer on payment of the loss is entitled to be placed in the position of the insured by succeeding to all his rights and remedies against third parties in respect of the subject matter of the insurance. In this situation, since the insurer has made good the loss, he is then entitled to claim or be indemnified by the third party. The right of subrogation rests upon the ground that the insurer's contract is in the nature of a contract of indemnity and that he is, therefore, entitled, upon paying a sum for which others are primarily liable to the assured, to be proportionately subrogated to the right of action of the assured against them. The insurance principle of subrogation reinforces the indemnity character of insurance. According to section 80(1) M.I.A,

> Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part of the subject matter insured, he shall thereupon become entitled to take over the interest of the assured in whatever may remain of the subject matter so paid for, and shall thereby be subrogated to all the rights and remedies of the

assured in and in respect of the subject matter as from the time of the casualty causing the loss.

This section enunciates two fundamental principles of insurance law and rights of an insurer in an insurance contract: the right of subrogation and the salvage principle. Where the loss is caused by the fault of another or where by contract another person is liable to bear the loss insured against if the insured claim from the insurer and he is paid, the insurer then succeeds to the rights of the insured against the third party. Where the insured obtains any remedy from a third party for the same loss, he must revert to the insurer. Being paid by the insurer does not preclude him from seeking reliefs from the wrongdoer who caused the loss. He does this on behalf of the insurer who is said to be subrogated to his rights.

3.3.2 The principle of subrogation comes into effect when the assured receives satisfaction from his insurer; whatever he receives thereafter he holds in trust for the insurer. Subrogation rests on the ground that the insurer's contract is one of indemnity and is therefore entitle upon paying the sum for which others are primarily liable to the assured to be proportionately subrogated to the right of the assured. In practice, at times the Insurer will require the assured to sign a subrogation form to assist the insurer press claim against third parties: very often such forms are worded thus "In consideration for the payment of the sum of…for the loss of… I hereby abandon to you all my rights, title and interest in the said…"

3.3.3 It must be noted that the right does not arise unless and until the insurer has admitted the insured's claim under the policy and has paid the sum payable under the policy. Furthermore, the insurer cannot recover more than the amount it has paid. In **YORKSHIRE INS. CO. LTD. v. NISBET SHPPING CO. LTD**. (1961) 1 Lloyd's Rep 479, a ship was insured under a valued policy for E72,000(pounds). It became a total loss as a result of a collision with another vessel. The insurer paid the valued policy of E72,000(pounds) to the assured. The assured claimed damages from the Canadian government and recovered E127,000(pounds). The assured repaid E72,000(pounds) to the insurer and kept the excess. The Court held that the insurer was not entitled to recover the excess from the assured.

3.4 Summary

Subrogation enables the insurer succeeds to the rights of the insured against third person(s) that have caused the loss for which the insurer has indemnified the insured. Subrogation strengthens the indemnity character of insurance. Where the insurer pays a loss insured against, he shall be subrogated to all the rights and remedies of the assured in respect of the subject matter. The insurer must have paid the claim and is entitled to what has been paid out to the assured.

3.5References/Further Reading/Web Sources

See British India General Insurance Co. Ltd v. Kalla (1965) 1 All NLR 20.

UNIT 4 DOUBLE INSURANCE AND CONTRIBUTION

UNIT STRUCTURE

4.1 Introduction

Where the marine risk is insured with more than one insurer, the insurers will proportionately bear the burden of the risk in the event of a loss or damage.

4.2 Learning Outcome

By the end of this unit, you will be able to:

- explain that in the event of over insurance, equity seeks a fair distribution of the risk among the various insurers.

4.3 Double Insurance and Contribution

4.3.1 The Concept of Double Insurance

The concept of double insurance allows an insured under a co-insurance arrangement to insure the same subject matter of the insurance with more than one insurance company. In the event of the occurrence of the event insured against, he is free to claim payment from his insurers in such order as he thinks fit until he has received the full amount for his loss (Section 33, M.I.A). In exercising this right, the insured is free to call upon any of his insurers to pay him in full and the fact that others are also liable will not afford the insurer any defence. Effectually, once the insured receives full payment from one insurer, he cannot receive further payment from other insurers.

4.3.2 Principle of Contribution

As a corollary to the duty of an insurer to pay in case of double insurance, is the right of such an insurer to call upon the other insurer(s) to contribute their share in indemnifying the assured for the loss, to the insurer. This right is known as the right to contribution. According to section 81(1), M.I.A "*Where the assured is over insured by double insurance, each insurer shall be bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract.* Before a right of contribution can be enforced, the following conditions must be satisfied.

(a) There must be a subject matter common to all the policies taken by the insured. Once the insurer can show that the subject matter insured with him has also been insured with another insurer, he can call on the latter to contribute ratably to the discharge of the obligation under the policy.

(b) The loss must be due to a risk or peril common to all the policies. The loss and the cause of the loss must have been covered by the several policies.

(c) All the policies must be enforceable. If any of the policies cannot be legally enforced against the insurer, as a result of a breach of a condition or non-disclosure by the insured, such a policy will not give rise to a right to contribution, even if the insurer had paid the insured under such a policy.

SELF-ASSESSMENT EXERCISES

1. A marine insurance is a contract of good faith because
   a. It is fiduciary in nature
   b. It is a contract of *Uberimae fidei*
   c. the insured is required to disclose all material facts on the subject matter of the insurance to the insurer
   d. All of the above is correct.

2. By insurable interest the assured is expected to
   a. Own the property sought to be insured at all times before the policy of insurance is issued.
   b. Benefit from the existence of the property and suffer a prejudice from its destruction.
   c. Insure the property at all times with Lloyds of London Insurance market.
   d. Reinsure the property for twice its value.

3. Subrogation enables the
   a. Insurer on payment of a claim to succeed to the rights of the insured against third parties that caused the loss.
   b. Insurer to make profit by making a double claim against third parties.
   c. Insurer to avoid the contract with the insured
   d. Insured to sue third parties and the insurer.

4. Marine insurance is a contract of indemnity because
   a. The insured can freely speculate on possible profit from the contract.
   b. As a matter of fact, the insured is gambling with the risk in view.
   c. The law allows the assured to engage in a scheme of wager as far as the risk insured against is concerned.
   d. The insured is sought to be restored as near as possible to the position he was before the loss insured against.

5. Double insurance enables the
   a. The insured to claim from all the insurers far and above his loss.
   b. Insured obtain reinsurance of the risk contemplated.
   c. National Insurance Commission to also regulate the banking industry in Nigeria.
   d. One insurer in a co-insurance arrangement to obtain ratable contributions from other insurers for the loss it has indemnified the assured.

4.4 Summary

The principle of double insurance and the right to contribution reinforces the character of marine insurance as essentially an indemnity contract. Where the assured is over insured by double insurance, each insurer shall be bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract. Before a right of contribution can be enforced, there must be a *subject* matter common to all the policies taken by the insured; the loss must be due to a risk or peril common to all the policies and all the policies must be enforceable.

4.5 References/Further Reading/Web Sources

Susan Hodges, Law of Marine Insurance, Cavendish Publishing Limited, Great Britain, 1996.

Rose F.D. Marine Insurance Law and Practice, Lloyd's of London Press. London,2004.

Reference Book of Marine Insurance Clauses, 69th ed, Witherby & CO. Ltd., London, 1997.

Interesting websites:

http://www.bmla.org.uk.

http://www.1malloyds.com

4.6 Possible Answers to Self-Assessment Exercises

1. d
2. b
3. a
4. d
5. d