Specimen coursework assignment

M05 – Insurance law

The following is a specimen coursework assignment including questions and indicative answers.

It provides guidance to the style and format of coursework questions that will be asked and indicates the length and breadth of answers sought by markers. The answers given are not intended to be the definitive answers; well-reasoned alternative answers will also gain marks.

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Coursework submission rules and important notes

Before you start your assignment, it is essential that you familiarise yourself with the information in the Coursework Support Centre available on RevisionMate.

Please note the following information:

- These questions must not be provided to, or discussed with, any other person regardless of whether they are another candidate or not. If you are found to have breached this rule, disciplinary action may be taken against you.
- Important rules relating to referencing all sources including the study text, regulations and citing statute and case law.
- Penalties for contravention of the rules relating to plagiarism and collaboration.
- You must not use Artificial Intelligence (AI) tools to generate content (any part of an assignment response) and submit it as if it was your own work.
- Coursework marking criteria applied by markers to submitted answers.
- Deadlines for submission of coursework answers.
- You must not include your name or CII PIN anywhere in your answer.
- The total marks available are 200. You need to obtain 120 marks to pass this assignment.
- Your answer must be submitted on the correct answer template in Arial font, size 11.
- Answers to a coursework assignment should be a maximum of 12,000 words. The word count does not include diagrams however, it does include text and numbers contained within any tables you choose to use. The word count does not include referencing or supplementary material in appendices. **Please be aware that at the point an assignment exceeds the word count by more than 10% the examiner will stop marking.**

Top tips for answering coursework questions

- Read the Learning Outcome(s) and related study text for each question before answering it.
- Ensure your answer reflects the context of the question. Your answer must be based on the figures and/or information used in the question.
- Ensure you answer all questions.
- Address all the issues raised in each question.
- Do not group question parts together in your answer. If there are parts (a) and (b), answer them separately.
- Where a question requires you to address several items, the marks available for each item are equally weighted. For example, if 4 items are required and the question is worth 12 marks, each item is worth 3 marks.
- Ensure that the length and breadth of each answer matches the maximum marks available. For example, a 30 mark question requires more breadth than a 10 or 20 mark question.

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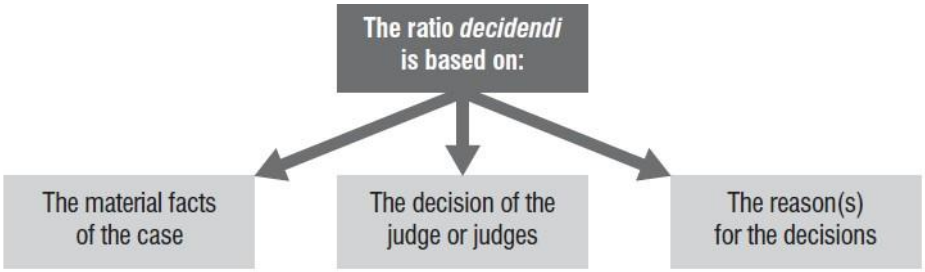
Additional M05 coursework tips

It is recommended that you take the following four-step approach when planning an answer to an M05 question:

- **Step One:** Identify which area(s) of the law the question is testing and link it back to the correct Learning Outcome(s).
- **Step Two:** Explain how the relevant area(s) of the law, in outline, may relate to the context set out in the question. Identify relevant statute and case law. When quoting law, focus on the ratio *decidendi* rather than the general facts of the case.



For further information see chapter 1 of the M05 Study text.

- **Step Three:** Apply the relevant principles of the law, including statute and case law, to the question.
- **Step Four:** Include in your answer a conclusion which directly links back to the question and relevant area(s) of the law.

The coursework questions link to the Learning Outcomes shown on the M05 syllabus as follows:

Question	Learning Outcome(s)	Chapter(s) in the Study Text	Maximum marks per answer
1	Learning Outcome 2	Chapter 2	10 marks
2	Learning Outcome 3	Chapters 3	10 marks
3	Learning Outcome 4	Chapters 4	10 marks
4	Learning Outcome 5	Chapters 3 & 5 & 6	30 marks
5	Learning Outcome 6	Chapter 3 & 7	20 marks
6	Learning Outcome 7	Chapter 8	20 marks
7	Learning Outcome 8	Chapter 9	20 marks
8	Learning Outcome 9	Chapter 10	20 marks
9	Across more than one Learning Outcome	Across more than one chapter	30 marks
10	Across more than one Learning Outcome	Across more than one chapter	30 marks

M05 specimen coursework questions and answers

Question 1 - Learning Outcome 2 (10 marks)

You are a claims handler. A serious road accident was caused by Arthur's negligent driving.

David's car was involved in this serious accident. The accident resulted in David being pulled from his car, just before the petrol tank exploded and he narrowly avoided death. David sues Arthur for damages in respect of post-traumatic stress disorder (PTSD) caused by nervous shock.

Fiona did not witness the accident. However, Fiona suffered nervous shock and developed PTSD after visiting her husband, David, in hospital. David was being treated for serious injuries received in the accident. Fiona sues Arthur for damages in respect of PTSD caused by nervous shock.

(a) Explain the legal position in respect of the legal liability of Arthur regarding the claim made by David. Refer to **one** relevant case in support of your explanation. (4)

(b) Explain the legal position in respect of the legal liability of Arthur regarding the claim made by Fiona. Refer to **two** relevant cases in support of your explanation. (6)

Answer to Question 1 (Learning Outcome 2)

The relevant areas of law to be considered here are types of victims.

(a) The question states that Arthur has been negligent so there is no need to consider the tort of negligence itself. The issue here is liability for subsequent loss or damage to property or to the person, the latter including either physical or psychological damage or both. According to Parsons et al, M05 (2020/21) the relevant law in this context is that relating to 'nervous shock' (also known as PTSD) a recognised psychiatric illness (and not "'mere' grief or sorrow") (Parsons et al, M05 (2020/21) Ch 2 D6A). Nervous shock claimants fall into two categories: primary victims, who suffer shock because of fear for their own safety, and secondary victims, who suffer shock through fear for the safety of others. David is a 'primary' victim. In *Page v Smith* (1996) (Example 2:18 Parsons et al, M05 (2020/21) Ch 2 D6B) the House of Lords held that a primary victim need only prove that *some form* of personal injury was foreseeable: victims do not need to establish foreseeability of *psychiatric* injury. Given the scale of the accident some form of injury to him was clearly foreseeable and therefore applying *Page v Smith* (1996) it is likely that that David would succeed in his claim.

(b) According to Parsons et al, M05 (2020/21) Ch2 D6B a secondary victim is one who has suffered shock through witnessing the plight of others. In *Alcock v Chief Constable of South Yorkshire Police* (1992) the House of Lords held that secondary victims can succeed only when they were proximate in space and time to the accident, or its immediate aftermath, and have a close tie of love and affection with a direct victim. Fiona is clearly a secondary victim who suffered shock through fear for the safety of others. While she did not witness the accident, itself she witnessed its aftermath. Another relevant case is *McLoughlin v O'Brian* (1983)*, which decided that such victims may be able to claim if they witness the 'immediate' aftermath of such a situation. McLoughlin is likely to be distinguished on its facts if applied here, as Fiona is not witnessing the 'immediate' aftermath, therefore in applying McLoughlin Fiona is unlikely to succeed in her action.

Question 2 - Learning Outcome 3 (10 marks)

John has a business supplying and delivering pianos. He was asked to supply and deliver a piano to a local music venue. As he was doing so he tripped and fell over some loose wiring left by electricians working at the venue. John was seriously injured and the piano was damaged beyond repair. The owners of the music venue have displayed the following notice at the venue:

'The owners of these premises do not accept responsibility for bodily injury to any visitor, or loss or damage to the property of any visitor, whether caused by the owners' negligence or not.'

John claims compensation from the owners of the music venue for both his injuries and loss of the piano, however they refuse to pay him anything referring to the notice displayed at the venue.

Explain, with justification, John's legal rights against the owners of the music venue. Refer to **one** statute and **two** relevant cases in support of your answer. (10)

Answer to Question 2 (Learning Outcome 3)

The relevant areas of law to be considered here are:

- the incorporation of terms into contracts;
- the possible exclusion of those terms.

John's contract to supply and deliver the piano is governed by the general law of contract however the context of this question is the ability to 'contract out' of certain liabilities under that contract.

There appear to be no issues relating to the formation of the contract applying the general law of contract and therefore this would appear to be a valid contract. It does not matter whether the contract was written or verbal as long as all the elements of a valid contract are

found to exist.

The main issue here is the contract terms. Terms can be incorporated into a contract in many ways. As Parsons et al, M05 (2020/21) notes, parties are generally free to negotiate their own contractual terms based on the idea of "freedom of contract", (Parsons et al, M05 (2020/21) Ch3 C) but in practice, terms may be set by one party, such as here, where the potential contractual terms appear on a notice. The notice appears to be an attempt to include 'exclusion or exemption clauses' into the contract.

Exclusion or exemption clauses are effective at common law only when they are "incorporated in the contract", (Parsons et al, M05 (2020/21) Ch3 C3A). This means that the party who seeks the protection of the clause must establish that the document containing it was 'contractual', i.e. which could reasonably be expected to contain terms and that those terms had been sufficiently drawn to their attention.

In two cases, one involving a hotel (*Olley v Marlborough Court Hotel* (1949)) and another involving a car park (*Thornton v Shoe Lane Parking* (1971)) the question of such terms being sufficiently brought to the claimant's attention was considered. Applying both cases, it is possible that this notice could be incorporated in to the contract. It would be useful to know if John was aware of this notice before he visited the venue. If he was not it would have to be established how visible it was when he visited the premises. It seems likely that he becomes aware of the notice too late for it to become a contractual term.

However, even if the term has been incorporated in the contract it will be subject to the Unfair Contract Terms Act 1977 (UCTA 1977), s2 of which states that: 'no one acting during business can by means of contractual terms or any notice given or displayed, exclude his liability for death or bodily injury arising from negligence'. This Act now only applies to business contracts as here and not contracts between traders and consumers.

This Act is relevant because a claim based on the negligence of the electricians is likely here. It does not matter whether the electricians were employed by the owner of the music venue or if they were also contractors. Therefore, applying UCTA, the owners of the music venue cannot rely on notice to deny John's claim for the personal injury.

Under s2 UCTA, "a person may exclude liability for other forms of loss caused by their negligence (e.g. property damage), but only if they can prove that the exclusion is reasonable", (Parsons et al, M05 (2020/21) Ch3 C3B) . This is relevant to the damage to the piano, but a court may have to decide if this is reasonable.

Question 3 - Learning Outcome 4 (10 marks)

Karen is an agent for CDE plc (CDE), an insurer. CDE have given Karen authority to grant cover on all household insurance risks, other than houses of non-standard construction which must be referred to CDE for approval.

Without reference to CDE, Karen grants cover on a house of non-standard construction that is owned by David. One week later David's house is damaged in a fire, but CDE refuse to pay the claim, stating that the insurance is invalid because Karen had no authority to grant cover.

(a) Explain briefly, the legal rights and duties of CDE regarding cover and the claim. (6)

(b) Explain briefly, the legal rights and duties of Karen regarding cover and the claim. (4)

Answer to Question 3 (Learning Outcome 4)

The relevant area of law to be considered here is the relationship between principals and agents.

(a) In the law of agency, where an agent enters into a contract with a third party, a principal, here CDE, is bound not only by the actual authority of their agent but also by the apparent (or ostensible) authority of the agent; that is, bound by the authority that the agent appears to have in the eyes of the third party. According to Parsons et al, M05 (2020/21) Ch4 F2, for this rule to apply "the principal must in some way 'hold out' another as being their agent". CDE may have done this, as they have obviously given Karen some authority to act for them. A principal will not, however, be bound by the apparent authority of their agent if the third party knows that the agent has no actual authority to act or if they did not know that Karen's authority was restricted as in *Watteau v Fenwick (1893)*.

Applying the principles of the law of agency the insurance contract with David may to be valid. CDE may therefore obliged to meet David's claim, unless David knew that Karen had no authority to put CDE on risk or of the limitations of her valid authority.

If the breach here is regarded as serious, CDE may have the right to terminate the agency agreement and withdraw Karen's authority completely. Alternative remedies available to CDE might include the right to refuse to pay Karen commission and, possibly, to sue her for damages.

(b) In granting cover, Karen is acting as an agent of CDE and not an agent of her client, David. Karen has been given authority to bind the insurers, but that authority is limited, as she is not allowed to give cover on houses of non-standard construction. In granting cover on such a house, Karen has therefore gone beyond her actual authority; that is the authority expressly conferred on her by CDE.

"An agent must obey the principal's instructions…." (Parsons et al, M05(2020/21) Ch4 C1) and "Agents must exercise reasonable skill and care in the performance of their

duties as agents". (Parsons et al, M05 (2020/21) Ch4 C2) In stepping outside her authority and granting cover, Karen has certainly broken the duties of obedience and due care and skill that every agent owes to their principal. Karen will be liable for a breach of her duties as an agent and may be liable for the claim amount.

Question 4 - Learning Outcome 5 (30 marks)

You are a claims handler for ABC Insurance plc (ABC), an insurer.

In February 2015, you pay the owner of a factory £20,000 in settlement of a claim for storm damage to the factory.

In April 2015, the factory is damaged again in another storm. The factory owner claims £50,000 for repairs to the building and £50,000 for loss of stock.

Following the claim investigation, the following facts are stablished:

- The factory owner is to appear in court on a fraud charge, which he was aware of when he took out the factory insurance cover in January 2015.
- The factory owner had answered 'no' to a question on the proposal form asking if he had ever been convicted of a criminal offence. There was no question on the proposal form relating to pending prosecutions.
- A loss adjuster's report states that the April 2015 building damage was £50,000, but that at the time of loss there was only £25,000 of stock.

You refused to pay the April 2015 claim and ABC send a letter to the factory owner declaring the policy *ab initio* on the basis of breach of good faith.

The factory owner writes back to you stating:

- He has just been acquitted of the fraud charge and did not declare it on the proposal form as he knew that he was innocent.
- All the questions on the proposal form were answered truthfully and, in any event, the fraud charge could have no relevance whatsoever to the claims for storm damage.
- The claim for stock was for £50,000 because he had been told that ABC always try to settle for less than the amount claimed. He assumed that he would not be paid the £25,000 unless he claimed for a greater sum.

(a) Discuss ABC's rights to avoid the policy *ab initio*. Refer to **two** statutes and **two** relevant cases in support of your discussion. (14)

(b) Discuss the factory owner's legal position with regard to the claim. Refer to **two** relevant cases in support of your discussion. (16)

Answer to Question 4 (Learning Outcome 5)

(a) This question involves the duty under the Insurance Act 2015 in business insurance (not 'consumer' insurance). The duty is to make fair presentation of the risk including the duty to disclose. The Insurance Act 2015 abolished some of the sections of the Marine Insurance Act 1906 which had previously applied to this topic.

S3(4)(a) Insurance Act 2015 provides that the insured is required to disclose every material circumstance which the insured knows or ought to know.

"Because the duty as set out under the Insurance Act 2015 is a pre-contractual duty the materiality of a fact should be judged by reference to the position as it existed at the date of placing the risk." (Parsons et al, M05 (2020/21) Ch6 B2).

A material fact, is something 'which would influence the judgement of a prudent insurer in determining whether to take the risk and if so, on what terms (Insurance Act 2015 s7).C*ontainer Transport International Inc. v Oceanus Mutual Underwriting Association (Bermuda) Ltd* (1984) held that the words 'influence the judgement' simply mean that the fact must be one which a typical, reasonable underwriter would have wanted to know about when forming his opinion of the risk. This is therefore an objective test. It need not necessarily be a decisive fact that would have caused such an underwriter to act differently had he known about it. This was affirmed and extended in *Pan Atlantic Insurance Co. v Pine Top Insurance Co.* (1994) which introduced a 'subjective element'. This element relates to the issue of whether the failure would have had any effect on the underwriter in taking the risk especially if he was not 'especially prudent'. Applying these cases, it would seem that a pending prosecution is certainly something that a hypothetical 'prudent insurer' would at least want to know about in assessing the risk but the impact of Pine Top would also need to be taken into account.

The argument that the factory owner puts forward, to the effect that a fraud prosecution is irrelevant to claims for storm damage, may not to be a valid one and would not prevent the insurers from claiming a breach of good faith. If a court accepted all these arguments, under the Insurance Act 2015 there are a range of alternative remedies for the breach of the duty of fair presentation, depending on whether the breach of duty by the proposer was deliberate, or reckless, or otherwise.

(b) It could be argued that the factory owner's pending prosecution did not, in fact, need to be disclosed because it was a matter that law outside the scope of the specific question about criminal conviction contained in the ABC proposal form. That is, in asking on the proposal form for details of actual convictions only, ABC implied that

there was no need to disclose potential convictions. This is an example of facts that do not need to be disclosed because the requirement to disclose them has been 'waived' by the insurers.

If this argument were to be accepted, ABC could not cancel the policy retrospectively and refute the current claims for failure to disclose the pending prosecution. Neither could they recover the £20,000 paid in respect of the earlier claim.

In this case, attention would then turn to the second claim for storm damage and, in particular, the factory owner's claiming for loss of stock to the value of £50,000 when property to the value of £25,000 only had been lost. A leading case on fraud in the claims process is the decision of the House of Lords in *Manifest Shipping Co. v Uni-Polaris Shipping Co.* (2001) (*The Star Sea).* This case confirmed the existence of a general duty, on both parties to an insurance contract, to act in good faith throughout the currency of the insurance, including the claims process. *The Star Sea* also confirmed that a right on the part of insurers to repudiate, not only a claim, but also the contract itself will arise in the case of actual fraud during making an insurance claim. For this right to arise, the falsehood in question must be substantial (i.e. not trivial), willful (e.g. deliberate and not merely negligent) and material in the sense that it had a decisive effect on the insurer's willingness to pay.

The factory owner says that he exaggerated his claim only because he thought that he would get less than that to which he was entitled, unless he asked for a greater amount, and some allowance must generally be made for negotiation between the insurer and the insured. However, he appears to be claiming for property that had not been lost at all, which is much more likely to be regarded as a deliberate attempt to deceive ABC, and therefore fraud. An example is *Galloway v GRE* (1999), a case in which a burglary claim for £16,000 was genuine up to £14,000 but fraudulent for the balance of £2,000, the court held that the insurers were entitled to repudiate the claim as a whole. In this case, even though it seems quite probable that ABC could establish fraud, it is also likely due to the operation of the Insurance Act 2015 that the insurers could only terminate the contract only for the future and could not avoid it *ab initio* (i.e. retrospectively cancel the policy from inception). This means that ABC would not be able to recover money paid in respect of the first 'honest' storm claim.

The policy may contain express wording known as 'fraud clause' "This typically states that in the event of a fraudulent claim 'all benefit under the contract shall be forfeited' or that the 'entire policy shall be void'." (Parsons et al, M05 (2020/21) Ch6 B5D). The validity of such a clause if it was found, would have to be considered in the light of the provisions of the Insurance Act 2015.

Question 5 - Learning Outcome 6 (20 marks)

You are an insurance broker. One of your clients, John, is the owner of a shop which is insured with YLX Insurance plc (YLX), an insurer, on a commercial combined policy.

A clause in the policy states: 'It is a term of this policy that all external locks and window fixings must be activated and secured when the premises are unattended.'

John informs you of the circumstances of a claim:

- He briefly left the shop to carry a customer's shopping to their car parked on the other side of the road, leaving his ten year old daughter alone inside the shop. His daughter accidentally started a fire in the shop, while playing with a cigarette lighter.
- He saw the fire and returned quickly to rescue his daughter. However, the fire had already caused extensive damage.
- YLX stated that he had breached the terms of the policy by leaving the shop and not securing the door, whilst the shop was unattended.

(a) Explain, with justification, the nature of the provision in the policy with regard to the securing of the premises. (10)

(b) Explain, with justification, the validity of YLX's decision to refuse the claim due to the alleged breach of the requirement to secure the premises when unattended. Refer to **one** relevant case in support of your answer your explanation. (10)

Answer to Question 5 (Learning Outcome 6)

This question is about the law relating to the classification of contractual terms, ambiguity in the interpretation of insurance policies and potential breaches of warranty.

(a) The first question is whether the term in the policy which is the contract is a condition or a warranty. As Parsons et al, M05 (2020/21Ch7 A2) states, "The classification of the terms of an insurance contract is in some ways more complex than the classification of terms in the general law." However, both involve placing obligations on the insured. The nature of a term in an insurance contract is often only considered where there is an alleged breach as here. It seems very likely that this requirement to secure premises during periods of absence would be considered a 'warranty'. It is not particularly relevant what language is used in the policy itself although it is not uncommon for requirements of this type to be on the basis that the requirement is 'warranted', that is it is specifically set out as a warranty in the policy. Even so, there are legal tests which can be applied to the term to try to establish what its nature is. The importance in doing this is to decide what type of remedy may be available on breach. It may be that this is considered to be an express warranty, but other types exist such as implied warranties. It may be considered to be a condition rather than a warranty; that is something which traditionally goes to 'the root of the contract' but here it is much more likely to be regarded as a warranty.

(b) Assuming the provision is a warranty it must be complied with exactly. Express warranties are construed strictly under the common law, so the insurers would probably be able to repudiate liability if the warranty applies even if locking the door might have made things worse rather than better.

The question of whether the warranty has been broken depends mainly on the construction of the word 'unattended'. Taken literally, the shop was not unattended, since a young child was present in it, but the insurers might argue that the only sensible construction of the word 'unattended' is 'not attended by any 'capable adult', since attendance only by a young child would not be appropriate. It may be argued that the word 'unattended' is ambiguous in this context and should be construed *contra proferentem*; that is, against the insurers who proposed the clause. This would give the shopkeeper the benefit of the doubt and mean there was not breach of warranty.

The shopkeeper could suggest that, in any event, the warranty applied only to the theft section component of the insurance policy and not to the fire or material damage section which may provide cover for fire claims. A similar issue arose in *Printpak v AGF Insurance* (1999)* in which the insured had broken a warranty that required the burglar alarm to be fully operational when the premises were closed. However, the policy divided into a number of sections. Section A covered fire and the alarm warranty was a 'section endorsement' in Section B, which dealt with theft. The insurers argued that the insured's breach of warranty ended the whole contract. However, the Court of Appeal held that although the policy was a single contract it was not necessarily 'seamless' and the burglar alarm warranty applied only to Section B, and not to A, so the fire claim succeeded. Effectively, the court in *Printpak* held that the insurance contract was, in effect composite

(or divisible) and not joint (or indivisible). The shopkeeper might make a similar point, and argue that, even if there had been a breach of warranty the effect would be to invalidate the theft section component of the policy only, and not the fire or material damage cover.

In conclusion, YLX may have difficulty in enforcing the warranty and may therefore be liable to meet the claim.

Question 6 - Learning Outcome 7 (20 marks)

Shahid is a racehorse trainer who owns stables. Shahid trains horses for a number of racehorse owners all of whom stable their horses with him. Shahid has a property insurance policy with RTS Ltd which includes fire cover for his stables. Straw in one of the stables caught fire and several stables were destroyed by the fire. RTS Ltd appointed a loss adjuster who reports that the stables are a total loss.

The loss adjuster also advises that all of the horses escaped due to the actions of the stables' staff but some of the horses appear traumatized and have been unable to race. As a consequence, some of the horses have missed important and profitable races they were likely to win.

The water, and other products used by the fire brigade to put the fire out, caused other damage to the stables office where Shahid kept all his files on various computer devices. The files have all been damaged beyond repair and Shahid had no back up files.

(a) Explain how the insurer would claim for the damage to the racehorses which prevented them racing. Refer to **one** relevant case in support of your explanation. (10)

(b) Explain how the insurer would claim for damage to the computer files. Refer to **two** relevant cases in support of your explanation. (10)

Answer to Question 6 (Learning Outcome 7)

The relevant areas of law here are the doctrine of proximate cause, remoteness of damages, and the duty to mitigate loss.

Perils relevant to insurance claims fall into the following categories:

- Insured perils; those named in the policy as insured, e.g. fire, as here, lightning and explosion.
- Excepted or excluded perils; those stated in the policy as excluded, e.g. riot, war or earthquake.
- Uninsured or other perils; those not mentioned at all in the policy.

There does not seem to be an issue with the claim in respect of the fire although the cause of the straw catching fire is unknown and may require further investigation.

(a) It may be that the claim is made under Shahid's policy although the racehorse owners may be able to claim themselves depending on what cover they have in respect of their individual horses. They may be reluctant to make a claim and so may seek to rely on Shahid recovering on his policy. The horses would in effect be considered goods in storage and they may therefore be insured by Shahid, it seems unlikely that damage to the horses in such an event would be excluded but the policy wording would have to be considered. According to Parsons et al, M05 (202/21) Ch8 C2 "Difficulty tends to arise when the loss results from a series of events spread over time……where there is a so-called 'chain (or train) of events'.") The issue here is likely to be whether the damage to the horses is too remote given that it is not directly caused physical damage. In order to recover for losses, the damage must not be too remote. There does seem to be actions taken by the staff which may have mitigated the loss, as otherwise some of the horses may have died and that may have been the result of Shahid taking 'reasonable precautions', as required by many policies, to train his staff what to do in the event of fire. That may be relevant to the claim but overall it seems likely that the losses claimed here might be too remote especially in relation the potential winnings. Case law such as *Leyland Shipping v Norwich Union Fire Insurance Society Ltd* (1918) does at least provide an argument that there is a 'chain of events' here to be considered.

(b) Here the issue is whether the damage is caused by the insured peril. In *Etherington v Lancashire and Yorkshire Accident Insurance Co.* (1909) the insured fell from his horse and suffered injuries which forced him to lie in cold and damp conditions. As a result he caught pneumonia and died. It was held that the accident was the cause of death and not the disease which was excluded. This case could be applied here to show that the result of the fire brigade's actions caused the loss of the computer files. However, it may be thought that Shahid did not take reasonable precautions to protect himself against the loss of the files and/or did not mitigate the loss by having back up files which perhaps he ought to have done. However, *Harris v Poland* (1941)* held that in fire insurance there could be a claim for something 'accidentally' damaged by the fire. The insured hid money and jewellery in his fireplace and later inadvertently lit a fire. The judge likened the loss to something accidentally falling into the fire and allowed the claim. Fire was the proximate cause.

Question 7 - Learning Outcome 8 (20 marks)

You are an insurance broker. One of your clients, Anthony, purchases a high-quality car for £90,000. You arrange motor insurance with XYZ plc (XYZ), an insurer, at an annual premium of £5,000. The motor policy states that, in the event of a total loss, XYZ will pay the market value of the car.

A few days later the car is stolen. XYZ promptly pays Anthony £87,500, which is the market value less a policy deductible of £2,500.

Anthony buys a replacement car of the same make and model. He asks that the car is added to his motor insurance policy. XYZ decline to do so, saying that his old policy had expired when the car was stolen.

XYZ states that Anthony must purchase a new policy if he wants the replacement car to be covered. XYZ quotes an annual premium of £6,500, due to the large claim. Anthony says that the policy has not expired, therefore XYZ are obliged to add his new car as a replacement vehicle without additional premium.

Six months later, XYZ succeeds in recovering the stolen car. The car's market value has risen to £100,000. Anthony argues that XYZ have made a profit of £10,000 and they should pass it to him, or at least pay him the amount of the £2,500 deductible.

(a) Explain, with justification, whether XYZ are correct in their argument that the policy ceased when the car was stolen. Refer to **one** relevant case in support of your explanation. (12)

(b) Explain whether XYZ should return any, or part, of the £10,000 to Anthony. (8)

Answer to Question 7 (Learning Outcome 8)

The relevant areas of law here are principle of indemnity and the doctrine of salvage and abandonment.

(a) The central issue here is whether Anthony's motor insurance terminated when the car was stolen and XYZ paid for the loss.

According to Parsons et al, M05 (2020/21) Ch9 F2B "…….cover may cease automatically if there is a total loss because the subject matter which supports the insured's interest will, as a result, no longer exist….". When the new vehicle needs to be insured, the old vehicle has not been recovered. The policy has been terminated as the subject matter no longer exists. If the subject matter does still exist (as here) the insured will have generally no rights in respect of it if the insurers have paid a total loss. This is so because, under the doctrine of salvage and abandonment, the property in the subject matter will pass to the insurers on payment of a total loss and the insured's ownership will cease.

The law draws a distinction between marine and non-marine insurance. In our example therefore, the principles of non-marine insurance apply. This principle states that you either have a total loss or a partial loss, there is no abandonment. For example, in *Holmes v Payne* (1930)*, the insurers paid a total loss on the jewellery which was believed to have been destroyed in a fire but was later found undamaged. It was held that the insured stopped being the owner and therefore the policy ceased.

A review of the exact wording of the policy would be required to determine whether XYZ are justified in treating the contract as terminated. If, as it seems XYZ are so justified, then they are also entitled to invite Anthony to insure the replacement car under a new insurance and to pay a full (and higher) premium for it.

However, if, in the light of the policy wording, the contract cannot be treated as terminated and Anthony can substitute his new car for his old one, it is very unlikely that XYZ can ask him to pay a full year's premium. XYZ might well be entitled to raise the premium for the new car (even if it is the same model) because there has been change or variation in the contract and not merely a continuation of the contract in its old form.

(b) Under the doctrine of salvage and abandonment, insurers that have paid a total loss are entitled to take over anything of the insured property that remains, so the car is now the property of the insurers. Therefore, it might seem that XYZ are entitled to benefit from the rise in the value of the car that has been abandoned, just as they would have had to suffer any detriment that would occur if the car had fallen in value.

The relevant question is can XYZ keep the whole of the salvage (or all the money that results from its sale) given that they have not paid Anthony the full market value of the car? That is a matter which may have to be resolved by the courts.

In concluding it may be useful to note as in Parsons et al, M05 (2020/21) Ch 9 E2 that the UK Financial Ombudsman "has taken the view that the insured should always be given the chance to repurchase". Applying that to the car in circumstances such as these, although it is not clear whether the (re)purchase price need necessarily be the same as the amount paid to the insured by the insurers. However, views of the Ombudsman do not create legal precedent.

Question 8 – Learning Outcome 9 (20 marks)

You are an insurance broker. One of your clients, George, owns and operates a factory, which is insured on an all risks basis for £5 million.

The factory sustains fire damage, at an estimated value of £1.5 million, caused by the negligence of a firm of building contracts, DCY Ltd (DCY), who were working on the factory. George claims under his all risks insurance policy and is paid £1 million as there is a £500,000 excess on the policy.

The insurer sues DCY in George's name and recovers £700,000 as DCY are insolvent. George demands to be paid £500,000 by his insurer, to recover the excess. The insurer declines to pay him anything as their recovery of £700,000 is less than their claim payment of £1 million.

(a) Explain with justification, whether George is entitled to the £500,000 from his insurer. Refer to **one** relevant case in support of your explanation. (10)

(b) Explain how the legal position would differ if George had sued DCY in his own name for £500,000 before George's insurer had settled the claim. (10)

Answer to Question 8 (Learning Outcome 9)

The relevant areas of law here are contribution and subrogation clauses in insurance contracts.

(a) George has requested that his insurer indemnify him for the full amount of his loss including the £500,000 excess he has paid. This would mean that there is no material gain and no material loss from the fire. In this case the recovery of £700,000 from the third party that caused the loss, DCY Ltd, is less than the £1.5 million loss and less than the insurers' own payment of £1 million. The key question is how the £700,000 recovery should be distributed, and who has priority over it, the insurers or George?

The answer can be found by applying *Napier v Hunter* (1993), where the House of Lords held that the money recovered by way of subrogation should first be allocated to any uninsured losses that the insured has suffered, then to the insurers for the losses that they have paid and, last, to the insured to cover any excess on the insurance policy. The insured's deductible is last in the chain of priorities because the insured, in taking an excess, has 'agreed' to bear the first part of any loss, up to the amount of that excess.

Since there is no mention of any uninsured losses in our case, apart from the excess, the insurers could keep the whole of the £700,000 recovered, as this is less than the amount of £1 million which they have paid. Therefore, George is not entitled to the £500,000 from his insurer as they take precedence in the recovery. George agreed to the excess when he took the policy out.

(b) If George had sued in his own name to recover the amount of his excess he may well have broken one or more conditions of his insurance policy. It was also held in *Napier v Hunter* (1993) that the doctrine of subrogation carries into an insurance policy a number implied terms, including a promise by the insured to act in good faith when proceeding against the third party. This means that an insured who proceeds against a third party would sue for the whole of the loss; £1.5 million in this case. If this occurs they cannot also seek compensation under their insurance policy, as any gains would be subject to a contributions clause. This is because only one actio*n can be brought* against the third party. If George had sued DCY for £500,000 only and settled for this amount, the insurers could not also sue DCY to make a further recovery. This would prejudice the insurer.

According to Parsons et al, M05 (2020/21), Ch10 B "The main purpose of subrogation is simply to prevent what is known as the 'unjust enrichment' of the insured- in other words to prevent him from indirectly profiting from their loss and so to preserve the principle of indemnity".

Claims conditions of this type generally take effect as conditions precedent to liability, which means that the insurers are likely to be entitled to refuse George's claim against them.

Question 9 - Across more than one Learning Outcome (30 marks)

You are an insurance broker. One of your clients, Chris, is a builder.

Chris had undertaken building work for one of his customers, Julie, at an agreed cost of £5,000. Julie was unable to pay Chris the agreed cost in a single payment. They had agreed that Julie should pay Chris in five monthly instalments of £1,000.

Subsequently Julie tells Chris that she will not be able to make any of the monthly payments. Chris then agreed to accept Julie's car, valued at £4,500 to pay the debt, together with Julie's car insurance policy, underwritten by QSR plc (QSR), an insurer.

Chris approaches you for advice and you establish the following:

- Whilst driving the car, Chris has hit a parked car owned by John.
- Chris believes that John's car was poorly parked and partially blocking the road.
- The repair bill, sent by John to Chris, for the damage to John's car, is £2,000.
- Chris had sent the repair bill to QSR under Julie's policy.
- QSR had replied stating that Chris is not insured under Julie's policy because it covers Julie and named drivers only, which does not include Chris.

Chris wishes to know whether QSR should pay the repair bill.

Chris says that, unless QSR pays the repair bill, he will demand the £5,000 from Julie. He states that the agreement to accept the car was never put in writing and the £4,500 value is less than the debt of £5,000, so the debt cannot be discharged. He also states that he believes that the damage to John's parked car was due to its poor parking.

(a) Explain, with justification, whether QSR are legally obliged to pay Chris' motor insurance claim. Refer to **one** relevant case in support of your explanation. (10)

(b) Explain whether there may be grounds upon which Chris might reduce his liability for damage to John's car. (8)

(c) Explain, with justification, whether Chris is still legally entitled to the amount of £5,000 that Julie owes him. Refer to **two** relevant cases in support of your explanation. (12)

Answer to Question 9 (Across more than one Learning Outcome)

The issues here relate to assignment of contracts of insurance, defences in negligence and consideration in relation to part payment of a debt.

(a) Motor insurance policies are 'personal' contracts, "in the sense that the insurer agrees to provide cover on the basis of the insured's personal characteristics and would not necessarily offer the same terms to another." (Parsons et al, M05 (2020/21) Ch3 H2. The terms of the cover granted, and the amount of premium payable will depend not only on the vehicle to be insured, but also on many factors relating to people who may drive it, including their age, occupation, experience and general use of the vehicle. All these are likely to change if a car is transferred as according to Parsons et al, M05 (2020/21): Ch H3 3."…….. the burden of a contract cannot in principle be transferred without the consent of the other party…….".

In *Peters v General Accident Fire and Life Assurance Corporation Ltd* (1938)* the seller of a van handed over his insurance policy along with the vehicle to the buyer, who assumed that he was covered by it. The buyer subsequently caused an accident in which the claimant was injured. The claimant secured a judgment against the buyer but the court held that the insurers were not liable to satisfy it, because the policy could not be assigned without their consent and no consent had been given. Whilst the motor policy was given to Chris by Julie indicating that she intended to assign the policy to Chris, motor insurance policies cannot be freely assigned; that is cannot be assigned without the consent of the insurer.

There is no mention of QSR giving their consent in this case so they are not legally obliged to meet Chris' claim.

(b) It is possible that both parties were at fault, i.e. that Chris was negligent, but that John was also partly to blame because he parked his car in such a way as to make the accident more likely to happen, or make the effects of the accident worse, or both. The concept here is contributory negligence which is a possible partial defence, (resulting in a reduction of liability) in relation to claims based on negligence or some other torts. If this defence was made out Chris would still have to pay compensation to John, but the amount of damages payable would be reduced by a percentage corresponding to John's share of the blame. For example, if a court took the view that John was 40% to blame, his damages would be reduced from £2,000 to £1,200.

(c) The question is whether Chris, having agreed to accept a car and a motor insurance policy to pay off the debt of £5,000, can change his mind and claim the full sum that was originally owed. Chris argues that the agreement to accept the car and insurance policy was never put in writing and that their £4,500 value is much less than the debt of £5,000. Most agreements do not need to be in writing to be legally binding, and here evidence in writing is not necessary.

"A debt cannot be discharged by the payment of a smaller sum unless there is a change in the time or mode of payment or something extra is added." (Parsons et al, M05 (202/21) Ch3 E4A).

For example, a person who is owed £5,000 and agrees to accept just £4,500 can change their mind afterwards and sue for the whole sum. The theory behind this rule is that the debtor in such a case has provided no consideration, i.e. nothing of value, in return for the creditor's promise to accept a smaller sum, so the promise is not binding and can be revoked. However, as noted above, payment of a smaller sum can discharge a larger debt if there is a change in the time or mode of payment, or something extra is added. This was the ratio of *Pinnel's Case* (1602)*.

This principle was confirmed by the House of Lords in *Foakes v Beer** (1884) in which Beer had obtained judgment against Foakes for £2,090. Later, Foakes agreed to pay £500 down and half-yearly sums of £150 until the debt was repaid. When the whole sum had been repaid, Beer sued Foakes for interest on the debt and the court held that she was entitled to do so as Foakes had supplied no consideration for her agreeing to accept payment by instalments.

In Chris' case there is a change both in the mode of payment and the timing of it. Payment is now being made in the form of goods (the car) and intangible property (the insurance policy) instead of cash and, perhaps more importantly, payment is effectively being made earlier than originally agreed. This is so because payment of the £5,000 was originally to have been in instalments, spread out over five months. In applying Pinnel's Case Chris may not be entitled to the £5,000 that was owed originally if the requirements of that case are found to be satisfied here.

Question 10 - Across more than one Learning Outcome (30 marks)

You are an insurance broker. You are arranging the insurances for a new client who owns and operates a restaurant. You recommend that the insurance is placed with WSR plc (WSR), an insurer.

With the owner of the restaurant, you completed WSR's online application form and entered the answers given to you by the restaurant owner. The restaurant owner informed you of two recent claims for thefts from the restaurant. However, you did not include this claim information on the application form.

Although you asked the owner to check the completed online application form, he declined to do so. The form is submitted to WSR who issue the policy.

Two months later the restaurant is damaged by a lightning strike. A claim for damage is notified to WSR, however, they refuse to pay the claim when, during their claim investigations, they learn about the earlier theft claims. WSR decide not to cancel the policy.

(a) Explain, with justification, whether WSR are correct in their decision not to pay the claim resulting from the damage caused by the lightning strike. Refer to **one** relevant case in support of your explanation. (8)

(b) Explain, with justification, whether WSR are correct in their decision not to cancel the policy. (6)

(c) Explain the extent of your responsibility for the decision not to include the theft claims in the online application form. (8)

(d) Explain how the legal position would differ if WSR had asked you to visit the restaurant owner to help with completing the online application form. (8)

Answer to Question 10 (Across more than one Learning Outcome)

The issues to be considered here are material facts, the duties of an agent and remedies on breach.

(a) In relation to many of their activities, insurance brokers act as agents of the insured, or the proposer for insurance, and this is generally the case when an insurance broker assists a client in completing a proposal form or similar documentation. As stated in Parsons et al; M05 (2020/21) Ch4 C2 "Agents must exercise reasonable care and skill in the performance of their duties as agents". Here, the broker is acting on behalf of the restaurant owner when the two completed the online application form together.

The broker's omission of the claims would be treated, in law, as though the restaurant owner himself had omitted the information, because he is the principal for whom the insurance broker was working and not WSR. The effect of this is that WSR are entitled to treat this failure as an actionable breach of good faith; previous theft claims are clearly material facts that a reasonable insurer would want to know about when a person applies for business insurance cover as it may 'influence their judgement'.. The nature of material facts has been considered in a number of cases including *Container Transport international Inc. v Oceanus Mutual Underwriting Association (Bermuda) Ltd (1984)* where it was held that "the words influence the judgement' simply mean that the fact must be one which a typical underwriter would have wanted to know about when forming their opinion of the risk". (Parsons et al, M05 (202/21) Ch6 Example 6.5).

(b) The remedy for a breach of good faith in the case of a non-consumer insurance depends on the nature of the breach. Under the Insurance Act 2015 if a qualifying breach was deliberate or reckless, the insurer may avoid the contract and refuse all claims and need not return any of the premiums paid. In all other cases (even where the insured has made an innocent mistake) proportionate remedies apply based on what the insurer would have done had it known the true facts. It appears from the action taken by WSR here that they are satisfied that the breach was neither deliberate or reckless.

(c) The broker's decision not to include the theft claim in the online application form has implications. Insurance brokers, like other agents, have a duty to obey the instructions of their clients and to exercise due care and skill, and it is apparent that the broker has failed to do this, as any reasonably competent insurance broker would understand the importance of disclosing the full claims record of their client to the insurers. Should a loss occur, this might mean that the restaurant owner may be able to sue the broker for breach of their duties as an agent and claim damages. Damages would normally be based on the loss to the restaurant owner that resulted from the broker's negligence; this might be equivalent to the amount of the restaurant owner's uninsured loss from the lightning strike.

There is a complication in that the restaurant owner failed to check the application form when invited to do so by the broker, as it might be argued that, as well as the broker, the restaurant owner has been negligent to some degree. One way in which a court might deal with this problem is to make a reduction for contributory negligence in the damages payable by the broker to the restaurant owner. However, the restaurant owner has a reasonable argument when he says that he assumed that the broker had completed everything correctly, so any reduction in his damages are unlikely to be significant.

(d) If WSR had asked the broker to visit the restaurant owner and help him complete the online application form, the legal position might well be different.

When an insurance intermediary is instructed by the insurers to ask questions and fill in the answers on an insurance proposal form he is likely then to be viewed as the insurers' agent rather than as an agent of the proposer, even when the proposal

contains a declaration to the contrary.

A further effect would be that the broker would now be in breach of their duties as an agent to their principal, WSR, which could expose them to a claim for damages by WSR. It is unlikely that WSR could sue the broker for the full amount of the loss that the restaurant owner suffered because of the lightning strike because if they had known about the two thefts, they might well have been prepared to insure the restaurant owner anyway, though perhaps at a high premium. In this case the basis of damages might be the difference between the premium that the restaurant owner paid and the premium that they would have paid if WSR had they been given the full claims record.

***Note to candidates:** Cases marked with * are either not found or are not named in the study text. Including them is an example of where further reading can justify marks. All cases should only come from the jurisdiction of England and Wales. A law report citation is only needed for cases **not** found in the study text.*

In-text referencing must clearly show any material directly quoted from the study text or elsewhere and the source must be given. All other information used must be original or paraphrased.

References

Alcock v Chief Constable of South Yorkshire Police (1992)

Container Transport International Inc. v Oceanus Mutual Underwriting Association (Bermuda) Ltd (1984)

Etherington v Lancashire and Yorkshire Accident Insurance Company. (1909)

Foakes v Beer (1884) UKHL1

Galloway v GRE (1999)

Harris v Poland (1941) Ll.LR 35

Holmes v Payne (1930) 37 Ll.LR 41

Insurance Act 2015

Leyland Shipping v Norwich Union Fire Insurance Society Ltd (1918)

McLoughlin v O'Brien (1983) 1 AC 410

Manifest Shipping Co. v Uni-Polaris Shipping Co. (2001) *(The Star Sea)*

Napier v Hunter (1993)

Olley v Marlborough Court Hotel (1949)

Page v Smith (1996)

Pan Atlantic Insurance Co v Pine Top Insurance Co (1994)

Parsons C (2016) Insurance Law. CII. London

Peters v General Accident Fire and Life Assurance Corporation Ltd (1938) 2 All. ER 267

Pinnel's Case (1602) 5 Co. Rep. 117

Printpak v AGF Insurance (1999) EWCA Civ 683

Thornton v Shoe Lane Parking (1971) Unfair Contract Terms Act 1977

M05 Specimen coursework assignment

How to plan an answer for a coursework question

The following three plans are based on 10, 20 and 30 mark questions respectively.

Question 1 - Learning Outcome 2 (10 marks)

You are a claims handler. A serious road accident was caused by Arthur's negligent driving.

David's car was involved in this serious accident. The accident resulted in David being pulled from his car, just before the petrol tank exploded and he narrowly avoided death. David sues Arthur for damages in respect of post-traumatic stress disorder (PTSD) caused by nervous shock.

Fiona did not witness the accident. However, Fiona suffered nervous shock and developed PTSD after visiting her husband, David, in hospital. David was being treated for serious injuries received in the accident. Fiona sues Arthur for damages in respect of PTSD caused by nervous shock.

(a) Explain the legal position in respect of the legal liability of Arthur regarding the claim made by David. Refer to **one** relevant case in support of your explanation. (4)

(b) Explain the legal position in respect of the legal liability of Arthur regarding the claim made by Fiona. Refer to **two** relevant cases in support of your explanation. (6)

Question deconstruction

- Review Learning Outcome 2 in the course material and the relevant information in the study text. As the facts disclose that Arthur has been negligent there is no need to consider negligence here, so the focus lies elsewhere i.e. the type of victims, whether they can be compensated and if so, by whom.
- Highlight the instructions within the question (which are circled in red above).
- Consider the circumstances, in this case as to whether the victims here are primary or secondary victims and what effect that classification has.

Answer plan

- When planning your answer refer to the four stages outlined in the M05 top tips in the answer M05 template. Please note that the four steps assist with **planning** but may not be the best structure to be used in the final answer submitted for assessment.
- Look closely at the mark allocation awarded for each part of the question.
- The number of marks available indicates the relative length and breadth required for the answer to each part of the question.
- You should answer each part separately and in each case, refer to the relevant case law to support your discussion.
- As this is a 10 mark question, your answer should be less detailed than your answers to either 20 or 30 mark questions.

Question 5 - Learning Outcome 6 (20 marks)

You are an insurance broker. One of your clients, John is the owner of a shop which is insured with YLX Insurance plc (YLX), an insurer, on a commercial combined policy.

A clause in the policy states: 'It is a term of this policy that all external locks and window fixings must be activated and secured when the premises are unattended.'

John informs you of the circumstances of a claim:

- He briefly left the shop to carry a customer's shopping to their car parked on the other side of the road, leaving his ten-year-old daughter alone inside the shop. His daughter accidentally started a fire in the shop, while playing with a cigarette lighter.
- He saw the fire and returned quickly to rescue his daughter. However, the fire had already caused extensive damage.
- YLX stated that he had breached the terms of the policy by leaving the shop and not securing the door, whilst the shop was unattended.

(a) Explain, with justification, the nature of the provision in the policy with regard to the securing of the premises. (10)

(b) Explain, with justification, the validity of YLX's decision to refuse the claim due to the alleged breach of the requirement to secure the premises when unattended. Refer to **one** relevant case in support of your explanation. (10)

Question deconstruction

- Review Learning Outcome 6 in the course material.
  Highlight the instructions within the question (which are circled in red above). Consider the circumstances very carefully and note what the question is asking you to do. This is not about breach as such but about the interpretation of the policy wording.

Answer plan

- When planning your answer refer to the four stages outlined in the M05 top tips in the answer M05 template. Please note that the four steps assist with **planning** but may not be the best structure to be used in the final answer submitted for assessment.
- In (a) you are required to consider the issues to do with the 'nature' of the policy wording; that is those clauses which could be either conditions or warranties. Some background may be necessary to explain how insurance contracts differ from other contracts where the distinction between conditions and warranties has been more firmly maintained.
- Consider the relevant law. It seems likely that this is a warranty. The policy wording may assist but labels are not always helpful. There are a number of legal tests which have been formulated to help decide if a clause is a warranty. Warranties should be complied

- with exactly.
- Conclude that the nature of the policy wording may ultimately be a matter for the courts.
- In (b) the justification is likely to be based on breach of the warranty. As mentioned above, the issue here is not so much any breach, which cannot be assumed, but if there is a breach at all based on the wording.
- Were the premises 'left unattended'? Is this the type of situation intended to be covered by the policy wording? Was it the intention of the insurer that the doors and windows be secured during any absences? Note the *contra proferentum* rule.
- Consider the more complex issues raised in case law such as Printpak to demonstrate your wider knowledge and understanding.
- As this is a 20 mark question, your answer should be more detailed than the answer to a 10 mark question but less detailed than the answer to a 30 mark question.

Question 9 - Across more than one Learning Outcome (30 marks)

You are an insurance broker. One of your clients, Chris, is a builder.

Chris had undertaken building work for one of his customers, Julie, at an agreed cost of £5,000. Julie was unable to pay Chris the agreed cost in a single payment. They had agreed that Julie should pay Chris in five monthly instalments of £1,000.

Subsequently Julie tells Chris that she will not be able to make any of the monthly payments. Chris then agreed to accept Julie's car, valued at £4,500 to pay the debt, together with Julie's car insurance policy, underwritten by QSR plc (QSR), an insurer.

Chris approaches you for advice and you establish the following:

- Whilst driving the car, Chris has hit a parked car owned by John.
- Chris believes that John's car was poorly parked and partially blocking the road.
- The repair bill, sent by John to Chris, for the damage to John's car, is £2,000.
- Chris had sent the repair bill to QSR under Julie's policy.
- QSR had replied stating that Chris is not insured under Julie's policy because it covers Julie and name drivers only, which does not include Chris.

Chris wishes to know whether QSR should pay the repair bill.

Chris says that, unless QSR pays the repair bill, he will demand the £5,000 from Julie. He states that the agreement to accept the car was never put in writing and the £4,500 value is less than the debt of £5,000, so the debt cannot be discharged. He also states that he believes that the damage to John's parked car was due to its poor parking.

(a) Explain, with justification, whether QSR are legally obliged to pay Chris' motor insurance claim. Refer to **one** relevant case in support of your explanation. (10)

(b) Explain whether there may be grounds upon which Chris might reduce his liability for damage to John's car. (8)

(c) Explain, with justification, whether Chris is still legally entitled to the amount of £5,000 that Julie owes him. Refer to **two** relevant cases in support of your explanation. (12)

Question deconstruction

- Review the relevant Learning Outcomes in the course material and the relevant information in the study text. Identify those areas which are in issue here and the relevant law.
- Highlight the instructions within the question (which are circled in red above).
- Consider the context which provides various clues to the different parts of the question.
- Apply the law as identified above appropriately in terms of detail and e.g. the number of cases required.

Answer plan

- When planning your answer refer to the four stages outlined in the M05 top tips in the answer M05 template. Please note that the four steps assist with **planning** but may not be the best structure to be used in the final answer submitted for assessment.
- There are three parts to this question. You are required to explain the legal obligations for each part and to explain the legal principles involved in each.
- Note the clues to the detail of each explanation provided by the mark allocation which is different between parts (a), (b) and (c).
- As this is a 30 mark question, your answer should be more detailed than the answers to 10 and 20 mark questions.

Glossary of key words

Analyse

Find the relevant facts and examine these in depth; examine the relationship between various facts and make conclusions or recommendations.

Construct

To build or make something; construct a table

Describe

Give an account in words of (someone or something) including all relevant, characteristics, qualities or events.

Devise

To plan or create a method, procedure or system.

Discuss

To consider something in detail; examining the different ideas and opinions about something, for example to weigh up alternative views.

Explain

To make something clear and easy to understand with reasoning and/or justification.

Identify

Recognise and name.

Justify

Support an argument or conclusion. Provide or show reasons for a decision.

Recommend with reasons

Provide reasons in favour.

State

Express main points in brief, clear form.