

P05

Diploma in Insurance

Unit P05 – Insurance law

October 2015 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) Explain briefly what is meant by the term 'contentious procedure' under the English legal system. (2)
 - (b) Explain briefly the purpose of:
 - (i) criminal proceedings; and (2)
 - (ii) a civil action in tort. (2)
 - (c) State the burden of proof that must be shown in order for the following actions to succeed:
 - (i) Criminal proceedings. (2)
 - (ii) Civil proceedings. (2)
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2. (a) Explain the purpose of the Pre-Action Protocols introduced into the civil justice system by the Woolf reforms. (6)
 - (b) Outline **two** of the main requirements of the Pre-Action Protocol for personal injury cases introduced by the Woolf reforms. (4)
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3. (a) Identify **four** characteristics of **each** of the following types of company:
 - (i) Public company. (4)
 - (ii) Private company. (4)
 - (b) State **two** ways in which a company can be liquidated or 'wound up'. (2)

4. (a) State the **three** characteristics common to all forms of the tort of trespass. (3)
- (b) Distinguish between assault and battery in the tort of trespass to the person, giving an example of **each** in support of your answer. (7)
5. Sarah has a personal accident policy that covers death by accident but excludes death by disease. She falls from her horse and suffers leg injuries. She is admitted to hospital but her leg wound turns septic and one week later she dies as a result of the disease, septicaemia.
- Explain whether the personal accident insurers are liable under the policy, referring to case law in support of your answer. (10)
6. (a) Explain briefly the meaning of the terms 'warranty' and 'condition' in the general law of contract. (4)
- (b) A theatre company engages professional actors, Jane and David, to take the leading roles in their forthcoming production. The actors' contracts include the following term: *'In the event of illness, the theatre company has the right to terminate the contract of employment due to a breach of condition'*. Jane is recovering from illness and arrives late for several rehearsals. On the opening night David is prevented from performing due to illness. The theatre company wishes to dismiss both actors and sue Jane and David for damages.
- Advise the theatre company of their legal position. (6)
7. (a) Distinguish between contracts that are contrary to law and those which are contrary to public policy. (2)
- (b) (i) State **four** examples of contracts that are contrary to law. (4)
- (ii) State **four** examples of contracts that are contrary to public policy. (4)

QUESTIONS CONTINUE OVER THE PAGE

8. Explain the main provisions of **one** of the following pieces of legislation:

Unfair Contract Terms Act 1977.

OR

Unfair Terms in Consumer Contract Regulations (UTCCR) 1999. **(10)**

9. (a) Explain briefly what is meant by 'ratification' in the law of agency. **(2)**

(b) State **four** of the conditions that must be satisfied before an act of an agent can be ratified. **(8)**

10. Describe the circumstances and principle(s) of law illustrated by **one** of the following cases:

Wayne Tank and Pump Co. Ltd v Employers' Liability Insurance Corporation Ltd (1974).

OR

Legal and General Insurance Society v Sphere Drake Insurance Co. Ltd (1992). **(10)**

11. Explain how the *contra proferentem* rule operates within the insurance market, referring to **one** example of case law in support of your answer. **(10)**

12. In the context of the tort of negligence, explain what is meant by the expression that 'you take your victim as you find him', referring to case law in support of your answer. **(10)**

13. Gary is driving his car abroad when his vehicle is damaged by a lorry driven carelessly by a local resident who does not stop at the scene of the accident. Gary's motor insurers, ABC, pay £5,500 to have his car repaired and Gary also pays a further £500, the amount of his policy excess. Four years later, the identity of the guilty driver is discovered and ABC sue him in Gary's name. The court orders the guilty driver to pay £6,000 in respect of damage to Gary's car and a further £1,000 in punitive damages because he fled from the scene of the accident. ABC refuse to give Gary any of the £7,000 stating he has been fully indemnified under the terms of the insurance policy and that they are entitled to the £1,000 surplus because of the interest they have lost on their claim payment over the last four years.

Advise Gary of his legal rights, referring to a leading case in support of your answer. **(10)**

14. Explain the effect the following contribution clauses have on the settlement of a valid claim:

(a) 'Escape' clauses. **(5)**

(b) 'More specific insurance' clauses. **(5)**

QUESTIONS CONTINUE OVER THE PAGE

PART II

Answer TWO of the following FOUR questions

Each question is worth 30 marks

15. (a) In relation to a contract of insurance, define the term 'insurable interest' stating, with an example for **each**, the **three** ways in which it may be created. (12)
- (b) Brenda insures her life for £1,000,000, with ABC Insurance Company (ABC) who, in turn, reinsures 75% of the risk with XYZ Reinsurance Company (XYZ). Brenda cancels the life policy a year later but ABC keep the reinsurance contract in force and continue to pay the reinsurance premium. Brenda is later killed in a car accident and ABC claim £750,000 from XYZ under the reinsurance contract. XYZ refuse to pay, stating that ABC has no insurable interest and the reinsurance is therefore void.
- Advise ABC of their legal position, referring to case law in support of your answer. (10)
- (c) David learns that his parents have bought him a car which will be given to him on his birthday in a week's time. Unfortunately the car is stolen a few days before his birthday. David, who had insured the car in his own name prior to its theft, submits a claim to his insurers for the value of the car.
- Advise David's insurers as to the extent of their liability, if any, referring to the leading case to illustrate your answer. (8)
16. (a) (i) Distinguish between a policy of indemnity and a valued policy. (8)
- (ii) Explain to what extent a valued policy modifies the principle of indemnity. (6)
- (b) Explain what effect a series of partial losses in the same year of insurance will have on further claims settlements. Cite examples from motor and property policies in support of your answer. (16)

17. (a) Outline the duties owed by an agent to the principal under the law of agency. (10)
- (b) Pauline, an insurance intermediary, helps Mrs Smith complete a proposal form for insurance on her business premises. Pauline reads out the questions and writes down the answers given to her by Mrs Smith. However, Pauline forgets to record details of three previous claims even though Mrs Smith had told her about them. Mrs Smith signs the proposal form without reading it and then submits it to the insurance company, who issue a policy on normal terms. Several weeks later, Mrs Smith suffers a new loss and makes a claim but her insurance company decline to provide indemnity because they have discovered the existence of her previous claims history.
- (i) Explain the effect the completion of the proposal form by Pauline has on establishing whether Pauline was acting as an agent of Mrs Smith or an agent of the insurance company. (8)
- (ii) Advise Pauline on the extent of her liability, if any, to the following, referring to relevant case law where appropriate:
- Mrs Smith. (9)
 - The insurance company. (3)
18. (a) Explain what is meant by the term 'warranty' in an insurance contract, stating **three** ways in which it can arise. (10)
- (b) David insures his factory under a property policy with ABC Insurance Company. The policy wording states '*it is warranted that none of the following items are stored or kept on the premises*' and the list of items includes '*acids, petroleum spirit, volatile chemicals and explosives*'. A fire occurs at the factory and insurers discover that a small quantity of fireworks is kept on the premises. The fireworks are only used occasionally at staff parties but ABC decline to indemnify David stating he has breached the warranty on the insurance policy. David is unhappy with this outcome and challenges the decision made by ABC.
- (i) Advise ABC Insurance Company of their legal position referring to case law in support of your answer. (14)
- (ii) Outline whether your advice would differ, if at all, had David been classed as a 'consumer'. (6)

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