



THE CHARTERED INSURANCE INSTITUTE

DIPLOMA

OCTOBER 2009 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 10 marks.**

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

1. Explain briefly each of the following in the context of the doctrine of precedent in English law:
 - (a) *ratio decidendi*; (5)
 - (b) *obiter dicta*. (5)

2. (a) List five essentials for the formation of a valid contract. (5)
(b) Distinguish between a bilateral and a unilateral contract, giving an example of the latter. (5)

3. List five examples of circumstances in which an insurance intermediary is likely to be regarded as the agent of the insurer, rather than the agent of the proposer. (10)

4. Describe briefly and explain the legal function of TWO of the following institutions:
 - (a) The Law Commission. (5)
 - (b) The House of Lords. (5)
 - (c) The Council of the European Communities. (5)

5. (a) Describe briefly the effect of illegality on a contract. (4)
(b) Outline three sets of circumstances in which an insurance contract might be illegal. (6)

6. Outline the principle(s) of law illustrated by ONE of the following cases:
- (a) *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co. Ltd* ('The Wagon Mound') (1961); (10)
- (b) *Napier v Hunter* (1993). (10)
7. Outline the main provisions of the Contracts (Rights of Third Parties) Act 1999 and explain its effect on the law of contract. (10)
8. (a) Explain briefly and distinguish between vicarious liability and strict liability. (4)
- (b) List one example of vicarious liability and two examples of strict liability drawn from English law. (6)
9. Explain briefly the 'Hedley Byrne' rule and comment on its effect in the law of torts. (10)
10. (a) Outline the conditions that must be fulfilled for contribution to arise between two or more insurance policies at common law. (5)
- (b) Exaco, a manufacturing firm, has two public (general) liability insurance policies. The first policy, written by Republican Insurance, has an indemnity limit of £100,000 and the second policy, written by Crowned Insurance, has a limit of £500,000. Each policy carries a contribution condition to the effect that the insurer will be liable for a 'rateable proportion' only of any loss that is insured by another policy. Exaco incur a loss of £66,000 that is covered by both of these policies.
- Calculate the liability of each insurer for the loss, assuming that the contracts are governed by English law. **Show all your workings.** (5)

- 11.** (a) Explain what is meant by ‘waiver by estoppel’ in relation to breach of warranty. (5)
- (b) List five examples of circumstances in which such waiver may be deemed to have occurred. (5)
- 12.** Explain briefly each of the following in the context of the law of agency:
- (a) usual authority; (5)
- (b) agency by necessity. (5)
- 13.** Peter, an elderly man, has a personal accident insurance policy which covers death and disablement caused by ‘accidental, external, visible and violent means’. He is involved in a car accident and suffers injuries that require hospital treatment.
- While in hospital he contracts the ‘superbug’ MRSA – a bacterial infection which is common in hospitals and highly resistant to antibiotics. Being elderly and in a weakened state from the accident, he dies as a result.
- Discuss whether the personal accident insurers are liable under the policy. Illustrate your answer with the legal principles and appropriate case law involved. (10)
- 14.** (a) Explain the operation of the literal rule in relation to disputes concerning the interpretation of documents. (6)
- (b) Give an example of the literal rule drawn from insurance case law. (4)

Part II questions can be found on pages 8 and 9

PART II

**Answer TWO of the following FOUR questions.
Each question is worth 30 marks.**

15. (a) Explain the doctrine of salvage and abandonment, and compare and contrast the operation of the doctrine in marine and non-marine insurance. (20)
- (b) Compare and contrast the doctrine of subrogation with the doctrine of salvage and abandonment. (10)
16. ‘Under the general law, contract terms divide into conditions – which are important because a breach will allow the injured party to avoid the contract, and warranties – which are not so important because a breach will only give rise to a claim for damages. In insurance, it is simply the other way round.’
- Discuss. (30)
17. (a) ‘The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely that the contract of insurance ... is a contract of indemnity and of indemnity only ... and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent the assured from obtaining a full indemnity or which gives the assured more than a full indemnity, that proposition must certainly be wrong.’
- (Brett, L. J. in *Castellain v Preston* (1883))
- Discuss whether this statement provides an adequate summary of the principle of indemnity. (15)
- (b) Discuss the factors which determine the measure of indemnity when a building insured on an ordinary indemnity basis is damaged or destroyed. Illustrate your answer with case law. (15)

18. (a) Explain briefly why the law requires a person to have an insurable interest in the thing or event that he insures. (5)
- (b) Explain the aspect of the law relating to insurable interest that is illustrated by the case of *Macaura v Northern Assurance Co Ltd* (1925). (5)
- (c) Michael wishes to effect the following insurance policies. In each case state whether he is legally entitled to do so under English law, giving a reason for your answer.
- (i) A policy on the life of the elderly judge who is hearing a complex case which Michael has brought against a business associate, Jack. (4)
- (ii) A policy on the life of Jill who, according to Michael, owes him £100,000 (though Jill disputes this). (4)
- (iii) A policy on the life of Dan, an odd-job man who occasionally does some work around the house for Michael in exchange for small payments. (4)
- (iv) A policy on the life of Michael's son, Christopher, whom Michael is relying on to look after him when he gets old. (4)
- (v) A policy on the life of Michael's 97-year-old Aunt Florence, who has promised to give Michael £10,000 on her 100th birthday, provided that Michael is good to her. (4)

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