

THE CHARTERED INSURANCE INSTITUTE

P05

Diploma in Insurance

Unit P05 – Insurance law

October 2013 examination

Instructions

- Three hours are allowed for this paper.
- **Do not begin writing until the invigilator instructs you to.**
- **Read the instructions on page 3 carefully before answering any questions.**
- Provide the information requested on the answer book and form B.
- You are allowed to write on the inside pages of this question paper, but you must **NOT** write your name, candidate number, PIN or any other identification anywhere on this question paper.
- The answer book and this question paper **must both be handed in personally by you** to the invigilator before you leave the examination room. **Failure to comply with this regulation will result in your paper not being marked and you may be prevented from entering this examination in the future.**

Unit P05 – Insurance law

Instructions to candidates

Read the instructions below before answering any questions

- **Three** hours are allowed for this paper which carries a total of 200 marks, as follows:

Part I	14 compulsory questions	140 marks
Part II	2 questions selected from 4	60 marks

- You should answer **all** questions in Part I and two out of the four questions in Part II.
- You are advised to spend no more than two hours on Part I.
- Read carefully all questions and information provided before starting to answer. Your answer will be marked strictly in accordance with the question set.
- The number of marks allocated to each question part is given next to the question and you should spend your time in accordance with that allocation.
- You may find it helpful in some places to make rough notes in the answer booklet. If you do this, you should cross through these notes before you hand in the booklet.
- It is important to show each step in any calculation, even if you have used a calculator.
- If you bring a calculator into the examination room, it must be a silent, battery or solar-powered non-programmable calculator. The use of electronic equipment capable of being programmed to hold alphabetic or numerical data and/or formulae is prohibited. You may use a financial or scientific calculator, provided it meets these requirements.
- Answer each question on a new page. If a question has more than one part, leave six lines blank after each part.

PART I

Answer ALL questions in Part I
Each question is worth ten marks

Note form is acceptable where this conveys all the necessary information

1. (a) List **two** of the most important forms of delegated legislation. (2)
- (b) State **two** advantages and **two** disadvantages of delegated legislation. (8)

2. Litigation can be very expensive and the potential costs involved are often unknown prior to going to court. Explain how **one** of the following can assist in alleviating this situation:

 Conditional fee agreements.

 OR

 Legal expenses insurance cover. (10)

3. (a) Distinguish between a corporation aggregate and a corporation sole. (4)
- (b) List **three** types of corporation aggregate and identify how **each** type is formed. (6)

4. The local newspaper, Fairbank Weekly News, recently published a story about the closure of the Fairbank Hotel, which was owned by Ella Brown, following an inspection by Environmental Health Officers. Unfortunately the paper printed a photograph of a different Ella Brown who owns a restaurant in the same village. She is very upset by this and decides to sue the owners of the newspaper for defamation.

 (a) State the **four** elements which must be present for an action in defamation to succeed. (4)
- (b) State, citing case law in support of your answer, whether Fairbank Weekly News are liable and in particular indicate whether they will be able to plead the special defence provided in Section 4 of the Defamation Act 1952. (6)

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

Spartan Steel and Alloys v Martin and Co. (Contractors) Ltd (1973).

 OR

Walker v Northumberland County Council (1995). (10)

6. Outline the **five** elements which must be established by a claimant in order to succeed in an action for breach of statutory duty.
7. (a) List **four** reasons which could result in a contract being regarded as defective. (4)
- (b) State the **three** circumstances, as outlined in the case of *Saunders v Anglia Building Society* (1971), whereby the defence of *non est factum* can be used by a person who has mistakenly signed a document. (6)
8. (a) State what is meant by a 'right of election' where the principal is wholly undisclosed. (2)
- (b) Identify **four** circumstances where an undisclosed principal cannot enforce their rights against a third party. (8)
9. (a) Outline the essential terms of an insurance contract that must be agreed for it to be valid. (6)
- (b) List **four** ways in which a contract may be discharged. (4)
10. Distinguish between moral and physical hazards providing **two** examples of each. (10)
11. (a) Identify the Act which came into effect in April 2013 that reformed the law governing disclosure and representations in consumer insurance contracts. (2)
- (b) Identify which common law duty of disclosure was modified by the Act identified in part (a) above and state what standard of disclosure is now required in consumer insurance contracts. (8)
12. (a) List the **three** ways in which an offer to form a valid contract can be made. (3)
- (b) Caroline goes shopping for Christmas presents and visits a department store. She picks up various items and takes them to the check-out to pay. However, when Caroline takes the items out of her basket, she decides that she no longer wants one of them. The check-out operator, Paul, insists that Caroline will have to pay for all the items in the basket because a contract to buy them has already been concluded.
- Advise Caroline of the legal position, citing **one** case in support of your answer. (7)

Questions continue over the page

13. Miss Smith suffers damage to her property due to a defective product she purchased from Ravenscroft Company Ltd, a manufacturing company. She submits a claim for £150,000 to Ravenscroft Company Ltd who has two public/products liability policies both of which include a 'rateable proportion clause'. The first policy, underwritten by Kingdom Insurance, has an indemnity limit of £100,000 and the second, underwritten by Rockwell Insurance, has an indemnity limit of £200,000.
- (a) Explain what method would be used to determine the contribution of **each** insurer, citing case law in support of your answer. (4)
- (b) Calculate, **showing all your workings**, the liability of each insurer. (6)
14. Distinguish between indemnity insurances and non-indemnity insurances, providing **two** examples of **each**. (10)

PART II

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

15. (a) Identify and explain the point in time at which insurable interest must exist, citing statute law in support of your answer, in respect of:
- (i) marine insurance; (10)
 - (ii) classes of insurance other than marine insurance. (8)
- (b) Richard, a businessman, wishes to arrange the following insurance policies, either in his own name or the name of his firm. In each case, state whether the contract is likely to be valid under English law, giving a reason for your answer. Where appropriate, also state whether the policy should be in Richard's name, or the name of the firm.
- (i) A policy covering the firm's factory premises which are leased from a property company. (3)
 - (ii) A policy covering an item of jewellery that Richard found in a car park, the owner of which has yet to be traced. (3)
 - (iii) A policy on goods belonging to his son, Christopher, which Richard has agreed to store in his factory for a three month period. (3)
 - (iv) A policy covering camera equipment which Richard purchased for £5,000 whilst on a business trip in Japan but did not pay the import taxes that were due when he arrived back in the UK. (3)
16. (a) (i) Describe what is meant by a warranty in a contract of insurance. (6)
- (ii) Identify, apart from 'basis of the contract clauses', the **two** ways in which warranties can arise. (2)
- (b) Simon owns a car and has noticed that the brakes are not working very well. His motor insurance policy incorporates a clause requiring him to maintain the vehicle in a road worthy condition at all times, but despite having faulty brakes he continues to use the car. Whilst driving, Simon has an accident caused by his negligent driving and faulty brakes, injuring Emma, a cyclist, and causing extensive damage to his car. Simon notes that his motor policy requires all claims to be notified within 30 days. Five months later, Emma writes to Simon claiming compensation for her injuries and damaged bicycle. Simon then notifies his insurers, Exp Insurance Company Ltd, of the claim and also submits invoices for the cost of repairs to his car.
- Describe the issues involved and the probable outcome of the following claims:
- (i) Simon's claim against Exp Insurance Company Ltd. (13)
 - (ii) Emma's claim against Simon. (9)

Questions continue over the page

17. (a) Explain briefly what is meant by the doctrine of privity of contract and the impact the Contracts (Rights of Third Parties) Act 1999 has had on the common law position.
- (b) Identify and describe the statutory exemptions to the doctrine of privity of contract in relation to motor and property insurance. (24)
18. (a) The principles of subrogation and contribution are sometimes described as 'corollaries of the principle of indemnity'.
- Explain what is meant by this and identify the main object which the law seeks to achieve in applying these principles. (10)
- (b) Define subrogation and explain why insurers incorporate an express subrogation clause in non-marine policies. (12)
- (c) In the case of *Napier v Hunter* (1993), it was held that subrogation had its origins in equity but that the basic doctrine had been supplemented by a number of common law terms.
- Identify the **four** common law terms referred to in part (c) above. (8)

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