

P05

Diploma in Insurance

Unit P05 – Insurance law

April 2013 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. (a) State **two** reasons why the law requires insurable interest in an insurance contract. (2)
- (b) Outline **four** ways in which an insurance contract differs from a gambling contract. (8)

2. Precedent is a major source of English law and is defined as a decision in a previous case where the facts were similar to the case now before the court.
 - (a) Identify **two** advantages and **two** disadvantages of this system. (4)
 - (b) Distinguish between ratio decidendi and obiter dicta. (6)

3. Outline **five** differences between partnerships and limited companies. (10)

4. Adam is going to a football match with his friend Brian, who is a passenger in Adam's car. Adam, who had been drinking alcohol, drives too fast around a bend and crashes his vehicle causing serious injury to Brian who was not wearing a seat belt at the time. Brian recovers and is considering suing Adam for negligence.

Advise Brian on his legal position identifying defences which may be presented on behalf of Adam quoting case law in support of your answer. (10)

5. Distinguish between the pairs of terms in each of the following:
 - (a) Contracts under seal and simple contracts. (5)
 - (b) Unilateral and bilateral contracts, give brief examples to illustrate your answer. (5)

6. State **five** of the conditions that must be satisfied before an act of an agent can be ratified under the law of agency. (10)

7. (a) Sally has a shop in the high street where she makes and sells jewellery. She has decided to work from home, selling her jewellery on-line and puts the business premises up for sale. Sally offers to sell the property to her friend, Karen, for £85,000 but Karen offers her £80,000 instead.
- Sally declines and Karen then increases her offer to £85,000 which Sally refuses due to a change of circumstances.
- Advise Sally on her legal position quoting case law in support of your answer. (3)
- (b) On 5 August, Claire offers to sell her car to Brian who posts a letter back to her on 8 August accepting her offer but it never arrives. On 7 August Claire changes her mind and decides not to sell her car and writes to Brian withdrawing her original offer to him. Brian receives this letter on 9 August.
- Advise Claire on her legal position quoting case law in support of your answer. (7)
8. Describe the circumstances of and the principle(s) of law illustrated by **one** of the following cases:
- *Yorkshire Insurance Co. Ltd v Nisbet Shipping Co. Ltd* (1962).
- OR
- *Caledonia North Sea Ltd v London Bridge Engineering Ltd and others* (2002). (10)
9. (a) List **three** of the rules which apply to consideration and state **three** of the ways in which a total failure of consideration in respect of insurance contracts may come about. (6)
- (b) Explain how the rules of consideration apply to insurance contracts and what effect the decision in *Tyrie v Fletcher* (1777) has had on them. (4)
10. John, an agent of Gemini Insurance Company, arranges a buildings and contents household policy for his mother Samantha. Samantha completes the proposal form but fails to disclose that she has a recent conviction for theft.
- Later Samantha's property is damaged by fire and she submits a claim for repairs to the building and also damage to the contents. Gemini Insurance decline to settle the claim arguing that Samantha is in breach of the duty of good faith by failing to declare the value of the antiques in her property, her conviction for theft and also that the warranty requiring the alarm to be set was breached. Samantha argues that Gemini Insurance had carried out a survey of the building (including inside the property) and also that John, her son, was aware of her conviction.
- Advise Samantha on her legal position quoting case law in support of your answer. (10)

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11. (a) Identify **three** sources of the right of subrogation. (3)
- (b) Give **one** example of how subrogation may arise from **each** of the above sources. (7)
12. The principle of indemnity means that insurance should provide exact financial compensation for the insured.
- Outline the **five** circumstances that could result in the insured recovering more than a strict indemnity. Give examples of the types of cover where applicable. (10)
13. Joe Brown, the owner of Joe Brown Engineering, decides that he no longer wishes to continue trading and in May sells the factory to XYZ Ltd who are paint manufacturers. The following month, Joe Brown hands the building insurance policy to XYZ and tells them that the building is insured until November. A fire occurs in September and XYZ submits a claim under the policy.
- Advise the insurers as to the extent of their liability, giving reasons for your answer. (10)
14. (a) Identify **two** circumstances in which an insurance agent is likely to be acting as agent for the insured (or proposer) and **two** circumstances in which an intermediary is likely to be acting as agent of the insurer. (4)
- (b) When an authorised agent contracts on behalf of a disclosed principal, the general rule is that the agent simply 'drops out' once the contract is made and no liability attaches to the agent.
- Identify the **three** exceptions to this rule. (6)

PART II

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

15. (a) Describe the main provisions of the Unfair Terms in Consumer Contracts Regulations 1999. (20)
- (b) Describe the rules applied by the courts for dealing with inconsistencies appearing in insurance documentation. (10)
16. (a) Define the principle of contribution. (3)
- (b) Identify and discuss the problems facing insurers in respect of their contribution rights under common law and the various ways in which insurers draft contribution clauses so as to overcome these problems. (27)
17. Non-life insurance policies are indemnity contracts and, if a valid claim is submitted, insurers will make payment to the insured, thereby performing their part of the agreement.
- (a) Explain what effect a series of partial losses in the same period of insurance will have on further claims settlements and give examples to support your answer. (14)
- (b) Explain how your answer in part (a) above will differ in the event of a total loss. (16)
18. (a) State the **six** essential elements for a valid contract of insurance. (6)
- (b) In relation to a contract of insurance, define the term 'insurable interest' and state the **three** ways in which it may be created giving **one** example of each. (9)
- (c) Identify and explain the **three** key elements of insurable interest quoting case law in support of your answer. (15)

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