 Liability insurance

Objective: To develop in the candidate:

- a knowledge of the ways in which liability arises and of the duty of care owed;
- a knowledge of the effect of a breach of that duty and the resultant damages;
- an understanding of the purpose and effect of the relevant legislation;
- the ability to apply knowledge and skills to practical situations;
- the ability to synthesise different aspects of the syllabus and apply them to given scenarios.

Assumed knowledge and application skills:
Assumed knowledge may not appear in detail within the learning outcomes but forms part of the syllabus and thus may be examined. It is assumed that the candidate already has knowledge of the fundamentals of insurance gained from a study of P05 Insurance law or an equivalent qualification.


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. Legal principles

1.1 Sources of civil liability
Candidates should be able to
- describe the various sources of civil law and explain the operation of the precedent system in English law;
- explain the purpose and effect of legislation and its impact on civil law;
- define and distinguish between contract and tort;
- outline how English civil law is modified by membership of the European Union and the impact of foreign jurisdictions.

1.2 Negligence
Candidates should be able to
- define the tort of negligence;
- explain, with examples from case law, the prerequisites of negligence, including:
  - duty of care;
  - breach;
  - standard of care;
  - causation;
  - foreseeable damage.

1.3 Nuisance
Candidates should be able to
- define nuisance and distinguish between private and public nuisance;
- explain the fundamental elements required to establish a private or public nuisance.

1.4 Trespass
Candidates should be able to
- define and explain the legal concepts of trespass to land, persons and goods.

1.5 Statutory duty
Candidates should be able to
- explain the concept of statutory duty and the rules which govern whether such breach of duty supports an action in tort and set out the available defences for breach of statutory duty;
- outline the duties imposed by statute in relation to Highway Authorities and liability for pollution.

1.6 Strict liability
Candidates should be able to
- list the various strict liabilities imposed by English civil law and the individual rules of strict liability as they apply to:
  - hoteliers;
  - bailees;
  - common carriers;
  - owners and keepers of animals.

1.7 Rylands v Fletcher
Candidates should be able to
- discuss the rule in Rylands v Fletcher and analyse the prerequisites of the rule and explain the various defences to the rule;
- explain how liability attaches for damage caused by the escape of fire and how such liability differs from the rule in Rylands v Fletcher.

1.8 Contractual liability
Candidates should be able to
- outline the principles of contractual liability; how contractual agreement can modify tortious liability and explain, with examples from statute, how legislation can impose contractual liability.
1.9 Disclaimers to liability
Candidates should be able to
– outline the various types of disclaimers to liability, both contractual and tortious, incorporated in contract terms and explain the extent to which such disclaimers are effective, with particular reference to the provisions of the Unfair Contract Terms Act 1977.

1.10 Contracts (Applicable Law) Act 1990
Candidates should be able to

1.11 Defences
Candidates should be able to
– outline the general defences available to an action in tort;
– list the various categories of parties that may bring or defend an action at law and explain how their status affects the way liability attaches to them.

1.12 Limitations
Candidates should be able to
– explain the rationale for time limits in actions in law;
– outline the principal provisions of the Limitations Act 1980 (as amended) with particular emphasis on:
  • the distinction between the limitation periods of injury to persons and damage to property;
  • with examples from case law, how the provisions have been interpreted by the courts.

1.13 Remedies
Candidates should be able to
– outline the main provisions of the Latent Damage Act 1986 and explain its current relevance in the light of recent case law;
– outline the two most common remedies available to a claimant who succeeds in subsequent action at law;
– list and describe the various categories of damage and explain how these apply to claims involving loss or damage to property, economic loss, personal injury and death.

2. Risk and underwriting

2.1 Risk
Candidates should be able to
– describe the legal and physical aspects of risk evaluation in liability insurance;
– discuss the role of the risk manager in controlling liability risk;
– outline key issues in the analysis of a claims record;
– discuss the problems that latency creates for liability insurers.

2.2 Underwriting principles and procedures
Candidates should be able to
– identify the various forms of policy trigger and link this to the risk evaluation;
– discuss the differences between admitted and non-admitted covers, and the uses of difference in conditions/differences in limits (DIC/DIL) covers;
– discuss the relative merits of the various premium bases and their inter-relationship with the latency issues;
– explain how excess liability insurance operates and identify the problem areas that can arise with layered or co-insured programmes;
– explain the relevance of deductibles, co-insurance and exclusions in liability insurance.

3. Employers’ liability

3.1 Market overview
Candidates should be able to
– discuss employers’ liability market issues and their effect on cost and availability of cover.

3.2 Legislative framework
Candidates should be able to
– explain the purpose, provisions and limitations of the legal liability of an employer for injury and disease in the workplace, including reference to the following as applicable to employers’ liability:
  • Employers’ Liability (Compulsory Insurance) Act 1969;
  • Employers’ Liability (Compulsory Insurance) Regulations 1998;
  • voluntary codes of practice applicable to employers’ liability business;
  • Financial Services and Markets Act 2000;
  • Health and Safety at Work Etc Act 1974;
  • Transfer of Undertakings (Protection of Employment).

3.3 Policy wording and covers
Candidates should be able to
– explain the scope of cover provided under a standard employers’ liability policy, including:
  • operative clause and other clauses;
  • exclusions;
  • conditions;
  • extensions;
  • policy limits;
  • legal costs;
– describe the major hazards in the more common trades and risks;
– describe the key underwriting considerations and explain how such risks are underwritten and rated.

3.4 Workplace legislation outside the UK
Candidates should be able to
– outline how other governments approach the issue of accidents and illness in the workplace.

4. Public and products liability

4.1 Market overview
Candidates should be able to
– discuss public and products liability market issues and their effect on cost and availability of cover.

4.2 Legislative framework
Candidates should be able to
– explain the purpose, provisions and impact of the following as applicable to public and product liability:
  • Health and Safety at Work etc Act 1974;
  • Consumer Protection Act 1987;
  • Environment Act 1995;
  • Financial Services and Markets Act 2000;
  • voluntary codes of practice applicable to employers’ liability business;
  • Contracts (Rights of Third Parties) Act 1999.
4.3 Policy wording and covers
Candidates should be able to
- explain the scope of cover provided under a standard public and products liability policy, including:
  - operative clause and other clauses;
  - exclusions;
  - conditions;
  - extensions;
  - policy limits;
  - legal costs;
- describe the major hazards of particular occupations and activities;
- describe the key underwriting considerations and explain how such risks are underwritten and rated.

5. Directors’ and officers’ liability

5.1 Market overview
Candidates should be able to
- discuss directors’ and officers’ liability market issues and their effect on cost and availability of cover.

5.2 Legislative framework
Candidates should be able to
- explain the purpose, provisions and impact of the following as applicable to the legal liability of directors and officers:
  - Companies Act 1985;
  - Insolvency Act 2000;
  - voluntary codes of practice applicable to directors’ and officers’ liability business;
  - The Financial Services and Markets Act 2000;
  - Health and Safety at Work Etc Act 1974;
  - Environmental Protection Act 1990;

5.3 Policy wording and covers
Candidates should be able to
- explain the scope of cover provided under a standard directors’ and officers’ liability policy, including:
  - operative clause and other clauses;
  - exclusions;
  - conditions;
  - extensions;
  - policy limits;
  - legal costs;
- discuss the types of cover available for companies, individual directors, officers and trustees;
- describe the key underwriting considerations and explain how such risks are underwritten and rated.

6. Professional indemnity liability

6.1 Market overview
Candidates should be able to
- discuss professional indemnity liability market issues and their effect on cost and availability of cover.

6.2 Legislative framework
Candidates should be able to
- explain the purpose, provisions and limitations of professional indemnity legislation as applicable to different types of organisation.

6.3 Policy wording and covers
Candidates should be able to
- explain the scope of cover provided under a standard professional indemnity liability policy, including:
  - operative clause and other clauses;
  - exclusions;
  - conditions;
  - extensions;
  - policy limits;
  - legal costs;
- describe the key underwriting considerations and explain how such risks are underwritten and rated.

7. Third party liability covers

7.1 Scope of cover
Candidates should be able to
- explain the scope of cover provided in respect of the following third party liabilities:
  - product guarantee liability;
  - financial loss liability;
- describe the key underwriting considerations for these third party liabilities and explain how such risks are underwritten and rated.

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

Additional reading
Reference materials
Workers’ compensation: analysis of private and public systems. Munchen: Munich Re. 2000

Periodicals
The Journal. London: The CII. Six issues a year. Also available online (CII/SOFA members only) at www.cii.co.uk/is

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.

Exam technique/study skills
There are many modestly priced guides available in bookshops. You should choose one which suits your requirements.
An example is:
For a more interactive approach, you should consider: