NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF POSTGRADUATE STUDIES

FACULTY OF LAW

COURSE CODE: CLL810

COURSE TITLE: LAW OF MARINE INSURANCE II

NATIONAL OPEN UNIVERSITY OF NIGERIA

Headquarters
Plot 91, Cadastral Zone,
University Village,
Nnamdi Azikiwe Expressway,
JABI - ABUJA
URL: www.nou.edu.ng

Lagos Office
14/16 Ahmadu Bello Way
Victoria Island, Lagos

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COURSE INFORMATION

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COURSE TEAM

Course Developer/Writer:	Prof. Augustine R. Agom
Course Editor:	Prof D.C. John
Programme Leader:	Dr Ernest O. Ugbejeh
Programme Co-ordinator:	F.O. ONAMSON, PhD

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CLL810 – Law of Marine Insurance

COURSE GUIDE

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 organization (IMO) over 90% of the worlds trade is carried by sea. The contribution of marine transport in the movement of industrial plants, machinery, equipments, 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 (CLL810). Law of Marine Insurance 1 provided a basic understanding of the regulatory framework for marine insurance law in Nigeria. This Law of Marine Insurance 11 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.

MODULES AND STUDY UNITS

The discussion in this course is broken down to 12 study units that are broadly divided into FOUR (4) modules as follows –

MODULE 1 FORMATION OF MARINE INSURANCE CONTRACT

Unit 1 – Negotiation/Proposal

Unit 2 – Consideration/Premium

Unit 3 – The Insurance Policy

MODULE 2 CONTRACTUAL TERMS

Unit 1 – Conditions and Warranties

Unit 2 – Implied Warranty

Unit 3 – Excess and Average Clauses.

MODULE 3 MARINE INSURANCE INTERMEDIARIES

Unit 1 – Intermediaries

Unit 2 – Obligations and Rights of Intermediaries

MODULE 4 ASSIGNMENT OF MARIEN INSURANCE POLICY

Unit 1 – Definition of Consumerism and Consumer Rights

MODULE 5 OBLIGATIONS OF PARTIES TO MARINE INSURANCE CONTRACTS

Unit 1 – Rights of the Assured

Unit 2 – Righters of the Insurer

MODULE 6 SETTLEMENT OF MARINE INSURANCE CONTRACTS

Unit 1 – Preliminary Issues

Unit 2 – Measure of Indemnity

Unit 3 – Excluded Losses

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 overemphasized 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	**FORMATION OF MARINE INSURANCE CONTRACT**		Assignment 1
Unit 1	Negotiation/Proposal		
Unit 2	Consideration/Premium		
Unit 3	The Insurance Policy		
MODULE 2	**CONTRACTUAL TERMS**		Assignment 2
Unit 1	Conditions and Warranties		
Unit 2	Implied Warranty		
Unit 3	Excess and Average Clauses		

MODULE 3	**MARINE INSURANCE INTERMEDIARIES**		Assignment 3
Unit 1	Intermediaries		
Unit 2	Obligations and Rights of Intermediaries		
MODULE 4	**ASSIGNMENT OF MARIEN INSURANCE POLICY**		Assignment 4
Unit 1	Definition of Consumerism and Consumer Rights		
MODULE 5	**OBLIGATIONS OF PARTIES TO MARINE INSURANCE CONTRACTS**		Assignment 4
Unit 1	Rights of the Assured		
Unit 2	Righters of the Insurer		
MODULE 6	**SETTLEMENT OF MARINE INSURANCE CONTRACTS**		Assignment 4
Unit 1	Preliminary Issues		
Unit 2	Measure of Indemnity		
Unit 3	Excluded Losses		

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.

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MODULE 1 FORMATION OF MARINE INSURANCE CONTRACT

Unit 1: Negotiation/Proposal

1.1 Introduction
1.2 Learning Outcomes
1.3 Negotiation/Proposal
1.4 Summary
1.5 References for Further Reading/Web Sources

1.1 Introduction

Formation of marine insurance contract is the product of a successful negotiation by parties on the major aspects of the insurance. The negotiations and the contract must be in the manner and form stipulated in the enabling law or customs and usages of the marine insurance industry. The negotiation between the assured and the insurer is essentially on the peril(s) sought to protected against and the premium payable. The clauses in the contract are fairly standardized. The assured begins the process of forming the contract by completing and submitting a proposal to the insurer.

1.2 Learning Outcomes.

At the completion of this unit, you will know that the proposal submitted by the insured constitutes the offer and in it he must make all necessary disclosures. In this arrangement, parties have freedom of contract; however, like all standard form contracts where one of the parties has more bargaining power, it is important to know that the facts that the insurer considers material are often elicited in the proposal for the assured to furnish information on thus controlling the quality and scope of facts material to the contract.

1.3 Negotiation/Proposal

1.3.1 A contract of marine insurance will come into existence following the negotiation by the parties to the contract, in this case the assured and insurer. It commences when

the insured makes an offer and the insurer accepts the offer. The broker will prepare a slip on receiving instruction to insure from the ship owner, merchant or other proposer. Strictly speaking proposal forms so common in other branches of insurances are not so commonly in use in marine insurance. The slip called "the original slip" is used for the proposal. The original slip is accompanied with other material information which the broker deems necessary for the purpose. The brokers are experts and well versed in marine insurance law and practice. The insured makes an offer by completing and submitting a proposal to the insurer. The proposal is normally designed and printed by the insurer or his agent. An insured who procures the service of an agent to fill out the proposal for him must accept the act of such agent as his own act and take responsibility for it. In **Northern Assurance Company v. Stephen Idugboe** (1966) 1 All NLR, 88, the insured in filling a proposal form for a comprehensive insurance cover, was assisted by an insurance agent and his own clerk and thereafter signed the form. Even though he had disclosed correct information to these two, they did not disclose the information in completing the form. When the plaintiff sought to claim for total loss under the contract, the insurer denied liability on the ground of non disclosure of material facts. Allowing the appeal against the judgment which held the insurer liable, the Supreme Court held:

> In my view…where the agent himself, at the request of the proposer, fills up the answer in purported conformity with the information supplied by the proposer. If the answers are untrue and he knows it, he is committing a fraud which prevents his knowledge being the knowledge of the insurance company. If the answers are untrue, but he does not know it, I do not understand how he has any knowledge which can be imputed to the insurance company. In any case I have great difficulty in understanding how a man who has signed, without reading it, a document which he knows to be a proposal for insurance and which contains statements in fact untrue, and a promise that they are true, and the basis of the contract, can escape from the consequences of his negligence by saying that the person he asked to fill it up for him is the agent of the person to whom the proposal is addressed.

1.3.2 The proposal usually elicits information or particulars of the risk which the insured wishes the insurer to undertake. Particularly, information regarding name, address, insured interest, subject matter, valuation of subject matter, existing insurer, etc. The

proposal for a hull insurance cover may be more detail requiring information on years of manufacture and current registration. It is important that the insured have recourse to the declaration clause before signing same. A typical declaration reads:

> I/We confirm that the foregoing statements and answers are true and complete and that I/we have not withheld any material information likely to affect the acceptance of this proposal. I//we agree that this proposal and declaration shall form the basis of the contract between Tokio Marine Insurance Company Singapore Limited (TMIS) and ourselves and I/we will accept a policy subject to the company's standard terms and conditions of the Policy.

1.3.3 Once an offer is made, it remains in force until it is either withdrawn before acceptance or lapsed after a reasonable period of time. A withdrawal of an offer will not be effective, until notice of the withdrawal is received by the insurer. It is up to the insurer to accept or decline the offer.

1.3.4 Acceptance of the offer is deemed to have been properly made, when the insurer issues a policy to the insured or does something in writing affirming acceptance. According to section 23, M.I.A, a contract of marine insurance shall be deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not. For the purpose of showing that the proposal was accepted reference may be made to the slip or covering note or other customary memorandum of the contract.

1.3.5 Where the insurer issues a slip, covering note or memorandum to the insured, the insurer will be bound during the provisional cover and the assured shall be entitled to recover in the event of loss contemplated by the policy. The provisional cover is a formal document issued to an insured to protect him against the occurrence of the risk in the interval between the submission of the proposal form and the issue of the insurance policy. The provisional cover notes are always issued for a definite period.

1.3.6 An acceptance must correspond to the terms of the offer. Where the insurer accepts the proposal subject to the payment of premium, the contract becomes binding only on

the tender to the insurer of that premium. Tender of the premium then amounts to an acceptance of the insurer's counter-offer by the insured. If the risk insured against occurs before the payment of the premium, the insurer does not assume responsibility for the loss. This is important because of the flexibility which the Marine Insurance Act 2004, allows with regard to the time for payment of premium.

1.3.7 If the risk insured against occurs before acceptance, the insurer will not be liable. The duty to disclose all material facts binds the insured and insurer until acceptance, so that a non-disclosure of a material fact before acceptance will render the contract of insurance voidable at the instance of the insurer. Where the risk occurs, unknown to the insurer but known to the insured, and the former inadvertently issued the policy, the insurer will be entitled to avoid it on the ground of concealment of material fact which the insured is bound to disclose in the proposal form. Where, unknown to both parties, the loss occurred before the contract, a policy issued subsequently by the insurer could be void because of common mistake and the insured will not be entitled to recover under such a policy.

1.3.8 The industry practice is that the proposal form contains standard clauses with practically little or no input at all by the assured except for answers supplied to demand for information on the subject matter. On the whole the insurer is more strategically positioned to skew the terms and clauses in its favour. This is a common challenge with standard form contracts. Dover observed of this market practice:

> "The most serious objection to standard clauses was that in many instances, they were not a product of the free balancing of interests resulting from negotiation between the parties to the contract but a dictate from the stronger, or at least the better organized, of the parties"

1.4 Summary

Insurance is a contract. Its formation begins with the negotiation of the parties. In insurance, the assured makes his offer by completing and submitting a proposal to the insurer. The assured initiates the process of marine insurance contract formation by making an offer by

completing a proposal form or slip obtained from the insurer. In the proposal form, the assured is under obligation to make material disclosures on the subject matter. The insurer may accept the offer by the issuance of the policy or a slip or memorandum evidencing the fact of the contract.

1.5 References/Further Reading/Web Sources

1) V. Dover Uniformity in Marine Insurance Policy, Form and Clauses (Gpoteborg, Akademiforlaget-Gumpers,1963) p15.
2) Visit https://www.tokiomarine.com
3) Visit also https://www.lonpac.com

MODULE 1 FORMATION OF MARINE INSURANCE CONTRACT

Unit 2: Consideration/Premium

2.1 Introduction
2.2 Learning Outcomes
2.3 Consideration/Premium
2.4 Summary
2.5 References for Further Reading/Web Sources

2.1 Introduction

Like all valid contracts, there must be the exchange of considerations. In the law of marine insurance, the consideration payable by the assured to the insurer to provide the cover against the risk insured against is called the premium.

2.2 Learning Outcomes

At the end of this unit, you should know that in marine insurance, consideration is very important. In insurance law generally, unless premium is paid, no cover can be provided. In marine insurance, it is not strictly so as the agreement of the parties can make flexible the time for payment of premium.

2.3 Consideration/ Premium

2.3.1 The assured and the insurer must furnish considerations to sustain the insurance contract. While the insurer undertakes to indemnify the assured in the event of the peril contemplated, the latter is obliged to pay a price called premium to the insurer for assuming the risk. In the absence of fraud, an acknowledgment of receipt of premium on the policy effected by a broker on behalf of the assured is conclusive evidence of payment of premium by the assured to the assured. The premium may not always be money, it may be in some other from, e.g., in a mutual insurance it may consist of a guarantee to contribute to the losses from other members of the mutual society.

2.3.2 Marine insurance law differs from general insurance law on this point. In general insurance, the legal requirement on payment of premium is 'no premium no insurance. According to section 50 (1) Insurance Act, 2003,

> *"The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk, unless the premium paid in advance"*

In **Ajaokuta Steel Co v. Corporate Insurance** (2004) 16 NWLR, Pt.899, 369 the Court upheld the principle of 'no premium no insurance'. In marine insurance however the law allows some flexibility. According to section 53, M.I.A

> *Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent are concurrent conditions, and the insurer shall not be bound to issue the policy until payment or tender of the premium.*[underlining for emphasis]

From this provision, the time for payment of premium may be fixed by the parties. Where insurance is effected at a premium or additional to be arranged in a given event and that event happens but no arrangement is made, the insurance is nonetheless valid: a reasonable additional premium shall be payable. This flexibility, in no way diminishes the importance of premium in marine insurance as the price payable by the insured.

2.3.3 When considering premium for a particular risk, an insurer will reckon with various considerations applicable to the risk that may affect the likelihood of a loss occurring and the amount of the insurer's potential liability. In the case of hull insurance, type and age of vessel, tonnage, motive power, state of equipment, trading limits, types of cargo carried, vessel's management crew, past claim experience, date of last survey, classification symbol of vessel are important factors. For cargo insurance, nature and value of the cargo, packaging, type of vessel, nature of the voyage, claims record of the shipper etc are important considerations.

2.4 Summary

The consideration furnished by the assured in a marine insurance contract is called a premium. Unless provided otherwise, the payment of premium and issuance of policy must be concurrent. Consideration is very important in marine insurance Contract and it is called premium. The insurance policy must state the premium for which the risk is undertaken. Unless otherwise agreed by the parties, the payment of premium and the issuance of the policy must be concurrent.

2.5 References/Further Readings/Web Sources

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

MODULE 1 FORMATION OF MARINE INSURANCE CONTRACT

Unit 3: The Insurance Policy

3.1 Introduction
3.2 Learning Outcomes
3.3 The Insurance Policy
3.4 Summary
3.5 References for Further Reading/Web Sources
3.6 Answers to Self-Assessment Exercises

3.1 Introduction.

Upon the conclusion of the negotiation, the insurer shall issue the insurance policy covering the risk insured against. The size of the risk covered and the amount of premium payable are fixed by the policy.

3.2 Learning Outcomes

At the end of this unit, you should know that the basis of the marine insurance contract is the Insurance policy. First Schedule to the Marine Insurance Act, 2004 is a precedent form of Marine Insurance Policy.

3.3 The Insurance Policy.

3.3.1 A contract of marine insurance is entered into when the proposal of the assured is accepted by the insurer. To show that the proposal was accepted reference may be made to the slip or covering note or other customary memorandum of the contract. Section 24 M.I.A provides

(1) Subject to the provisions of any statutes, a contract of marine insurance shall not be admissible in evidence unless it is embodied in a marine policy in accordance with the form in the First Schedule to this Act or to the like effect

(2) The policy may be executed and issued either at the time when the contract is concluded, or afterwards; and subject to the provisions of this Act and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that Schedule assigned to them.

(3) *Nothing in this section shall affect the operation of a contract for such insurance as is mentioned in section 368 of the Merchant Shipping Act.*

The First Schedule to the Marine Insurance Act provides a precedent form of marine insurance policy. The policy shall specify the name of the insured or the person who effects the insurance on his behalf and duly signed by the insurer. It contains particulars of the parties, subject matter of the contract, premium, signature of the assured and the amount assured. Rules for construction of the policy are annexed to the Form for guide of parties. The subject matter insured shall be designated with reasonable certainty. The wordings of a marine insurance policy are to a great extent based on mercantile customs and business convenience.

3.3.2 In placing the policy, the assured must give full details on the subject sought to be insured. In giving full description of the risk, he must state what it is, value, destination, departing, etc for the insurer to decide whether to accept the risk and at what premium. The disclosures and representations must be accurate. The law governing disclosure and representation by the parties stipulate that the contract is based upon the utmost good faith and is voidable at the instance of the injured party if the good faith standard is not maintained. The assured must disclose to the insurer before the contact is concluded every material circumstance which is known or ought to have been known to the assured in the ordinary course of his business. Any material fact represented to the insurer in the course of the negotiations for the contract must be correct. A material circumstance or representation is defined to be that which would influence the judgment of a prudent insurer in fixing the premium or in determining whether he would take the risk. If the assured fails to disclose material information or misrepresent a material fact, the insurer may avoid liability for losses under the policy though the loss may be caused by some circumstance entirely unrelated to the innocent non disclosure or misrepresentation.

3.3.3 A marine insurance policy may stipulate the value of the insured object as agreed upon by the parties. The value agreed upon in the policy, as between the insured and insurer, is conclusive of the actual or insurable value of the object. Alternatively the policy may not specify the value of the insured object thus leaving the insurable value to be

ascertained at the time of loss or damage. The conclusiveness of the agreed value as to the insurable value of the insured object provides a useful guide in the future as regards the indemnity payable in the event of a loss. In practice virtually all cargo and hull insurance are valued policies.

3.3.4 In international marine insurance practice the (London market-Lloyds of London) precedent in the S.G. Form accompanied with the desired Institute Clauses has gain prominence. The British marine insurance policy is based upon an ancient document called the "Lloyd's S.G. Form" adopted by Lloyds in 1779 and has virtually remain unchanged and incorporated in the First Schedule to the UK Marine Insurance Act, 1906. The Form may be used for hull and cargo insurance. In terms of details, the Form contains various provisions, by completing the appropriate blank spaces, the assured set forth a description of the parties, voyage, subject matter insured, name of vessel and master, duration of the risk, certain liberties in the routing of the voyage (touch and stay clause), value of the insured subject matter (Valuation clause) risk insured against (Perils clause), certain liberties of the assured and insurer to minimize the extent of casualties (sue and labour clause and the waiver clause), the promise by the insurer to insure the property (Binding clause), receipt of the premium (attestation clause), certain limitations in the payment of claims (memorandum clause). A typical peril clause in the Lloyds S.G. Form reads

> "Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter mart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality so ever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof.

The inability to alter this centuries old precedent has resulted in the need to attach lengthy amending clauses to the original policy form as a means of keeping pace with modern development of marine insurance. So many of such clauses are drafted under

the auspices of the Institute of London Underwriters (ILU) and are referred to as the "Institute Clauses".

Most hull insurances are underwritten on a time basis and thus usually subject to a standard set of clauses called the "Institute Time Clauses: Hull" in addition to the S.G Form. In the case of cargo Insurance, three standard options are prominent "Institute Cargo Clauses: F.P.A.(Free of Particular Average)" ; "Institute Cargo Clauses: W.A(With Average)" "Institute Cargo Clauses: A.R.(All Risks)". The various standard clauses spell out the details of the contract.

The Institute Clauses have caused some modernisation to the Lloyds S.G.Form. Even then, the entire policy document is still very complex and challenging to construct and interpret. In **Atlantic Maritime Co Incorporated v. Gibbon [1953] 2 Lloyd's Rep.294,CA,** it court stated

> The policy is…based upon…[the SG Form] to which numerous slips…have been added so that little indeed is left of the original foundation…I have no doubt that those engaged in this class of business find it convenient that their policies should take this form. But… the task of the Court in construing the resultant document or documents in certainly rendered more difficult. The very numerous cases to which we have been referred make it not, indeed easy, to contend that those entering into this class of business well understand the conventional accumulation of clauses which constitute the policy"

In **Panamanian Oriental Steamship Corporation v. Wright** [1971] 1 Lloyd's Rep 487 CA Justice Mocata solicited

> It is probably too late to make an effective plea that the traditional methods of insuring against ordinary marine risks and what are usually called war risks should be radically overhauled. The present method, certainly as regards war risk insurance, is tortuous and complex in the extreme. It cannot be beyond the wits of underwriters and those who advise them in this age of law reform to devise more straightforward and easily comprehended terms of cover.

Suggestions for reforms have been advanced to revise the standard clauses, update grammar, simplify the clauses and do away with antiquated terminologies. in the present form adopted in marine insurance contract. The complexity makes it difficult not only for the courts but for the parties as well, especially in developing countries

developing capacity and expertise in the marine insurance industry. Alterations to the SG Form have been resisted on the ground that it has been subject to such a large amount of litigation over the years that its meanings are now clear. It is feared that any improvements would initiate a flood of litigation to clarify the new wording.

3.3.5 At the end of the policy, the insurer must commit itself to be bound by the undertaking it has given. A marine policy must be signed by the insurer, where two or more insurers are parties, they must sign since each constitute separate contract unless the contrary is indicated.

SELF-ASSESSMENT EXERCISE
Outline the major steps you will take in the formation of a marine Insurance contract.

3.4 Summary

A marine insurance policy is expected to conform with the First Schedule to the Marine Insurance Act, 2004. In international marine insurance, the Lloyd's S.G. Form accompanied with Institute Clauses is prominently in use. The insurance policy shall contain details of the risk insured against and the premium payable. The contract of marine insurance is required in an insurance policy in the form as shown in the First Schedule to the M.I.A.

3.5 References/Further Readings/Web Sources

Prof D. Rhidian Thomas, The Modern Law of Marine Insurance, Volume Four, Informa Law from Routledge,New York, 2016.

3.6 Answers to Self-Assessment Exercises

a. Needs assessment- Determine whether it is a hull or cargo insurance?
b. Choose an insurance company with the capacity to take the risk.
c. Fill out the proposal form
d. Ensure the insurance policy is issued or at least a slip or memorandum evidencing the cover.
e. Have recourse to the form of the policy and ensure compliance with Schedule 1, Marine Insurance Act, 2004.
f. Pay the agreed premium.

MODULE 2 CONTRACTUAL TERMS

Unit 1: Conditions and Warranties

1.1 Introduction
1.2 Learning Outcomes
1.3 Conditions and Warranties
1.4 Summary
1.5 References for Further Reading/Web Sources

1.1 Introduction.

Contractual terms define the insurance relationship. These terms confer the status of assured and insurer and measure their rights and obligations. In negotiating an insurance contract, the parties make representations to each other of their expectations. These representations eventually filter into conditions and warranties that underlie the contract.

1.2 Learning Outcomes.

At the end of this unit, you should know that in marine insurance, condition and warranty determine the obligation of the parties to the contract. Furthermore, they are fundamental as the breach of either of them entitles the other to avoid the contract. There is a point of difference here between law of contract and marine insurance contract.

1.3 Conditions and Warranties.

1.3.1 The basis of the contractual relation is the terms settled by the parties. In the course of negotiating a marine insurance contract statements/representations are made of the expectations of the parties on the subject and terms of the risk to be covered. The statements form the basis of the contract and their correctness or otherwise may impact, enhance or hurt the contract. Representation is the information advanced by the assured to the insurer. The assured's answers to the various questions in the Proposal Form/slip and personal statements are representations, on the strength of which the insurer assesses the risk, compute premium and enter into the contract. If the representations are included in the insurance policy, they attain the status of a condition or warranty.

1.3.2 Where a representation is not correct, it amounts to a misrepresentation which may be innocent or fraudulent. In all cases, the insurance contract is avoidable at the instance of the party who is not at fault. What constitutes misrepresentation is a question of fact. Ordinarily, statement of belief or opinion does not amount to misrepresentation if the belief or opinion is sincerely held. Half truth may be accurate on the face of it and may be false when related to other relevant facts and could avoid an agreement on the ground of misrepresentation.

1.3.3 A stipulation in the contract can make the accuracy of a statement as condition for the validity of the policy. If the statement is shown to be inaccurate, it is a breach of the policy whether the fact is material or not. Insurers effect this by inserting what is known as "the basis of the contact clause". A typical example of this clause is as follows:

> ***"I declare that the particulars and statements made by me above are true and I agree that they shall be the basis of the contract between me and…"***

1.3.4 In law of contract, conditions and warranties are stipulations of distinct characters that create different rights and obligations. A condition is a fundamental term of the contract, the breach of which entitles the other party to rescind the contract and claim for damages. The breach of warranty entitles the other party to claim damages only and not to avoid the contract. In marine insurance, it is different. In **W & J Lane v. Spratt [1970]** 2 QB 480,486, Roskill J clarified the position thus

> "…it is well known, particularly in the field of marine insurance law, that the word "warranty" is often used when those who use it in truth mean a condition. I will therefore, define what I mean in this judgment by a 'condition' and a 'warranty'. By a condition I mean a contractual term of the policy, any breach of which by the assured will, in the event of a loss arising, otherwise payable under the policy afford underwriters a defence to any claim irrespective of whether there is a casual connection between a breach of the contractual term and loss. By 'warranty' I mean a contractual term of the policy a breach of which will not of itself afford a defense to underwriters unless there is a

necessary casual link between the breach and the loss which is the subject matter of the claim under the policy.

In the case of **Bank of Nova Scotia v Mutual War Risks Association (Bermuda)** Ltd [1991] 2 WLR 1279. The vessel "The Good Luck" was insured under a policy which contained, *interalia*, an express warranty prohibiting her from entering certain declared areas of such extreme danger that it was considered not accepted by the insurer that they should cover vessels entering them. In breach of the warranty, the vessel sailed into the Arabian Gulf and was struck by a missile which so badly damaged her that she became a constructive total loss. The question was whether the insurer was automatically discharged from liability by reason of the breach or whether it was required to take active steps to rescind the contract as it would have to under ordinary principles of the law of contract. Lord Goff held

> "…if a promissory warranty is not complied with, the insurer is discharged from liability as from the date of the breach of warranty, for the simple reason that fulfillment of the warranty is a condition precedent to the liability or further liability of the insurer"

1.3.5 The contract may insist on certain things as fundamental that the assured must comply with either before the occurrence of the insured risk or after a loss might have been sustained. The former is called "conditions precedent to liability" while the latter is called "conditions subsequent to liability". Conditions precedent to liability are things that the assured have to do before the policy comes into existence. If the condition is not complied with, then, there will be no cover for the loss. Conditions subsequent to liability are requirements to be fulfilled after the loss has occurred. Where they are not fulfilled the policy could be avoided. The onus of proof of breach of a condition precedent or subsequent to liability lies on the insurers.

1.3.6 Warranty is a charge by which the assured undertakes to do a particular thing or satisfy a particular condition or affirms or negates the existence of a particular state of facts. Warranties may relate to past or present facts (called affirmative warranties) or future conduct of the assured (called continuing /promissory warranties. Whereas

warranties are part of the written policy, mere representations without more, are outside of the written contract.

1.3.7 According to section 34, M.I.A a warranty means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done or that some conditions shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts. A warranty is a condition which shall be exactly complied with, whether it is material to the risk or not. If it is not so complied with, then subject to any express provision in the policy, the insurer shall be discharged from liability as from the date of breach of warranty, but without prejudice to any liability incurred by him before that date.

1.3.8 Whereby reason of a change of circumstance or where compliance with the warranty is rendered unlawful by subsequent law, non compliance with the warranty may be excused. Where a warranty is however broken, the fact that the breach has been remedied and the warranty subsequently complied with before loss shall be no defence to the assured unless the breach is waived by the insurer. In **Ocean Masters Inc v. AGF M.A.T (Alliance AGF MAT Ltd)** 2007 NLCA35, the plaintiff vessel *enroute* to recover its crab gear in the water 170 miles off the coast, caught fire and sank 40 miles off the coast of Newfoundland. The vessel had insurance policy wherein it was expressly stated that the vessel would be operated in compliance with its CSI certificate. The vessel's CSI certificate limited the vessel's operation to 120 miles off the coast. The trial judge held that the trip was illegal. Allowing the appeal the Court of Appeal for Newfoundland held that the trip was not illegal in its entirety but was only illegal during the time the vessel was beyond 120 miles. The court gave effect to clause of the policy which provided " if any breach of a clause or condition of insurance shall occur prior to a loss under this insurance, such breach shall not avoid the coverage… unless such breach shall exist at the time of such loss" With respect to implied warranty of legality, the court held that when the ship sank, it was not being operated illegally and therefore the warranty did not apply.

1.4 Summary.

The successful negotiation of the parties results in the contract. The agreed terms of the parties constitute the conditions and warranties of the insurance contract. Conditions and warranties in the contract constitute the charter of rights and obligations of the assured and the insurer in their contractual relationship. Conditions and warranties are fundamental terms and the core of marine insurance. These terms may be conditions precedent or conditions subsequent to liability. The warranties may be affirmative or promissory. The breach of conditions entitles the party who is not at fault to avoid the insurance. Unlike, the general law of contract, in marine insurance the breach of warranties gives the party who is not at fault the right to avoid the contract.

1.5 References/Further Readings/Web Source

1) **John Pratt v.Aigaion Insurance Co SA** [2008] EWHC 489 Admiralty.
2) R.H.Brown, Marine Insurance-The Principles (London,Witherby and Co.Ltd,1970) p.19.

MODULE 2 CONTRACTUAL TERMS

Unit 2: Implied Warranty

2.1 Introduction
2.2 Learning Outcomes
2.3 Implied Warranty
2.4 Summary
2.5 References for Further Reading/Web Sources

2.1 Introduction

Under the MI.A, some warranties are implied in the relationship of the assured and the insurer.

2.2 Learning Outcomes

At the end of this unit, you should know that the breach of certain unexpressed terms can impact on the contract because the law has implied these terms into the contract. Where the implied terms are not complied with the party who is not at fault can be discharged from any liability arising thereby.

2.3 Conditions and Warranties

2.3.1 By warranty the assured undertakes that some particular things shall or shall not be done or that some conditions shall be fulfilled or affirms or negates the existence of a particular state of facts. A Warranty may be expressed or implied. Whereas there are no implied warranties as to the nationality of a ship, or the sea worthiness of goods in the case of policy on goods, there is an implied warranty that the adventure insured against is a lawful one. Specifically, section 40, M.I.A. warrants the seaworthiness of ship in certain instances. According to this section

(1) In a voyage policy, there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purpose of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) *In a time policy there is no implied warranty that the ship shall be sea worthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.*

Where the registration of a vessel has expired, the vessel is not seaworthy-**Nimasa v. Hensmor Nig Ltd (**2015) 5 NWLR, 1452, p.278.

2.3.2 There is an implied condition in the case of voyage policy "at and from" or "from" a particular place, that the adventure shall be commenced within a reasonable time. If the adventure is not so commenced the insurer may avoid the contract unless the insurer waived the condition. Where the place of departure or destination is specified by the policy and the ship sails from or to any other place, the insurer shall be entitled to avoid the contract as the risk shall not attach. Unless otherwise provided for, when there is a change of voyage, the insurer is discharged from liability as from the time of change.

2.3.3 Where a ship in the course of a specifically designated voyage deviates or departs from the usual and customary course without lawful excuse, the insurer is discharged from liability as from the time of such deviation or departure. It is of no moment that the ship regained her route before any loss occurred. Unreasonable delay in prosecuting a voyage policy may discharge the insurer from liability.

2.3.4 Deviation or delay may be excused where such is excused in the policy; caused by circumstances beyond the control of the master of the ship or his employer; reasonably necessary to comply with an express or implied warranty; for the safety of the ship or

subject matter insured; for the purpose of saving human life or aiding a ship in distress where human life may be in danger; necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; caused by the barratious conduct of the master or crew, if such is one of the perils insured against. Where and when these exceptions cease, the ship shall resume her cause and prosecute her voyage with reasonable dispatch.

2.4 Summary

Warranties in marine insurances may be expressed by the parties or implied by law. The implied terms have legal consequences. Certain terms are implied into marine insurance. It is an implied term that the ship/goods shall be sea worthy and that the vessel keeps to its course. Unless otherwise indicated violation of the implied terms would enable the insurer to avoid the contract.

2.5 References/Further Readings/Web Source

1) Baris Soyer, Warranties in Marine Insurance, Cavendish Publishing Limited. Great Britain, 2001.
2) See Sections 43,44 and 45, Marine Insurance Act,2004.

MODULE 2 CONTRACTUAL TERMS

Unit 3: Excess and Average Clauses

3.1 Introduction
3.2 Learning Outcomes
3.3 Excess and Average Clauses
3.4 Summary
3.5 References for Further Reading/Web Sources
3.6 Answers to Self-Assessment Exercise

3.1 Introduction.

Excess Clause and Average Clause are recurring terms in marine insurance contract.

3.2 Learning Outcomes

At the end of this unit, you should know that liability for losses in marine insurance can be spread across the threshold of stakeholders by resort to 'Excess' and 'Average' clauses.

3.3 Excess and Average Clauses.

3.3.1 Excess is a set threshold for liability. A policy is stated to be subject to an excess when the assured is required to bear any loss up to a fixed amount himself. In this instance, he is an insurer to himself up to certain threshold. Thus, in the case of a policy subject to N50.000 excess, nothing is recoverable in respect of any loss below this figure.

3.3.2 Average as a term in marine insurance contract means loss or damage. General average is a loss falling generally on all interest involved in a maritime venture as distinguished from particular average or a loss falling on one particular interest. When a policy is made subject to average, the assured becomes his own insurer for the difference between the sum insured and the full value of the property at the time of the loss.

SELF-ASSESSMENT EXERCISES

1. In the formation of marine insurance, parties make……

   a) Promises
   b) Undertakings
   c) Representations
   d) Policies

2. The representation that parties make to each other take the form of

   a) conditions and warranties
   b) offer and acceptance
   c) Different policies.
   d) Agreement and contracts.

3. In marine insurance, all except ……..is correct.

   a) breach of conditions or warranties entitles the insurer to avoid the contract.
   b) The breach of conditions entitles the insured to seek for damages against the insurer.
   c) Breach of warranties like general law of contract does not confer the right to avoid the contract.
   d) Conditions and warranties do not need to accord with the form of policy in Schedule 1, Marine Insurance Act, 2004.

4. Under the Marine Insurance Act, 2004, unless the parties agree otherwise,

   a) It is implied warranty that the ship shall be sea worthy for the purpose of the particular adventure.
   b) It is implied that the ship shall be reasonably fit to encounter the ordinary perils of the port.
   c) It is implied that that the adventure insured against is a lawful one.
   d) All of the above.

5. In Marine Insurance a policy subject to an excess means that

   a) that the insured is his insurer in respect of any sum below the stated excess.
   b) the insurer shall not be liable whatsoever.
   c) the insurer shall be liable to compensate the insured howsoever arising.
   d) All of the above.

3.4 Summary.

The Excess and Average clauses in insurance are concerned with risk distribution. The Excess clause sets limit below which the assured bears his own risk. The Average clause which may be general or particular spreads the risk of a loss among stakeholders.

3.5 References/Further Readings.

1) R.H.Brown, Marine Insurance-The Principles (London,Witherby and Co.Ltd,1970) p.19.
2) Prof D. Rhidian Thomas, The Modern Law of Marine Insurance, Volume Four, Informa Law from Routledge, New York, 2016.

3.6 Answers to Self-Assessment Exercises

1) c.
2) a.
3) a.
4) d.
5) a.

MODULE 3 MARINE INSURANCE INTERMEDIARIES

Unit 1: Intermediaries

1.1 Introduction
1.2 Learning Outcomes
1.3 Intermediaries
1.4 Summary
1.5 References for Further Reading/Web Sources

1.1 Introduction

Marine insurance intermediaries facilitate marine insurance contracts. The marine insurance market is very complex. Experts with actuarial skills necessarily intermediate between stakeholders and the marine insurance market. They are crucial at both (demand and supply) ends of the insurance market.

1.2 Learning Outcomes

At the end of this unit, you should know who the intermediaries are and what role they play. You should also know that the engagement of intermediaries creates rights and obligations between the intermediaries and those for whom they act.

1.3 Intermediaries

1.3.1 Ship owners, mortgagees of vessel and cargo owners are the usual purchasers of marine insurance policies. The terms of the international contract may determine who is to place the policy. A C.I.F (cost, insurance freight) or F.O.B (free on board) may compel the consignee or consignor as the case may be to take out an insurance cover for the goods. The assured may approach the insurer directly or through an insurance intermediary. Insurance brokers, agents, loss adjusters etc are professionals in the industry and by the deployment of their expertise play very critical roles in the search, placement, calculation and satisfaction of obligations arising from insurance contracts. The acts of the intermediaries effectively creates contract between the insured and the insurer for which the intermediaries take no benefits.

1.3.2 Insurance Broker. According to Black's Law Dictionary, a insurance broker is a person who, for compensation, brings about or negotiates contracts of insurance as an agent for someone else, but not as an officer, salaried employee or licensed agent of an insurance company. The insurance broker is a very important professional intermediary in the insurance industry. He is the independent intermediary between the insurer and the assured and facilitates the placement of the cover and at a later date the settlement of claim, He is appointed by the assured and acting as his agent, gives professional advice on the nature of cover most suitable and obtain the best terms and conditions for the insured. He is entitled to broker's commission. The use of brokers is not obligatory under the law but because of the critical roles they play in the highly complex marine insurance market, brokers are almost indispensable at every stage of the insurance contract. National legislations ensure that they meet minimum standards of competence and financial responsibility. Under section 36 Insurance Act, 2003,

(1) No person shall transact business in Nigeria as an insurance broker unless he is duly registered under this Act.

(2) An application for registration as an insurance broker shall be made to the Commission [National Insurance Commission-NAICOM) in the prescribed form and accompanied by the prescribed fee and such other documents as may be prescribed from time to time.

(3) If the Commission is satisfied that the applicant-

(a) has the prescribed qualifications; and

(b) is a partnership or company with limited liability duly registered under the Companied and Allied Matters Act,1990, it shall register the applicant as an insurance broker by issuing the applicant with a certificate of registration.

(4) No firm or company shall be registered under this section unless each partner, chief executive and executive director is registered as an insurance broker by the Institute.

1.3.3 A person who transacts business as an insurance broker without having been registered commits an offence. (Section 36(8) Insurance Act, 2003). The registration is renewable every year. The brokerage firm or company is expected to maintain a

professional indemnity cover of not less than ten million or fifty percent of its annual brokerage income and maintain proper books of accounts.

1.3.4 Brokers are different from insurers' representative or agent who acts on behalf of the insurer and may engage in the marketing of insurance policies. To obtain cover at the Lloyds of London, Lloyds brokers must be used. Contracts of insurance are placed at Lloyds by a broker acting exclusively as agent for the assured. He prepares the slip to obtain the cover that the assured requires. He takes the slip in the first instance to an underwriter whom he has selected to deal with as leading underwriter; very often one with a reputation in the market as an expert in the kind of cover required and whose lead is likely to be followed by others in the market. If it is the first policy covering that risk in which a particular underwriter has acted as leading underwriter, the broker and the leading underwriter would go through the slip together, agree on any amendment and fix the premium. The leading underwriter initials the slip for his proportion of the cover and the broker then takes the initial slip round the market to other insurers who would initial it for such proportion of the cover as each is willing to accept. For practical purposes all the negotiations on the terms of the insurance and the rate of premium are carried out between the broker and the leading underwriter alone.

1.3.5 Where a policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium and the insurer is directly responsible to the assured for the amount payable in the event of a loss. The broker may have a lien on the policy for money due to him from the insured.

1.3.6 Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

1.3.7 Insurance Agent. It is not uncommon for an insurance company to appoint another to act on its behalf especially in helping to market its insurance products. No person shall transact business as an insurance agent unless he possesses a certificate of proficiency issued in the name of the individual applicant by the Chartered Insurance

Institute of Nigeria; is duly appointed by an insurer and licensed under the Act and registered by the Commission. An insurer who employs the services of insurance agents or anybody to act on its behalf shall maintain a register of their details.

1.3.8 Where the policy is effected for the assured by an agent, the agent shall disclosed to the insurer every material circumstance which is known to him and shall be deemed to know every circumstance which in the ordinary course of business he ought to know or to have been communicated to him unless such circumstance came to the knowledge of the assured too late to be communicated to the agent (Marine Insurance Act, 2004, section 21). Every material representation made by the agent acting on behalf of the assured during negotiation and before the contract is concluded shall be true. The insurer shall be entitled to avoid the contract if they are otherwise (Marine Insurance Act, 2004, section 22(1)).

1.3.9 Loss adjusters work for the insurance companies and their interests while loss assessors work for the policy holder. A loss adjuster is a claims specialist appointed by an insurance company to investigate a contentious claim it is called upon to pay. They are expected to establish the cause of a loss and to determine whether it is covered by the policy. They may visit the site of the loss to gather evidence and assess damage and possibly discredit and dispute the claim to secure the lowest possible settlement if the claim cannot be avoided. The loss assessors on the other hand are appointed by the assured to help manage his claim under the insurance policy. With their expertise, they help with preparing and presenting successful claim on behalf of their client.

1.4 Summary

The intermediaries facilitate the contract between the insurer and the assured who are the primary parties to the marine insurance contract. They perform distinct but complementary roles. Generally, the insurance broker acts for and on behalf of the assured. The insurance agent on the other hand is engaged by the insurance company and helps the company market its products. The loss adjusters and loss assessors act for and on behalf of their insurer and the assured respective at the point of settlement of claims.

1.5 References/Further Readings/Web Sources

1) Miao Li, Marine Insurance Broker's Duties and Liabilities, University of Southampton, 2012.
2) Bryan A. Garner (2004) Black's Law Dictionary, Thomson West, 8th Edn, p.206
3) **American Airlines Inc v.Hope**[1974]2 Lloyds Rep.301,30
4) The National Insurance Commission is established by the National Insurance Commission Act, LFN, 2004
5) Chartered Insurance Institute of Nigeria is established by the Charted Insurance Institute of Nigeria Act, CAP C11, Laws of the Federation of Nigeria, 2004-charged with the general duty of determining the standards of knowledge and skills to be attained by persons seeking to become registered members of the insurance profession in Nigeria and reviewing those standards from time to time as circumstances may permit.

MODULE 3 MARINE INSURANCE INTERMEDIARIES

Unit 2: Obligations and Rights of Intermediaries

2.1 Introduction
2.2 Learning Outcomes
2.3 Obligations and Rights of Intermediaries
2.4 Summary
2.5 References for Further Reading/Web Sources
2.6 Answers to Self-Assessment Exercises

2.1 Introduction.

The relationship between the intermediaries and those for whom they act is a legal one creating obligations for the parties.

2.2 Learning Outcomes.

At the end of this unit, you should know the obligations and rights of insurance brokers and agents. This should enable you advise the parties accordingly.

2.3 Obligations and Rights of Intermediaries

2.3.1 The relationship between the intermediaries and the insured or assured is sown in trust and confidence. It is a fiduciary relationship with ascribed rights and obligations. Unless otherwise expressly stated the legal relationship between the broker and the insured or between the insurance agent and the insurer is that of principal and agent. The position of principal and agent gives rise to particular and onerous duties on the part of the agent. The high standards of conduct require from him springs from the fiduciary relationship between his employer and himself. His position is confidential[1]. His duties are many. The insurance broker as an agent is bound to perform the task for which he as engaged. If for whatever cause he is unable to execute his mandate, he must promptly inform his employer. In executing his mandate, the agent is duty bond

[1] Aberdeen Railway corporation v. Blaikee brothers (1854)1MARQ 461.

to obey all lawful instruction from his principal. The principal's instruction is however subject to the custom and usages of the insurance industry. In **ROBINSON v MOLLETT** (1875) LR 7 HL,802 Classy B, stated

> "…By employing a broker who acts upon a particular market, you authorized him to make contracts upon all such terms as are usual upon the market, otherwise his hands would be tied and he might not be able to contract at all. Therefore, as regards all such matters as the time, and mode of payment, the time and mode of delivery, the various allowances to be made, the mode of adjusting disputes as to quality, and all such matters as arise upon the contract made in the market, the principal would be bound by the usage…"

2.3.2 The agent owes his employer the duty of care and skill. An agent is bound to exhibit reasonable care, skill and judgment in executing his agency. He must bring to bear on his task that qualification and finesse required which he possesses to bring his task to fruition. What constitutes proper care and skill will differ from case to case. Whatever care is used or skill employed must be for the best interest of the principal ultimately. As a professional insurance agent holding himself out as possessing a professional qualification, he must exhibit such care, skill and diligence as is usual, customary or necessary for the proper conduct of the insurance business in which he is employed.

2.3.3 The fiduciary character of the relationship requires the agent to perform his duties personally. He cannot delegate the performance of his duties as an agent in a manner that will amount to abdication of his responsibilities. According to Thesinger LJ in **DEBUSHE v ALT** [1878]8 Ch.D 286,310;

> As a general rule, no doubt, the maxim *delegatus non potest delegare* applies so as to prevent an agent from establishing the relationship of principal and agent between his own principal and a third party; but this maxim when analysed merely imports that an agent cannot without authority from his principal, devolve upon another obligations to the principal which he had himself undertaken to personally fulfill; and that, in as much as confidence in the particular person employed is at the root of the contract of agency, such an authority cannot be implied as an ordinary incidence in the contract.

A broker or an insurance agent cannot, without the authority of the insured or insurer as the case may be, delegate his duties to his employer.

2.3.4 The agent is duty bound in the discharge of his duties to act in good faith. He must avoid any situation of conflict between his personal interest and the interest of his principal; in this case the insured or insurer. He must not be in a position to be swayed by his interest rather than his duties to this employer. Flowing from the duty of confidentiality, the agent cannot make any secret profit or derive any benefit from his position in excess of his agreed commission or remuneration. The agent cannot take a bribe or secret commission in the form of cash payment, discount or bonuses while executing his task.

2.3.5 The agent is duty bound to keep and render proper and accurate account of all transactions entered into on behalf of his principal. He is bound to render account of all monies and properties received on behalf of the principal. In the event of breach of this duty, the agent can be compelled to account.

2.3.6 The agent on his part is entitled to his remuneration as agreed upon between himself and the principal. This remuneration may take the form of commission, wages, allowances, fees or salary. The agent must have earned the remuneration. He must be the direct, immediate and effective cause of the event upon the occurrence of which the principal has agreed to pay the agent the remuneration. He must fulfill the conditions, if any upon which the remuneration accrues.

2.3.7 The agent is entitled to be indemnified for all liabilities and expenses incurred in the execution of his duties. He could exercise a right of lien or set off or by a separate action to enforce this duty on the principal. The actions occasioning the liabilities must expressly or impliedly fall within the agent's authority.

2.3.8 Primarily, the principal is liable to third parties for contracts entered into on his behalf by his agent. This to a large extent is decided by the fact that the agent acted within the scope of his authority and whether the principal is named, disclosed or

undisclosed in the contract. The rational for this is simply that " the principal put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in"

SELF-ASSESSMENT EXERCISE

What rights do you have against your insurance broker and what obligations owed him in a marine insurance contract?

2.4 Summary

The relationship between the parties is essentially that of principal and agent. The agent (broker/insurance agent) is under a duty to perform his contract, obey lawful instruction of his employer, personally perform his contract, act with care and skill, loyalty and good faith and duty to account. In turn they have rights to remunerations, reimbursements.

2.5 References/Further Readings/Web Source

1) Aberdeen Railway corporation v. Blaikee brothers (1854)1MARQ 461.
2) Otto Hamman v. Sebanjo Anor(1962)2 All NLR,139
3) Omatayo v Ojikutu [1961] 1 All NLR 901
4) Spiropolous Co. Ltd v. Nigeria Rubber Co. Ltd (1970) NCLR 94
5) McPherson v. Watt (1877) 3 AC 254.
6) Barwick v. English Joint Stock Bank (1867) L.R.2 EXCH.259

2.6 Answers to Self-Assessment Exercise

Insured's rights.

a. Duty of performance
b. Duty of obedience.
c. Care and skill
d. Loyalty and good faith

Broker's/Agent's Rights

a. Remuneration
b. Indemnify for incurred expenses.
c. Enabling environment to execute agency.

MODULE 4 ASSIGNMENT OF MARINE INSURANCE POLICY

Unit 1: Assignment of Marine Insurance Policy

1.1 Introduction
1.2 Learning Outcomes
1.3 Assignment of Marine Insurance Policy
1.4 Summary
1.5 References for Further Reading/Web Sources
1.6 Answers to Self-Assessment Exercise

1.1 Introduction.

Marine Insurance Policy is an asset and can be transferred. The essence of this transfer is to enable a third party who was not privy to the formation of the contract acquire rights and obligations under the policy.

1.2 Learning Outcomes.

At the end of this unit, you should understand that the marine insurance policy is an asset, like all private properties, can be transferred through a legal process called assignment. This enable the assignee assume the rights of the assured under the policy.

1.3 Assignment of Marine Insurance Policy.

1.3.1 The insured has proprietary interest in the policy of cover and like all estates can freely transfer his interest in the policy through the process of assignment. Assignment of policy of insurance means transferring the policy by the assured who is called the "assignor" to a third party called the "assignee" so as to enable the assignee to enforce the policy in his own name.

1.3.2 A policy of insurance is a personal contract and does not run with the subject matter of the insurance. If a vessel on which a policy of insurance exists is sold, the sale does not automatically transfer the policy to the buyer unless the policy itself is specifically

assigned to the buyer. In the absence of some special agreement, the transferee cannot call upon the insurer to indemnity him under the policy.

1.3.3 For there to be a valid assignment, the consent of the insurer must be obtained and the assignment of the policy must be contemporaneous with the assignment of the subject matter. The policy may contain express prohibition against assignment unless with the consent of the insurer in which case the insurer has the discretion to give or to withhold consent; unless the discretion of the insurer is qualified to the effect that its consent shall not be unreasonably withheld. Where consent is required, an assignment without consent renders the policy avoidable at the instance of the insurer. By giving consent the insurer is estopped from denying the validity of the policy. As a matter of fact most policies usually contain express provision against assignments.

1.3.4 The assignment of the policy must be made at the same time as the assignment of the subject matter, or in pursuance of an agreement which is cotemporaneous with the subject matter of the policy. The assignee does not acquire the benefit of the insurance cover until the actual transfer of the subject matter. According to section 51 Marine Insurance Act,

(1) A marine policy shall be assignable unless it contains terms expressly prohibiting assignment, and a marine policy may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy shall be entitled to sue thereon in his own name; and the defendant shall be entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

The process of assignment enables a new party to succeed to the rights and obligations of the parties particularly the insured.

SELF-ASSESSMENT EXERCISE

How would you transfer the interest in a marine insurance to another person?

1.4 Summary

A third party can acquire title to a marine insurance policy if it is transferred to him through the process of assignment. Unless prohibited under the policy, a marine insurance is assignable. The assignment of a marine insurance policy must be in accordance with the provisions of the law.

1.5 References/Further Readings/Web Source

1) Vijayalakshmi Venugopal, "Assignment in Insurance Law" [2002]29 Journal of Malaysian and Comparative Law,19

1.6 Answers to Self-Assessment Exercise

This is through the process of assignment. Ensure that the policy has a clause on the right of the insured to assign. Where consent of the insurer or notice to the insurer is a condition precedent, such consent must be sought before assignment or notice given before the assignment. The assignment may be before or after the loss.

MODULE 5 OBLIGATIONS OF PARTIES TO MARINE INSURANCE CONTRACTS

Unit 1: Rights of the Assured

1.1 Introduction
1.2 Learning Outcomes
1.3 Rights of the Assured
1.4 Summary
1.5 References for Further Reading/Web Sources

1.1 Introduction.

The relationship of assured and insurer creates obligations for both parties. In so many of the instances, the obligations of one constitute the rights of the other. Parties are contractually obligated to each other under the policy. The obligations of the insurer are the rights of the assured under the contract.

1.2 Learning Outcomes.

At the end of this unit, you should know what rights the assured can assert under a marine insurance. The rights of the assured have their foundation in the contract and the law of marine insurance.

1.3 Rights of the Assured

1.3.1 Insurance policy

The insured has a right to an insurance cover against the risk insured against. Once the insured's proposal is accepted, a contract of marine insurance comes into place and the insured is entitled *ex debito justicea* to the protection contemplated by the contract. The insurer is under a duty to issue the policy or a slip or memorandum evidencing it.

1.3.2 Indemnity

In the event of a loss or damage as contemplated by the contract, the insured is entitled to be indemnified as settled in the contract. The quantum of indemnity would depend

on the nature of the loss which may be a partial or total loss and whether the policy is a valued one or unvalued policy.

1.3.3 Return of premium.

The assured, in certain situations may be entitled to the refund of his premium as prescribed under section 83-85, Marine Insurance Act, 2004. The circumstances include:

a) Where the premium or proportionate part of it is declared by the Act or the Insurance Policy returnable.
b) Where the assured has not been put at risk and consequently there has been a total failure of consideration.
c) Where the assured and the insurer laboured under a common mistake that the subject of insurance was in existence at the time of the contract of insurance where as this is not so.
d) Where the contract of insurance is repudiated or avoided by the insurer for a breach of warranty. Such a breach of warranty may occur before the completion of the contract, or after the completion of the contract but before loss is incurred.
e) Where the contract of insurance is avoided either by the insurer or the assured on ground of innocent misrepresentation or non-disclosure not amounting to fraud.
f) Where the policy of insurance is not valid because of absence of insurable interest.

1.4 Summary

The relationship is contractual and the insurer has obligations which it must discharge to the assured. The insurer is duty bound to issue the insurance policy, indemnify the assured when and if the event insured against occurs and where there is total failure of consideration refund the premium which the assured paid under the contract.

1.5 References/Further Readings/Web Sources

1) Prof D. Rhidian Thomas, The Modern Law of Marine Insurance, Volume Four, Informa Law from Routledge,New York, 2016.

MODULE 5 OBLIGATIONS OF PARTIES TO MARINE INSURANCE CONTRACTS

Unit 2: Rights of the Insurer

2.1 Introduction
2.2 Learning Outcomes
2.3 Rights of the Insurer
2.4 Summary
2.5 References for Further Reading/Web Sources
2.6 Answers to Self-Assessment Exercise

2.1 Introduction.

The obligations of the insured are the rights of the insurer under the contract.

2.2 Learning Outcomes.

At the end of this unit, you should know what rights the insurer can assert under a marine insurance.

2.3 Rights of the Insurer

3.1. Premium. The duty of the assured or his agent to pay the premium and the duty to issue the policy to the assured or his agent are concurrent conditions and the insurer shall not be bound to issue the policy until payment or tender of premium (Section 53 Marine Insurance Act, 2004).

3.2. Disclosure-The insured is duty bound to disclose to the insurer before the contract is concluded every material circumstance which is known to the insured or deemed to be known to him (Section 20 and 21 Marine Insurance Act,2004). Where the insurance is effected by a broker on behalf of the insured, the broker is duty bound to disclose to the insurer every material circumstance which is known or deemed to be known to the agent by the ordinary course of business.

3.3. Subrogation In the case of total loss and the insurer pays for the total loss, he becomes entitled to take over the interest of the insured in whatever may remain of the subject matter under the salvage principle. In the case of partial loss, the insurer

acquires no title to the subject matter insured but subrogated to all rights and remedies of the insured against third parties who may be liable to the insured (Section 80, Marine Insurance Act,2004).

3.4. Contribution-Where the assured is over insured by double insurance, each insurer shall be bound, as between himself and the other insurers to contribute rateably to the loss in proportion to the amount for which he is liable under the contract. If any insurer pays more than his proportion of the loss, he shall be entitled to maintain an action for contribution against the other insurers, and be entitled to the like remedies as a surety who has paid more than the proportion of his debt (Section 81, Marine Insurance Act, 2004).

3.5. Salvage- In the case of total loss and the insurer pays for the total loss, he becomes entitled to take over the interest of the insured in whatever may remain of the subject matter under the salvage principle.

3.6. Right to avoid. Where the insured failed to disclosed a material circumstance in the formation of a contract, the insurer has a right to avoid the contract (Section 20, Marine Insurance Act,2004). Every material representation made by the assured or his agent to the insurer during the negotiation for the contract and before the contract is concluded shall be true; and if untrue the insurer can avoid the contract (Section 22 Marine Insurance Act, 2004).

3.7. According to section 87, Marine Insurance Act, 2004, where any right, duty, liability would arise under a contract of marine insurance by implication of law; it may be negative or varied by express agreement or by usage, if the usage is such as to bind both parties to the contract.

SELF-ASSESSMENT EXERCISE

Mention the rights of parties to a marine insurance contract.

2.4 Summary.

The relationship is contractual and the assured has obligations which it must discharge to the insurer. The insurer is entitled to be paid the premium for the coverage, disclosure of material

facts on the risk insured, right of subrogation to the rights of the insured and contribution where a risk has occurred and have been paid for and to what is left of the subject matter of the insurance under the salvage principle. The insurer has a right to avoid the contract where there is non-disclosure of material circumstances on the subject matter of the insurance.

2.5 References/Further Readings.

1) Prof D. Rhidian Thomas, The Modern Law of Marine Insurance, Volume Four, Informa Law from Routledge,New York, 2016.

2.6 Answers to Self-Assessment Exercise.

The insured is entitle to

a. Coverage under the insurance policy
b. Indemnity.
c. Return of premium where there is failure of consideration

The Insurer is entitled to

a. Premium.
b. Disclosure of every material circumstance of the risk.
c. Subrogation.
d. Contribution.
e. Salvage.
f. Right to avoid the contract.

MODULE 6 SETTLEMENT OF MARINE INSURANCE CONTRACTS

Unit 1: Preliminary Issues

1.1 Introduction
1.2 Learning Outcomes
1.3 Rights of the Insurer
1.4 Summary
1.5 References for Further Reading/Web Sources

1.1 Introduction.

In the event of a loss or damage, necessary steps are taken to ensure that the assured is indemnified. This is the essence of the insurance relationship. The need to determine the cause of loss or damage and to serve notice to the insurer is important steps towards settlement of claims.

1.2 Learning Outcomes

At the end of this unit, you should know the preliminary considerations towards recovery of claims or indemnity under the marine insurance contract. These preliminary issues can be the reason for the successful recovery or otherwise under the policy.

1.3 Preliminary Issues

1.3.1 The relationship between the insured and the subject matter of the insurance must be sufficiently close to justified his being paid in the event of its loss or damage. It shall be the duty of the assured and his agents, in all cases to take such measures as may be reasonable for the purpose of averting or minimizing a loss. The insurer is liable for any loss proximately caused by the peril insured against-*causa proxima non remota spectator*. By section 56(1), Marine Insurance Act, 2004, the insurer shall be liable for any loss proximately caused by a peril insured against. He shall not be liable for any loss which is not proximately caused by a peril insured against.

1.3.2 If and when a loss or damage insured against occurs, the assured will usually request a broker to proceed with the mechanics of the settlement. For complex cargo loss claim and for most hull claims, the broker submits the claim to an average adjuster who calculates or adjusts the claim according to his professional expertise and in an impartial manner. The claim will then be submitted to the claims adjuster of the insurer who has the responsibility of determining whether the insurer has any liability under the policy to pay the claim or adjust the claim himself if it has not already been adjusted. If it has, he will review the adjustment to see if everything is in order and gives his approval to settlement of the claim by payment. Upon payment of an indemnity to the assured under the policy, the insurer is subrogated to any claims the assured may have against any third party who may have caused the loss. This will be in the nature of proceedings for compensation or recovery in the name of the assured against third parties.

1.3.3 Where a vessel is damaged and such is within the contemplation of the policy, the choice of where to repair is an important factor because the standard used to determine liability is reasonable cost of repair. In international marine insurance Clause 19, Institute Time Clauses: Hull empowers insurer to veto the ship-owners choice of repair yard and to take their own tender or require further tenders to be taken for such repair work.

1.3.4 Insurance policies placed directly with a foreign insurer may be faced with the challenge of conflict of laws as it relates to the issue of jurisdiction in the event of disputation. If the foreign insurer has presence within jurisdiction where the insured is, litigation may well be commenced within jurisdiction. Where the insurance was effected abroad through a broker, the assured may be compelled to institute legal action in that foreign country which could be complex and costly for the assured. In such instances the assured may concede to a compromise settlement, regardless of the legitimacy of his claim. Careful consideration must be given to the inclusion of a satisfactory jurisdiction clause in international marine insurance placement. An “agreement to be bound” clause in favour of a designated insurer in the case of co-

insurance arrangement would lighten the burden for the assured where the co-insurers are in different jurisdictions apart from the assured.

1.4 Summary

Where the event insured against occurs, the obligations of the insurer crystalises after the insured has taken the appropriate steps. If the loss or damage insured against is the proximate cause of the peril, the insured must put the insurer on notice and request the insurer to make good his undertaken.

1.5 References/Further Readings.

1) The Moonacre (1992) 2 Lloyds Rep 501.
2) Marine Insurance Act,2004, section 79(4)
3) The Leyland Case (1918) AC 350.

MODULE 6 SETTLEMENT OF MARINE INSURANCE CONTRACTS

Unit 2: Measure of Indemnity

2.1 Introduction
2.2 Learning Outcomes
2.3 Measure of Indemnity
2.4 Summary
2.5 References for Further Reading/Web Sources

2.1 Introduction.

When the liability of the insurer is established, the next important concern is the quantum of recovery by the assured. The measure of indemnity depends on the benchmark set by the Marine Insurance Act.

2.2 Learning Outcomes

This unit enables you to see the relationship between the kind of insurance policy taken and the extent of recovery in the event of a loss.

2.3 Measure of Indemnity.

2.3.1 The measure of indemnity is the sum which the assured can recover in respect of a loss on a policy by which he is insured (Section 68, Marine Insurance Act, 2004). The loss may be total or partial loss. Total loss may be actual total loss (i.e. sunk or missing ship) or constructive total loss (i.e. reasonable abandonment following the occurrence of the risk insured against which renders the vessel beyond economic repair and for which the insured has given notice to the insurer. Sections 56-64 Marine Insurance Act, 2004 set out the rules on construction of loss and abandonment.

2.3.2 Partial loss may be particular average loss or general average loss. Particular average is one caused by a peril insured against. A general average loss is one caused by or directly consequential on a general average act and includes a general average expenditure as well as a general average sacrifice. There is a general average act where

an extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperil in the common adventure. Where there is a general average loss, the party on whom it falls shall be entitled to a rateable contribution, called a general average contribution from the other parties interested. Where the insured has incurred a general average expenditure or sacrifice he may nonetheless recover from the insurer in respect of the expenditure or sacrifice without enforcing his right of contribution against the other parties. Where the assured has paid or is liable for any general average contribution, the measure of indemnity is the full amount of such contribution if the subject matter is insured for its full contributory value (Section 74, Marine insurance Act, 2004). In the absence of express stipulation, the insurer shall not be liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding or in connection with the avoidance of a peril insured against (Section 67 Marine Insurance Act, 2004).

2.3.3 The extent of insurers' liability for loss in the case of unvalued policy is the full extent of the insurable value. For valued policy, the insured can recover to the full extent of the valued fixed by the policy. In the case of a total loss for a valued policy, the measure of indemnity is the sum fixed by the policy. In the case of unvalued policy, the measure of indemnity is the insurable value of the subject matter insured (Section 69, Marine Insurance Act, 2004).

2.3.4 For partial loss of ship, the reasonable cost of repairs less the customary deductions but not exceeding the sum insured in respect of any one casualty; the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage (Section 70 Marine Insurance Act, 2004). For partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the insured bears to the whole freight at the risk of the insured under the policy. Where the assured has effected an insurance against liabilities to third parties, the measure of indemnity is the amount paid or payable by the insured to the third party

(Sections 71,72, & 75, Marine Insurance Act, 2004). In **Goole and Hull Steam Towing Co. Ltd v Ocean Marine Insurance Co.** [1927] 29 LIL Rep 242, McKinnon noted that "the real question in the case is what is the measure of indemnity that, by the convention of the bargain, has been promised to the assured? That may in some cases be less than an ideal pecuniary indemnity, in some cases it may be more"

2.4 Summary.

Once the peril is covered by the marine insurance policy, the obligation of the insurer to indemnify the assured crystallizes. Partial or total loss, valued or unvalued policy will determine whether the measure of indemnity will be the value insured against or the insurable value of the subject matter lost or damaged.

2.5 References/Further Readings/Web Sources

1) Berkeley v Preserve (1801) 1 East 220

MODULE 6 SETTLEMENT OF MARINE INSURANCE CONTRACTS

Unit 3: Excluded Losses

3.1 Introduction
3.2 Learning Outcomes
3.3 Excluded losses
3.4 Summary
3.5 References for Further Reading/Web Sources
3.6 Answers to Self-Assessment Exercise

3.1 Introduction

Certain losses are ordinarily outside the coverage of marine insurance contract.

3.2 Learning Outcomes.

At the end of this unit, you should know that the Marine Insurance Act 2004 ordinarily excluded certain losses from the realm of the insurer's liability.

3.3 Excluded Losses

3.1. Risks that fall outside the policy are excluded losses. In **Midnight Marine Limited v. Aviva Insurance Company of Canada** 2019 NLSC 228, the company was engaged in a transport of scrap metal in the Caribbean rolled in rough sea causing a material handler to fall off the barge. The ship had in 2005 and renewed in 2006 a commercial general liability insurance policy which excluded losses beyond the territorial limit of Canada and continental USA and an exclusion of coverage while the material handler was waterborne. The plaintiff's claim for the material handler was denied by the insurer as the loss fell within the exclusion. The court held that the insurer did not have to indemnify the assured for loss as the loss fell within the exclusions in the policy.

In **Haryet v. Lloyd's Canada** 2015 ONSC 853 the insured crash his motor boat into a dock killing himself and injury a passenger. At the time, the insured had a

blood/alcohol level of more than 3 times the legal limit. The injured passenger sued the insured's estate and the estate sought defence and indemnity coverage from the insurer. The insurer refused on the grounds that the policy contained no "duty to defend" clause and that there was no coverage for illegal operation of the vessel. With respect to the duty to indemnify, the policy provided that the insurer shall be liable if the vessel was operated illegally. It is an offence under the criminal code to operate a vessel with a blood/alcohol level of more than 0.08. The insured's blood/alcohol level was well above that that limit. The Ontario Supreme court held that a liability insurer had no duty to defend its insured's when the policy contains no such contractual obligation and no duty to indemnify when the injured was driving the vessel under the influence of alcohol and therefore illegal.

3.2. The English Marine Insurance Act 1906 provides the framework in relation to excluded and included losses. The principle of proximate cause is applied to determine the liability of the insurer. The Act states that there are certain situations in which the insurer is not liable for the loss which has been insured against. But if the loss occurred due to proximate cause, and the willful negligence of the assured also contributed in happening of the loss, the insurer will be liable.

3.3. Unless otherwise provided for in the policy, losses occasion by willful misconduct of the assured, loss proximately caused by delay, ordinary wear and tear, leakage and breakage, inherent vice and nature of the subject matter covered by the policy, loss proximately caused by rats or vermin, injury to machinery not proximately caused by maritime perils are excluded losses for which the insurer bears no responsibility.

3.4. In the case of cargo insurance, risk of loss or damage caused by delay, inherent vice or the nature of the subject matter insured are excluded. Risk of loss or damage is used in a technical sense to exclude inevitable losses which occur in the shipment of certain types of commodities such as percentage loss of weight or volume with grains or fluid; what are called normal transit losses or damages.

SELF-ASSESSMENT EXERCISES

What steps would you take to recover under a marine insurance contract?

3.4 Summary.

The insurer does not bear any responsibility for the losses excluded under the Marine Insurance Act, 2004. Section 56 (2) Marine Insurance Act,2004 ordinarily excluded losses caused by willful misconduct of the assured, delay, wear and tear, nature of the subject matter, rats or vermin unless the policy state otherwise.

3.5 References/Further Readings

1) Robert H. Brown, Witherby Encyclopedic Dictionary of Marine Insurance: Insurance Terms and Clauses, Dictionary of Marine, 2003, Witherby & Co. Ltd, ISBN 978-1856092227
2) Rose F.D. Marine Insurance Law and Practice, Lloyd's of London Press. London,2004.
3) Reference Book of Marine Insurance Clauses, 69th ed, Witherby & CO. Ltd., London, 1997.
4) http://www.bmla.org.uk.
5) http://www.1malloyds.com

3.6 Answers to Self-Assessment Exercise.

a. Determine the proximate cause of the loss.
b. Ensure that the insured has insurable interest in the subject matter of the loss.
c. Determine the nature of loss (partial or total loss)
d. Be mindful of the kind of policy.
e. Serve notice of the loss.
f. Engage with the provisions of section 56-64 Marine insurance Act,2004 on the measure of indemnity.