

P05

Diploma in Insurance

Unit P05 – Insurance law

April 2012 examination

Instructions

- Three hours are allowed for this paper.
- **Do not begin writing until the invigilator instructs you to.**
- **Read the instructions on page 3 carefully before answering any questions.**
- Provide the information requested on the answer book and 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 book and this question paper must **both be handed in personally by you** to the invigilator before you leave the examination room. **Failure to comply with this regulation will result in your paper not being marked and you may be prevented from entering this examination in the future.**

Unit P05 – Insurance law

Instructions to candidates

Read the instructions below before answering any questions

- **Three hours** are allowed for this paper which 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 should answer **all** questions in Part I and two out of the four questions in Part II.
- You are advised to spend no more than two hours on Part I.
- Read carefully all questions and information provided before starting to answer. Your answer will be marked strictly in accordance with the question set.
- The number of marks allocated to each question part is given next to the question and you should spend your time in accordance with that allocation.
- 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.
- It is important to show each step in any calculation, even if you have used a calculator.
- If you bring a calculator into the examination room, it must be a silent battery or solar-powered non-programmable calculator. The use of electronic equipment capable of being programmed to hold alphabetic or numerical data and/or formulae is prohibited. You may use a financial or scientific calculator, provided it meets these requirements.
- Answer each question on a new page. If a question has more than one part, leave six lines blank after each part.

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. Explain the purpose and function of **each** of the following types of Act of Parliament, giving an example of **each**.
 - (a) Codifying Act. (5)
 - (b) Enabling Act. (5)

2. A forest fire is raging near Roger's farm and the wind is blowing the flames towards it. Roger pumps large quantities of water onto the advancing flames and manages to put the fire out just before it reaches his property.

Roger's water bill rises by £500 as a result of his using so much water and Roger claims this amount from his fire insurers. The fire insurers are unwilling to pay, saying there has been no fire damage.

Advise Roger as to the correct legal position, explaining the legal principles involved. (10)

3.
 - (a) Distinguish briefly between a warranty in relation to the general law of contract and a warranty in the context of an insurance contract, explaining, in each case, the legal effect of a breach of warranty. (6)
 - (b) Outline **two** significant changes proposed by the Law Commission/Scottish Law Commission in relation to the legal effects of a breach of warranty on an insurance contract. (4)

4. Insurance policies very often contain a 'reasonable precautions' clause along the following lines:

'You must take all reasonable care to protect the property insured, prevent loss or damage and prevent accidents or injury.'

Explain, citing case law, how the courts have interpreted these clauses in circumstances in which the insured has been careless in relation to a loss. (10)

5. Explain the main provisions, and the effect on insurance contracts, of **one** of the following pieces of legislation.
 - Contracts (Rights of Third Parties) Act 1999.

OR

 - Fires Prevention (Metropolis) Act 1774. (10)

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6. (a) State **five** conditions that must be satisfied for a misrepresentation to affect the validity of a contract. (5)
- (b) Outline the remedies that are available to a contracting party who is the victim of misrepresentation. (5)
7. (a) State **five** duties that an agent owes towards his principal. (5)
- (b) Explain what is meant by 'imputed knowledge' in the context of the law of agency and state briefly why the doctrine of imputed knowledge is important in relation to insurance. (5)
8. Explain briefly the extent to which legal liability for damage in respect of 'pure' economic (or financial) loss exists in:
- (a) tort; (6)
- (b) contract. (4)
9. Explain briefly:
- (a) the effect of an average clause on a property insurance policy; (4)
- (b) whether 'average' can operate as an implied term. (6)
10. (a) Give a short definition of 'contribution' in the context of insurance. (3)
- (b) State **five** conditions which must be fulfilled for contribution between two insurers to apply at common law, providing at least **two** cases in illustration. (7)
11. (a) Distinguish between breach by failure to perform and anticipatory breach of a contract. (4)
- (b) State **three** ways, other than by breach, in which a contract may be discharged. (6)

Questions continue over the page

12. Annie has a home insurance policy which includes cover for the risks of 'storm, tempest and flood'. She connects a hosepipe to a tap in her kitchen and passes the pipe out of the window to water her garden. She falls asleep and wakes to find that the hosepipe has become detached and her kitchen sink is overflowing. Water has accumulated in the kitchen, ruining the flooring.

Annie makes a claim on her insurance policy, stating that the damage to the kitchen floor was caused by flood. No definition of the term 'flood' appears in the policy and the insurers refuse to pay, saying that in this case no flood has occurred. Annie insists that she is entitled to claim.

Explain, citing case law, how a court might seek to resolve this dispute. **(10)**

13. Outline the principle(s) of law illustrated by **one** of the following cases:

- *Overseas Tankship (UK) v Morts Dock and Engineering Co. Ltd (1961) (The Wagon Mound)*;

OR

- *Macaura v Northern Assurance Co. Ltd (1925)*. **(10)**

14. Explain briefly **each** of the following in the context of the law of agency.

- (a) Usual authority. **(5)**
- (b) Agency by necessity. **(5)**

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) Distinguish between the doctrine of subrogation and the doctrine of abandonment and salvage, highlighting both their similarities and the main differences between the two. (16)
- (b) Jack's Ferrari sports car is badly damaged in a collision caused by the negligence of another driver, William. Jack's insurers, the Italian Insurance Corporation (IIC), instruct a firm of specialist motor engineers to do the repair work, but the car, which was previously worth £100,000, is now worth only £70,000 because buyers of specialist vehicles of this type are much less willing to purchase vehicles which have been in major accidents. Jack therefore sues William for the sum of £30,000 and successfully recovers this amount from him. IIC's claims manager seeks to recover this from Jack by way of subrogation, saying that IIC have dealt with his loss and Jack cannot be paid twice for it. Jack wants to keep the £30,000.
- Fully explain the legal position, citing case law where appropriate. (14)
16. (a) Adam Smith wishes to arrange the following insurance policies in his own name. In each case, say whether the contract is likely to be valid under English law, stating the extent of the interest where appropriate, and giving a reason for your answer:
- (i) a policy on the life of his wife, Samantha; (3)
- (ii) a comprehensive motor policy on a car owned by his daughter, Sadie; (3)
- (iii) a policy on the life of his son, Gerald, who he hopes will take over the family business soon and allow him to retire early; (3)
- (iv) a policy on the life of his dearest friend, Jacob, who tells him jokes and cheers him up when he is feeling miserable; (3)
- (v) a policy on the life of his mother, Margaret, who helps Adam and his wife to look after the house. (3)
- (b) Outline the main changes to the law on insurable interest proposed by the Law Commission/Scottish Law Commission. (15)
17. In the context of the duty of good faith, discuss the effect of fraud by the insured in the claims process. Illustrate your answer with appropriate case law. (30)

18. Arthur, who lives alone, goes out to post a letter. He locks the house but does not activate the burglar alarm because he will only be away for two or three minutes. He leaves his large dog asleep in its basket. While Arthur is out Bert breaks in, without waking the dog. Arthur returns and catches Bert in the act, but Bert escapes with valuables worth £10,000.

A week later, Christopher, who is a minister of religion and Bert's twin brother, calls at Arthur's house to collect money for charity. Arthur thinks that Bert has returned to rob him again and hits Christopher with a garden spade, injuring him. The police do not press criminal charges but Christopher sues Arthur for damages and is awarded £20,000 by the court.

Arthur claims £30,000 from his insurers, Friendly Accident, since his policy covers both theft and personal liability. Friendly Accident refuse to indemnify Arthur for any of his losses. They argue that:

- (i) Arthur failed 'to take reasonable precautions to avoid loss', as required by a policy condition; (8)
- (ii) in any case, the policy is subject to a warranty requiring the burglar alarm to be activated 'whenever the house is unoccupied'; (12)
- (iii) hitting Christopher with a spade was a criminal act and not an accident. (10)

Advise Arthur, giving reasons for your advice and quoting case law where appropriate, as to his rights against Friendly Accident under the policy with specific reference to arguments (i), (ii) and (iii) above.

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