JUS5450/JUR1450 Marine insurance, Exam Spring 2016
Guiding lines for the evaluation

Some general comments on the student group, the course and the material

The course in marine insurance is not an ordinary elective course at the faculty. It is introduced to be included in the master programme Master of International Maritime Law at the Scandinavian institute of maritime law. In addition, the course is open to other students, also on bachelor level. This means that the group of students taking this course differs from the ordinary student group in elective courses in several aspects:

1. Several of the students do not have a legal background and therefore are not familiar with Norwegian or Scandinavian legal method. The master program is open for candidates with a bachelor degree or similar education in law or other areas. This means that there are clear methodological challenges to be met during the course, and that the expectations in relation to legal method on the exam cannot be too strict.

2. The students with legal background from other countries, even other Scandinavian countries, are not familiar with our way of doing exams. This is particularly true for the maritime law students from outside Scandinavia, but even within Scandinavia the way of examination differ. Many of the students will be used to shorter questions and less independent writing.

3. Several of the students have difficulties with the English language.

These problems has to be taken into consideration when setting the level of the grades.

On the other hand, this group of students is generally hard working and extremely motivated. This should also be taken into consideration. Even if the attitude here is that we shall not follow a "normalfordelingskurve" in the strict sense, it would seem appropriate that at least 10 % of the students and may be even 15 % should be given an A. In the previous examination of marine insurance we therefore operated with less strict requirements than we do with an ordinary group of Norwegian legal students. We have also practised that we do not lower the result due to weak language qualifications unless bad language render the meaning unclear.

Part I. Master and Bachelor level

Question 1: Can AS Insurance deny the claim due to breach of safety regulations:

a) *Is there a breach of safety regulations?*
b) *Presuming there is a breach of safety regulations, may AS Insurance invoke the breach?*
c) *Presuming AS Insurance may invoke breach of safety regulations, may this breach be invoked against the owner/assured?*

Safety regulations are regulated in the NP Cl. 3-22 and 3-25. The regulation is a central part both of the mandatory reading (Wilhelmsen/Bull, Handbook in hull insurance, or Handbook) and in the lectures. It must be required that the candidates manage to identify the relevant regulation.

Question a) is regulated in 3-22. It must be required that the candidates sees that the relevant alternative is "measures for the prevention of loss, issued by public authorities", and also that duty to establish, implement and maintain a safety management system is a safety regulation according to the ISM Code as implemented in the Norwegian Ship Safety Act, cf. Handbook p. 172-173. It must be accepted that they only refer to the ISM Code, but as a starting point this is not binding for the assured unless it is incorporated in the legislation of the flag state or rules of the classification society. As the point that the regulation must be binding for the assured to constitute a safety regulation he has to comply with is not emphasized in the book, the candidate cannot be expected to see this.

The main problem is whether the ISM Code as a safety regulation includes the individual assureds procedures/guiding-lines/policies etc, in this instance the procedures to prevent fire. A good candidate starts this discussion with the wording: What is issued by public authorities is a requirement to establish the system; the procedures are strictly speaking issued by the assured. On the other hand, it may be argued that the procedures must be seen as part of the system requirement. According to Handbook p. 173 it is the "development of the safety arrangement per se which constitutes the safety requirement, and not the individual provision". A candidate that refers to the Commentary where this is also stated must be given a plus, but the Handbook does not refer to the Commentary.

This issue was discussed in the 2016 amendment of the Plan, and the 2016 Commentaries contain an extensive discussion on this. The conclusion however, is the same as the previous solutions. The discussion was mentioned in the lectures,

and a candidate referring to the new Commentary must get credit for this. However, this knowledge cannot be required.

Depending on the argumentation both solutions must be accepted. For bachelor candidates one must require less of the methodic aspect of the argumentation.

Letter b)

This question concerns the insurers' right to invoke a sanction against the breach of a safety regulation. The presumption is that the procedures constitute safety regulations according to Cl. 3-25, and that these are breached. The candidate must be expected to see that the relevant provision is NP Cl. 3-25, and that the question includes to issues: negligence and causation.

Handbook p. 173 refers to the previous wording of 3-25 (1) stating that the assured must be responsible for the breach. It is however also stated that this refers to a requirement of negligence, and such requirement is expressly stated in 3-25 in the new wording ("through negligence"). In the exam text the assured claims that "the conditions to invoke such breach were not satisfied", but does not say anything about negligence or why there is no negligence. Neither does AS Insurance spell this out. The candidates must therefore define this issue on their own, and also the arguments that are relevant. One cannot expect much of this discussion, but if the candidates see the risk for fire inherent in the use of heat and that the procedures could easily be complied with this should be given credit. The conclusion will depend on the discussion, but it is natural to conclude with negligence here.

Causation is treated in Handbook p. 175-177. Similar to the issue of causation, there is little in the exam text to help the candidates. A good candidate points out that as the procedures are meant to prevent fire, a breach of them will rise the risk for such fire, but that this is not sufficient to establish factual causation. Further, the exam states that "The investigation however did not conclude whether the fire could have been prevented or reduced if the procedures had been followed". The main point for the candidates here is the rule on burden of proof in Cl. 3-25 (3) stating that the assured has the burden of proving that there is no causal connection between the breach and the casualty. This was not so clearly expressed in the 2007 version the book is built on, but it is stated at p. 177. It was also emphasized during the lectures. As the point is fairly complicated, it cannot be expected that a bachelor candidate sees it.

Letter c).

The question here is whether the assured may be identified with the "crew" that according to the exam text is responsible for breaches. A good candidate points out that the regulation in Cl. 3-25 is addressed to the "assured", here the "owner/assured", whereas the breaches are made by the "crew". In order to invoke the breach against the assured he must be identified with the crew. The issue is regulated in Cl. 3-36, where the starting point is that such identification may not take place if the negligence is committed in connection with their service as seamen. As a starting point, following the procedures in the ISM code is within this framework, but a good candidate can point out that this must be the case also when the ship is under repair. It cannot be expected that a bachelor candidate sees this issue.

Question 2.

This is a question of whether or not the ship is condemnable according to NP Cl. 11-3. The rule here is that the ship is condemnable if the cost of repair amounts to at least 80 % of the insurable value.

The insurer argues that "insurable value" refers to the sum of hull value (30) and hull and freight interest value (20) = 50. Cost of repairs = 25, which is 50 % of 50, and less than 80 %, which is the threshold to claim condemnation. In this case, the insurer will be liable for repair only.

The owner claims that only the hull value = 30 is relevant. 80 % av 30 = 24, which means that the cost of repair of 25 is above the threshold for condemnation.

A good candidate starts with the wording "insurable value", which does not solve the matter. He further points out that NP ch. 11 is part of the ordinary hull insurance and that it is therefore natural that it refers to the hull value, and not to the interest values. Another argument is that one has wanted to avoid the situation where the hull value is set low and the hull interest values high in order to achieve easy access to condemnation, and this presumes that only the hull value is relevant. The question is addressed directly in Handbook p. 239, where it is stated that the interest insurance values are not to be taken into consideration, but without further reasoning. It is now also expressed directly in the Commentary. The question is not

difficult, and both master and bachelor students should be able to answer it correctly.

Question 3.

This is a "control" question and relates to NP Cl. 10-12 and Cl. 14-4 (1), stating that hull interest and freight interest insurance of more than 25 % each is void. The provisions are not discussed in the book, but mentioned at p. 69. It clearly follows from the provisions that the total liability of the insurer is 45, but the provisions are not described in the Handbook. A correct answer therefore presumes that the candidate have read the provisions that are referred in the book. This must therefore be given credit. The limits for effecting interest insurances has also been explained during the lectures, but a failure to identify the relevant provisions cannot be deemed to be a serious mistake since there is so little about the limitation in the book.

Part II Only for Master level.

To what extent is cargo insurance according to the Norwegian Cargo Clauses, Conditions relating to Insurance for the Carriage of Goods of 1995, Version 2004, Cefor Form No. 261, effected to the benefit of a third party?

This is a fairly limited question which is addressed in the Cargo Insurance book p. 18-22 and has also been emphasized during the lectures. However, the provision is difficult because of the relationship between the sales conditions, the documents and the insurance.

The main problem for the candidates is to identify the three party relationship in insurance and make the distinction between the person effecting the insurance, the assured and the company. A good candidate also points out that the typical third party relationship in cargo insurance is between the seller and the buyer. It must be required that the candidates manage to identify the Cargo Clauses § 9, and that this provision regulates the issue if it is not regulated directly in the insurance documents. On the other hand, it cannot be expected that the candidates do much more than referring the text in the clause. A plus should be given to candidates that manage to get something more out of the question. In particular, a good discussion on the different sales situations and the concept of transfer of title should be credited. Apart from this, the level of precision will be decisive.