Legal aspects of insurance

Objective: To develop in the candidate:
- a sound knowledge and understanding of the laws which form a background to the operation of insurance;
- a sound knowledge and understanding of the system within which these laws operate;
- the ability to apply this knowledge and understanding to insurance.


Notes:
- The syllabus will be based on UK law and practice.
- The April session will test the legal position as of 31st August of the preceding year.
- The October session will test the legal position as of 28th February of the same year.

1. The nature and sources of law

1.1 Classification of law
Candidates should be able to
- state how laws are classified;
- distinguish between public and private, criminal and civil law.

1.2 The legal system
Candidates should be able to
- describe the characteristics of the legal system.

1.3 Sources of law
Candidates should be able to
- outline the development of various sources of English law, including:
  - common law;
  - equity; custom;
  - legislation.

1.4 Delegated legislation and statutory interpretation
Candidates should be able to
- describe delegated legislation and statutory interpretation.

1.5 Effect of supra-national legislation on national systems
Candidates should be able to
- describe the effect of supra-national legislation, such as EC law, on national systems.

1.6 Courts and the system of precedent
Candidates should be able to
- describe the courts and the system of precedent.

2. Legal personality

2.1 Status and capacity
Candidates should be able to
- explain the status and capacity of natural legal persons and corporations.

2.2 Formation and dissolution of corporations
Candidates should be able to
- describe the required procedures for the formation of corporations;
- describe the required procedures for the dissolution of corporations.

2.3 Unincorporated associations
Candidates should be able to
- describe unincorporated associations.

2.4 Corporations and unincorporated associations
Candidates should be able to
- compare corporations and unincorporated associations.

3. The law of tort

3.1 Nature and classification
Candidates should be able to
- explain the nature of a tort;
- explain how torts are classified.

3.2 Main torts
Candidates should be able to
- describe the characteristics of the main torts;
- describe the principles governing the main torts.

3.3 Defences
Candidates should be able to
- explain the main defences in tort.

3.4 Limitation of actions
Candidates should be able to
- describe the limitation of actions in tort.
3.5 Remedies
Candidates should be able to
– describe the main remedies in tort.

4. The law of contract
4.1 Contractual liability and classification of contracts
Candidates should be able to
– explain the nature of contractual liability;
– explain how contracts are classified.

4.2 Formation
Candidates should be able to
– identify the rules governing the formation of a contract.

4.3 Classification of contract terms
Candidates should be able to
– describe how contract terms are classified.

4.4 Validity
Candidates should be able to
– describe the elements which affect the validity of contracts.

4.5 Discharge
Candidates should be able to
– explain the circumstances in which a contract may be discharged.

4.6 Breach
Candidates should be able to
– describe the remedies for breach of contract.

4.7 Privity
Candidates should be able to
– explain the doctrine of privity of contract.

4.8 Assignment of contractual rights and duties
Candidates should be able to
– state the basic principles of assignment of contractual rights and duties.

4.9 Assignment in relation to insurance
Candidates should be able to
– apply the principles of assignment specifically to insurance.

4.10 Construction
Candidates should be able to
– describe the rules applicable to the construction (interpretation) of contracts.

5. Agency
5.1 Nature of agency
Candidates should be able to
– explain the nature of agency.

5.2 Agents, principals and third parties
Candidates should be able to
– describe the relationships between agents, principals and third parties.

5.3 Creation of agency
Candidates should be able to
– describe the creation of agency.

5.4 Rights and responsibilities
Candidates should be able to
– discuss the nature of an agent’s rights;
– describe the nature of an agent’s responsibilities;
– describe the nature of an agent’s authority;
– describe the nature of an agent’s duties.

5.5 Termination
Candidates should be able to
– explain the termination of agency;
– explain the effects of termination.

5.6 The law of agency and insurance
Candidates should be able to
– apply the law of agency to insurance.

6. Formation of the insurance contract
6.1 General principles governing the formation of insurance contracts
Candidates should be able to
– state how the general principles of contract law apply to insurance.

6.2 Insurable interest
Candidates should be able to
– explain the concept and nature of insurable interest.

6.3 Law of insurable interest
Candidates should be able to
– describe the development of the law of insurable interest.

6.4 Creation of insurable interest
Candidates should be able to
– describe the creation of insurable interest.

6.5 Application of insurable interest
Candidates should be able to
– apply the principle of insurable interest to the major types of insurance and reinsurance.

7. Utmost good faith
7.1 Misrepresentation
Candidates should be able to
– distinguish between misrepresentation and non-disclosure.

7.2 Duty of disclosure
Candidates should be able to
– explain the duty of disclosure;
– describe the nature of material facts.

7.3 Application of utmost good faith
Candidates should be able to
– apply the doctrine of utmost good faith to insurance.
7.4 Breach
Candidates should be able to
– describe the forms which breach of utmost good faith may take;
– describe the remedies available for breach of utmost good faith.

7.5 Legislation and codes of practice
Candidates should be able to
– describe the effects of legislation and voluntary codes of practice on the duty of utmost good faith.

8. Conditions and warranties in insurance

8.1 Express and implied warranties
Candidates should be able to
– explain the nature of express and implied warranties in insurance contracts;
– explain how warranties are made.

8.2 Conditions and other terms
Candidates should be able to
– explain conditions and other terms in insurance contracts.

8.3 Breach of warranty or condition
Candidates should be able to
– outline the implications of breach of warranty or condition.

8.4 Statement of insurance practice
Candidates should be able to
– explain the effects of the statement of insurance practice.

8.5 Special rules for compulsory insurances
Candidates should be able to
– state the special rules that apply to compulsory insurances.

9. Void and illegal insurances

9.1 Void and voidable contracts
Candidates should be able to
– distinguish between void and voidable contracts.

9.2 Illegal insurance contracts
Candidates should be able to
– describe illegal insurance contracts.

10. Making an insurance claim

10.1 Notice and proof of loss
Candidates should be able to
– explain the rules governing notice and proof of loss.

10.2 Construction
Candidates should be able to
– apply the rules governing the construction (interpretation) of contracts specifically to insurance contracts.

10.3 Proximate cause
Candidates should be able to
– explain the doctrine of proximate cause;
– establish the proximate cause of an event.

10.4 Proximate cause
Candidates should be able to
– apply the doctrine of proximate cause to insurance.

11. Measuring the loss

11.1 Indemnity
Candidates should be able to
– explain the principle of indemnity;
– describe the factors which limit, reduce, extend or modify the principle of indemnity.

11.2 Indemnity
Candidates should be able to
– explain the measure of indemnity under the main forms of insurance policy.

11.3 Providing an indemnity
Candidates should be able to
– explain the methods of providing an indemnity.

11.4 Salvage and abandonment
Candidates should be able to
– explain the doctrine of salvage and abandonment.

11.5 Claims payments and policy cover
Candidates should be able to
– state the effect of claims payments on policy cover.

12. Subrogation and contribution

12.1 Nature of subrogation
Candidates should be able to
– explain the principle of subrogation as a corollary of indemnity.

12.2 Operation of subrogation
Candidates should be able to
– explain how subrogation operates.

12.3 Application of subrogation
Candidates should be able to
– apply the principle of subrogation to basic insurance situations.

12.4 Source of subrogation rights
Candidates should be able to
– identify the source of subrogation rights.

12.5 Modification of subrogation rights
Candidates should be able to
– explain how subrogation rights may be modified.

12.6 Double insurance and contribution.
Candidates should be able to
– explain the nature of double insurance and contribution.
12.7 Contribution and common law
Candidates should be able to
– explain how contribution arises at common law.

12.8 Operation of contribution at common law
Candidates should be able to
– describe the operation of contribution at common law.

12.9 Common contribution conditions
Candidates should be able to
– describe the effect of common contribution conditions.

12.10 Basis of contribution
Candidates should be able to
– explain the maximum liability and independent liability methods of contribution.

12.11 Application of contribution
Candidates should be able to
– apply the principle of contribution to insurance.

12.12 Market agreements
Candidates should be able to
– describe the effect of market agreements on the principles of subrogation and contribution.

Reading list
The following list provides details of various publications which may assist with your studies. The primary text for this syllabus is shown in bold type. Periodicals and publications listed as additional reading will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

Note: The examination will test the syllabus alone. The reading list is provided for guidance only and is not in itself the subject of the examination.

Most of these additional study materials can be borrowed or purchased from CII Information Services at www.cii.co.uk/is

Primary text
Legal aspects of insurance. London. The CII. Coursebook P03.

Additional reading

Reference works

Periodicals
The Journal. The CII. Six issues a year.

Examination guides
You are strongly advised to study these before the examination. Please visit www.cii.co.uk to buy online or contact CII Customer Service for further information on 020 8989 8464.