



THE CHARTERED INSURANCE INSTITUTE

DIPLOMA

APRIL 2010 EXAMINATION PAPER

**UNIT P05
INSURANCE LAW**

INSTRUCTIONS

- Three hours are allowed for this paper.
- Fill in the information requested on the answer booklet and on form B.
- You are allowed to write on the inside pages of this question paper but you must **NOT** write your name, candidate number, PIN or any other identification anywhere on this question paper.
- **The answer booklet and this question paper must be handed in personally by you to the invigilator before you leave the examination. Failure to do this may result in your paper not being marked and you may be prevented from entering this examination in future.**

READ THE INSTRUCTIONS OVERLEAF CAREFULLY BEFORE ANSWERING ANY QUESTIONS.

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P05 – Insurance law

CANDIDATE INSTRUCTIONS

READ THE INSTRUCTIONS BELOW BEFORE ANSWERING ANY QUESTIONS.

Three hours are allowed for this paper. You should answer all questions in Part I and two out of the four questions in Part II.

The paper carries a total of 200 marks, as follows:

Part I	14 compulsory questions	140 marks
Part II	2 questions selected from 4	60 marks

You are advised to spend no more than two hours on Part I.

Answer each question on a new page. If the question has more than one part, leave several lines blank after each part.

It is important to show each step in any calculation, even if you have used a calculator.

You may find it helpful in some places to make rough notes in the answer booklet. If you do this, you should cross through these notes before you hand in the booklet.

PART I

**Answer ALL questions in Part I.
Each question is worth ten marks.**

Note form is acceptable where this conveys all the necessary information.

1. (a) Distinguish between a corporation and an unincorporated association. (4)
- (b) Give two examples of an unincorporated association. (2)
- (c) Explain briefly the extent to which an unincorporated association is liable for a tort committed by one of its members. (4)

2. Alice steals Brenda's motorcycle, sells it and spends the money. She is convicted of theft in the UK Crown Court.
 - (a) Identify which court will hear the case, if Alice appeals. (2)
 - (b) If Alice loses her appeal, explain briefly what further rights of appeal she has, if any. (3)
 - (c) State the tort Brenda will allege, if she sues Alice in a civil case for the loss of her motorcycle. (2)
 - (d) State, giving reasons, the court which will hear the civil case. (3)

3. Alan writes to Ernest making a firm offer to sell his car for £10,000 but stipulates that Ernest must accept 'by return of post' if he wants to buy the car. The next day Alan receives an e-mail from Ernest saying that he accepts the offer. However, on reading the e-mail, Alan decides not to sell the car.

Discuss whether there was a binding contract between the two, explaining the legal principles involved. (10)

4. (a) Explain the purpose of a conditional fee agreement (CFA). (4)
- (b) Describe how a typical CFA operates. (6)
5. Outline the principle(s) of law illustrated by **one** of the following cases. (10)
- *Leyland Shipping v Norwich Union Fire Insurance Society Ltd* (1918).
- Or
- *Yorkshire Insurance Co. Ltd v Nisbet Shipping Co. Ltd* (1962).
6. Charles is a keen fan of Utterly United Football Club (UUFC), which is near the top of the Premier League of English clubs. Charles is also the Chairman of the UUFC Supporters' Association. Charles books 12 rooms in Gordon's luxury hotel for himself and fellow supporters, on learning that the UUFC team will be staying there if they qualify for the final of the English Cup, which is to be held in a stadium nearby. The booking is made by telephone in Charles's own name, but no details are discussed and nothing is put in writing.
- In the event, UUFC fail to qualify for the final and Charles cancels his reservations. Gordon is annoyed and seeks your advice as to whether he can sue Charles, and as to how his compensation would be calculated.
- Advise Gordon, explaining the points of law involved. (10)
7. (a) Describe briefly the effect of the Occupiers' Liability Act 1957. (6)
- (b) Outline briefly how the 1957 Act was modified by the Occupiers' Liability Act 1984. (4)
8. (a) Describe two types of contract which are fully binding on a minor. (6)
- (b) For each contract identified in (a) above, give an outline of a decided case to illustrate how the law on this topic has been applied. (4)

9. (a) Distinguish between the express terms of a contract and implied terms. (4)
- (b) State three ways in which implied terms may become part of a contract. (6)
10. Amicable Assurance discovers that David, an agent who has authority to grant cover and issue policies on behalf of the company, has been overcharging policyholders for their motor insurance and keeping the extra premium for himself. He refuses to return the documents and other materials which Amicable Assurance have given him, or provide any financial details relating to the policies which he has sold.
- Describe briefly the (civil) legal wrongs which David has committed, and the legal remedies which are available to Amicable Assurance. (10)
11. (a) In relation to the law of contract, explain what is meant by the term 'misrepresentation'. (5)
- (b) List the conditions which must be satisfied for the validity of a contract to be affected by misrepresentation. (5)
12. (a) Using an example, explain the term 'condition precedent to liability' and describe the effect of breach by the insured of such a condition. (4)
- (b) Explain briefly how the remedy available to an insurer for breach of a condition of this sort is modified in the case of compulsory third party insurances, such as motor (or employers' liability in the UK). (6)
13. (a) Describe briefly the two main alternative interpretations of the term 'rateable proportion'. (4)
- (b) Describe the effect of a rateable proportion clause in an insurance policy. (6)

- 14. (a)** Distinguish between ‘primary victims’ and ‘secondary victims’ in the context of tort law relating to nervous shock. **(4)**
- (b)** Illustrate each category identified in (a) above, with a decided case. **(6)**

PART II

Answer TWO of the following FOUR questions.

Each question is worth 30 marks.

15. John has an 'all risks' insurance policy containing a condition which requires him to take 'reasonable care to prevent loss' and a warranty requiring that 'the insured property should not be left in an unattended vehicle'.

He leaves a bag containing jewellery to the value of £100,000 locked in the boot of his car, which is itself locked. He leaves the car (a very expensive luxury model) in a motorway services car park for a few minutes while he goes to buy a newspaper. His seven year old son remains in the car, asleep. While John is away thieves break into the car boot and steal the bag containing the jewellery.

When John makes a claim, his insurers write back and refuse to pay, saying that he has failed to take reasonable precautions to prevent loss, as required by the policy condition. On the advice of his solicitor, John begins legal proceedings against the insurers. The insurers then issue a defence in which they cite the breach of policy condition. However, they also cite breach of warranty as a further defence, arguing that at the time of the events in question the vehicle was effectively unattended.

Discuss the legal issues that the court would need to take into account in resolving this case and suggest its likely outcome. Support your arguments with appropriate case law and/or other legal authority.

(30)

16. (a) State briefly the main remedies available:

(i) to an insurer for breach of good faith by the insured; **(9)**

(ii) to an insured for breach of good faith by the insurer. **(6)**

(b) The Equivocal Insurance Society (EIS) writes to its home insurance policyholders and tells them that if their policies remain claim free for three years, following the next renewal, the fourth year's insurance will be free. George renews his home insurance policy with EIS and although he suffers a small insured loss in each of the next two years, decides not to claim, so as to be sure of having the free insurance. Just before the end of the three year period EIS writes to George saying that the free insurance scheme has been withdrawn. EIS invites him to renew at a premium of £400.

George demands the free insurance and also asks EIS to pay for the two losses. However, EIS's lawyers refuse both requests, saying that the offer of free insurance did not amount to a binding contract and that, in any event, he cannot claim for the losses because he failed to report them 'as soon as reasonably possible', as required by a policy condition.

Explain how the general rules of contract and the rules of insurance law would apply in this case. **(15)**

- 17. (a)** Explain how the rights and duties of the parties differ, where a contract is made through the medium of an agent, in the following cases.
- (i)** The agent discloses the principal on whose behalf he is acting. **(8)**
 - (ii)** The existence of the principal is not disclosed by the agent. **(7)**
- (b)** Jill Bates, a wealthy American woman, engages Rodney, a pilot, to find and purchase on her behalf an executive jet aircraft for her personal use. Rodney locates a suitable aircraft in Hong Kong, purchases it, and flies it back to the USA. He also arranges insurance cover on the aircraft in the name of Jill before taking delivery and flying it back. Jill refuses to pay the aviation insurance premium, saying that she does not believe in insurance and gave Rodney no authority to incur this expense on her behalf.
- Discuss whether or not Jill is bound by the insurance contract, giving reasons for your answer. **(10)**
- (c)** Explain whether or not Jill could claim on the insurance policy, if the aircraft had been damaged in transit, and Rodney had insured it in Jill's name, even though she had specifically told him not to do so. **(5)**
- 18. (a)** In the context of insurance, distinguish between assignment of the subject matter of the contract, assignment of the benefit of the contract and assignment of the contract itself. Use examples where appropriate. **(14)**
- (b)** Distinguish between a legal assignment and an equitable assignment, commenting on the different rights of the parties in each case. **(8)**
- (c)** Discuss briefly the extent to which insurance contracts can be freely assigned. **(8)**

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