

# **STUDY MATERIAL**

## **LL.M SEMESTER II**

**SUBJECT CODE – LM 106**

**SUBJECT NAME – INSURANCE LAW**

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**TOPIC NO – 5 MARINE INSURANCE**

### **1.Introduction**

Marine insurance covers the loss or damage of ships. Marine insurance is closely associated with banking system and shipping. The banks finance the goods which are transported through ships. This insurance policy covers all risks other than risks like theft, robbery, fire etc. Cargo insurance is a sub-branch of marine insurance.

All risks relating to vessels, Floating dry docks, freight, disbursements, premium reducing, excess liabilities, increased value, ship repairer's liabilities, ship building risks and other associated interests of whatsoever nature are required to be insured in India.

### **2. Definition-**

The contract of marine insurance is a kind of insurance which protects against physical and other losses to movable property as well as liabilities arising during the course of sea voyage. Marine insurance is an agreement by which the insurer agrees to indemnify the owner of the ship.

Section 3 of the Marine Insurance Act<sup>1</sup>, defines marine as, “an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say the losses incidental to marine adventure.”

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<sup>1</sup> The Marine Insurance Act, 1963

### **3. History of marine insurance**

Marine insurance is one of the oldest kinds of insurance. This insurance first originated among the Greek and the Romans in ancient times. In 1961 a specialized chamber of assurance was established in England, which was separate from the other Courts. Lloyd's Coffee House was the first marine insurance market. The Indian Marine Insurance Act came into operation in the year 1963. This Act deals with all the aspects of marine business in India. Prior to this Act, all these aspects were dealt under the General Contract Act and the English Marine Insurance Law.

### **4. Types of Marine Insurance-**

There are different kinds of marine insurances. They are as follows:

- (i) Hull insurance- in hull insurance generally the vessels and equipments are included. It is mainly related to the torso and hull of the vessel along with the furniture on the ship. This type of insurance is mainly taken by the owner of the ship to protect the ship against any loss in case the ship faces any kind of mishap.
- (ii) Cargo insurance- it is mainly related to the marine cargo of the ship and the different types of belongings carried by the ship during the voyage. It protects the owner of the cargo carried by the ship in cases where the ship may meet with an accident and there is loss of the cargo. Generally people who exports goods take this kind of insurance.
- (iii) Freight insurance- this type of insurance provides protection to merchant ships' corporations which may lose money in the form of freight if the ship is damaged when it meets with an accident. This type of insurance solves the problems of big merchants who have the possibility of losing money due to mishaps happening to the cargo. This insurance is designed to fit the need of the cargo owners.
- (iv) Marine liability insurance- This type of insurance is designed to offer specific protection against third party insurance claim. The payment is not made to the insured

but to the third party who is not a party to the contract but has suffered loss. Sometimes due to the failure of the captain of the ship the ship along with its members may suffer loss. To tackle with these types of perils, the ship owners prefer having these insurances.

## **5. Marine Insurance Policies-**

Apart from the various types of insurances, the insurance companies also provides the clients with various kinds of policies. They are as follows to name a few:

- (i) Voyage policy- this type of policy is valid for a particular voyage
- (ii) Mixed policy- These kinds of policies offer the client the benefit of both time and voyage policies.
- (iii) Time policy- These policies are valid for a specified time period , generally one year.
- (iv) Single vessel policy- This policy is suitable for small ship owner
- (v) Fleet policy- here, several ships belonging to one owner are insured.
- (vi) Block policy- This policy protects the cargo owner against damage or loss of cargo in all modes of transport through which the goods are carried.
- (vii) Floating policy- in this type of policy only the amount of claim is specified and all other details are omitted till the time the ship embarks on its journey
- (viii) Wager policy- In this policy no fixed terms or reimbursement are mentioned.
- (ix) Port risk policy- This kind of policy is taken out to ensure the safety of the ship while it is stationed in the port.

## **6. Marine Insurance Contract-**

All the elements of a general contract along with certain other features such as the presence of insurable interest, indemnity, subrogation, utmost good faith and proximate cause must be present in a marine insurance. The following eight elements must be present in a marine insurance contract:

- (i) Proposal-proposal to buy the marine insurance must be made by the person owning the ship or cargo.
- (ii) Acceptance- The proposal must be accepted by the Marine insurance company.
- (iii) Consideration- The premium paid is called the consideration in case of insurance.
- (iv) Insurable interest- A contract of marine insurance made without insurable interest has been expressly declared to be void by section 6 of the Marine Insurance Act, 1963. The definition of the term insurable interest is given under section 7 of the Act. The section says that any person who is interested in marine adventure is deemed to have insurable interest in it. In particular a person is interested in a maritime adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk in consequence of which he may be benefitted by the safety or due arrival of insurable property or may be prejudiced by its loss.
- (v) Utmost good faith- Sections 19, 20, 21 and 22 of the Marine Insurance Act, 1963, explained the doctrine of utmost good faith. Insurance contracts are based upon the legal principles of *uberrimae fides* or utmost good faith. If it is not observed then the contract can be avoided by the other party.
- (vi) Doctrine of indemnity-the contract of marine insurance is of indemnity. Under no circumstances the insured is allowed to make a profit out of a claim. In the absence of the principle of indemnity people would have the chances of making profits,
- (vii) Doctrine of subrogation- the aim of the doctrine of subrogation is that the insurer should not get more than the loss which he has actually suffered.
- (viii) Warranty-Section 35 of the Act discusses about warranties. Warranty means an undertaking by the assured that a particular thing shall or shall not be done, or that some conditions shall be fulfilled. The effect of a warranty is that it becomes a condition of the contract and, therefore, must be exactly complied with. If it is not complied with, the insurer is discharged as from the date of breach. Non-compliance of warranty is excused in the following cases (section 36 of the Marine Insurance Act, 1963):
  - (a) When the insurer waives it
  - (b) When the compliance of the particular warranty is rendered unlawful by any subsequent law.

- (c) When, on account of change of circumstances the warranty ceases to be applicable to the circumstances if that particular contract.
- (ix) Proximate cause- According to section 55 (1) of the Marine Insurance Act, the insurer is liable for any loss proximately caused by a peril insured against, and not liable for any loss which is not proximately caused by a peril insured against, subject to the policy of the Act and unless the policy otherwise provides

## **7. Clauses Incorporated in Marine Insurance-**

The following nine clauses are covered in a marine insurance:

- (a) 'At and from clause'- This refers to the moment of time when the risk commences. This means when the vessel is lying in the port and when it commences its journey from the port. This clause applies to hull and freight insurance.
- (b) Valuation clause- The value of the subject is given in this clause. The value is decided by both the parties on agreement. In case of any loss the value which is mentioned will be taken into consideration. If it is decided by the parties that the value will be decided after the loss has taken place then that column is left blank.
- (c) Sue and labour clause- by this clause the parties to the contract tries to save the subject matter.. if the insured spends some money to same the immediate loss of the subject matter, then he can recover the amount from the in insurer.
- (d) Change of voyage- the details of the voyage are mentioned in the policy. The starting point of the voyage , the place where the voyage will end, the route to be taken are also mentioned in the policy. If the ship changes its original route and follows the same route later on, it will be deemed to be breach of conditions and the insurer is not liable to indemnify the loss.
- (e) Memorandum clause- sometimes perishable goods are subject matter if insurance. In that case the insurer is not liable for partial loss. In certain commodities the loss is allowed upto 50%.

- (f) Jettison- Jettison means throwing out certain cargo to save the ship from being overloaded , to avoid accident. The loss caused by jettisoning is covered under general clause.
- (g) Touch and stay clause- Under this clause the ship is allowed to stay in such ports which are mentioned in the clause. If the ship goes to any other port then it will amount to deviation of the clause.
- (h) *Inchmaree* clause- Under this clause any damage to the goods done during the loading and the unloading of the goods are covered. Any loss done to the goods for the activities of the master or the crew member is also covered.. this clause is named after a famous case involving a ship called '*Inchmaree*' in 1887, the case of Thames & Mersey Marine insurance Co. Hamilton Fraser & Co.