Insurance law

CII

At the end of this unit, candidates should be able to:

- demonstrate a knowledge and understanding of the laws which form a background to the operation of insurance;
- demonstrate a knowledge and understanding of the system within which these laws operate and are administered;
- apply knowledge and skills to practical situations.

Assumed knowledge

It is assumed that candidates already have a knowledge of the fundamental principles and practices of insurance as covered in IF1, Insurance, legal and regulatory.

Summary of learning outcomes

1. Understand the nature and sources of law and legal systems.
2. Understand the concept of legal personality.
3. Understand the principles of the law of tort and the characteristics of the main Torts.
4. Understand the law of contract.
5. Understand the law of agency and its application to insurance.
6. Understand the main principles governing the formation of insurance contracts.
7. Understand how the terms of insurance contract are classified and the effect of a breach of an insurance contract term by the insured and of other vitiating factors.
8. Understand the main legal principles governing the making of an insurance claim.
9. Understand how losses are measured and how the principle of indemnity applies to insurance claims.
10. Understand how the principles of subrogation and contribution apply to insurance claims.

Notes:

- **The syllabus is examined on English law and practice.**
- **The April session will test the legal position as of 31 August of the preceding year.**
- **The October session will test the legal position as of 28 February of the same year.**

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1. Understand the nature and sources of law and legal systems

1.1 Classification of law and the main branches of public and private law;

1.2 Characteristics of English law and the UK legal system;

1.3 The development of the common law and of equity;

1.4 The principal sources of law: legislation and judicial precedent (case law);

1.5 Minor sources of law, in outline;

1.6 Delegated legislation and statutory interpretation;

1.7 The effect of supra-national legislation, such as EC law, on national systems;

1.8 The structure of the courts, the judiciary and the system of precedent;

1.9 Elements of civil procedure and methods for the funding of litigation.

2. Understand the concept of legal personality

2.1 The status and capacity of natural legal persons and corporations;

2.2 The main types of corporation and their characteristics;

2.3 Unincorporated associations and their characteristics;

2.4 Partnerships and their characteristics;

2.5 The Crown and its characteristics.

3. Understand the principles of the law of tort and the characteristics of the main torts

3.1 The nature and classification of torts;

3.2 The law of negligence: duty of care, breach of duty and rules concerning damage, including liability for economic loss and psychiatric injury;

3.3 General characteristics of the other main torts: trespass, nuisance, the rule in Rylands v. Fletcher, breach of statutory duty and defamation

3.4 The application of tort and liability law in the context of employers' liability, liability for defective products and liability for dangerous or defective premises;

3.5 The main defences in tort;

3.6 The main remedies in tort;

3.7 Limitation of actions.

4. Understand the law of contract

4.1 The nature of contractual liability and classification of contacts;

4.2 The rules governing the formation of a contract;

4.3 How contract terms are classified under the general law;

4.4 Elements which affect the validity of contacts;

4.5 The circumstances in which a contract may be discharged;

4.6 Remedies for breach of contract;

4.7 The doctrine of privity of contract and the effect of the Contracts (Rights of Third Parties) Act 1999;

4.8 The assignment of contractual rights and duties;

4.9 Assignment in the context of insurance.

5. Understand the law of agency

5.1 The nature of agency;

5.2 The relationships between agents, principals and third parties;

5.3 The creation of agency;

5.4 The nature of an agent's rights, responsibilities, authority and duties;

5.5 The termination of agency and its effects;

5.6 How the law of agency applies to insurance.

6. Understand the main principles governing the formation of insurance contracts

6.1 How the general principles of contract law apply to insurance;

6.2 The concept and nature of insurable interest;

6.3 The application of the doctrine of insurable interest to the main classes of insurance;

6.4 The doctrine of utmost good faith;

6.5 Misrepresentation in the context of insurance;

6.6 The duty of disclosure in the context of insurance;

6.7 Breach of good faith by the insured or the insurer: consequences and remedies;

6.8 The effect of the FSA Insurance Conduct of Business (ICOB) rules on the doctrine of utmost good faith.

7. Understand how the terms of insurance contract are classified and the effect of a breach of an insurance contract term by the insured and of other vitiating factors

7.1 The classification of insurance contract terms;

7.2 The nature of warranties, conditions and other insurance contract terms;

7.3 The effect of breach of warranty or condition;

7.4 The effect of the FSA Insurance Conduct of Business (ICOB) rules on the law of warranties and conditions;

7.5 Potential reform of the law of warranties and conditions;

7.6 Void and illegal insurance contracts;

7.7 The distinction between joint and composite insurance contracts and its implications in the case of fraud or other breach by the insured.

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8. Understand the main legal principles governing the making of an insurance claim

8.1 Parties who can claim on or benefit from an insurance contract;

8.2 The rules governing notice and proof of loss;

8.3 The construction of insurance contracts;

8.4 The doctrine of proximate cause;

8.5 The application of the doctrine of proximate cause in the case of 'chains of events', concurrent causes and efforts to avoid or reduce loss.

9. Understand how losses are measured and how the principle of indemnity applies to insurance claims

9.1 The principle of indemnity;

9.2 The measure of indemnity in various classes of insurance;

9.3 The factors which limit, reduce, extend or modify the principle of indemnity;

9.4 Methods of providing indemnity;

9.5 The doctrine of salvage and abandonment;

9.6 The effect of claim payments on policy cover.

10. Understand how the principles of subrogation and contribution apply to insurance claims

10.1 Subrogation

10.1.1 The principle and operation of subrogation as a corollary of indemnity;

10.1.2 The source of subrogation rights;

10.1.3 Subrogation, abandonment and salvage;

10.1.4 How subrogation rights may be modified or denied;

10.2 Contribution

10.2.1 The nature of double insurance and contribution and how contribution arises at common law;

10.2.2 The operation of contribution at common law and the effect of common contribution conditions;

10.2.3 Methods of ascertaining the ratio of contribution;

10.2.4 Application of the principle of contribution to the main lines of insurance;

10.2.5 The effect of market agreements on rights of contribution.

Reading list

The following list provides details of various publications which may assist with your studies. Periodicals and publications listed will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

Note: The examination will test the syllabus alone. The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/PFS members can borrow most of these additional study materials from CII Information Services and may be able to purchase some at a special discount. For further information on lending and discounts go to www.cii.co.uk/is.

Insurance law. London: CII. Coursebook P05.

Birds' Modern insurance law. John Birds. 7th ed. London: Sweet & Maxwell, 2007.

The Financial Ombudsman Service and general insurance. Peter Tyldesley, Saira Paruk. London: CII Knowledge Services. Updated as necessary. Available online at www.cii.co.uk/knowledge/factfiles (CII/Personal Finance Society members only).

Insurance law: an introduction. Robert Merkin, ed. London: Informa, 2007.

Law made simple. 12th ed. D L A Barker. Oxford: Elsevier, 2007.

Recent developments in insurance contract law. Robert Merkin. London: CII Knowledge Services. Updated as necessary. Available online at www.cii.co.uk/knowledge/factfiles (CII/Personal Finance Society members only).

Recent developments in tort. Alan Peck. London: CII Knowledge Services. Updated as necessary. Available online at www.cii.co.uk/knowledge/factfiles (CII/Personal Finance Society members only).

Reference materials

Colinvaux' s law of insurance. 8th ed. London: Sweet & Maxwell, 2006.

Insurance claims. Alison Padfield. 2nd ed. Haywards Heath, West Sussex: Tottel, 2007.

Dictionary of insurance. C Bennett. 2nd ed. London: Pearson Education, 2004. Also available online at www.cii.co.uk/knowledge/doi (CII/Personal Finance Society members only).

Insurance law: text and materials. Ray Hodgin. 2nd ed. London: Cavendish, 2002.

Colinvaux & Merkin's Insurance contract law. Robert M Merkin. Brentford: Sweet & Maxwell. Looseleaf, updated.

The law of insurance contracts. Malcolm A Clarke. 5th ed. London: Informa, 2006.

MacGillivray on insurance law: relating to all risks other than marine. 11th ed. London: Sweet & Maxwell, 2008.

The modern law of insurance. Andrew McGee. 2nd ed. London: LexisNexis, 2006.

Smith and Keenan's English law: text and cases. Dennis Keenan. 15th ed. Harlow, England: Pearson Education, 2007.

Periodicals

Insurance Law Monthly. London: Informa. Monthly.

The journal. London: The CII. Six issues a year. Also available online (CII/Personal Finance Society members only) at www.cii.co.uk/knowledge/journal

Legal Digest. DaviesArnold Cooper. London: CII Knowledge Services. Several issues a month. Available online at www.cii.co.uk/knowledge/legaldigest (CII/PFS members only).

Post Magazine. London: Incisive Financial Publishing. Weekly.

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Websites

CII Knowledge Services – www.cii.co.uk/knowledge

Examination guides

Guides are produced for each sitting of written answer examinations. These include the exam questions, examiners' comments on candidates' performance and key points for inclusion in answers. You are strongly advised to study guides for the last two sittings. Please visit www.cii.co.uk to buy online or contact CII Customer Service for further information on 020 8989 8464. Older examination guides are available (for members only) at www.cii.co.uk/knowledge/examguides.

Exam technique/study skills

There are many modestly priced guides available in bookshops. You should choose one which suits your requirements. You will also find advice at www.cii.co.uk/knowledge/careersupport (CII/Personal Finance Society members only).

For a more interactive approach, you should consider: Winning the brain game. London: CII, 2006. CD-ROM.

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