

P05

Diploma in Insurance

Unit P05 – Insurance law

October 2011 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. State **two** ways in which an agency relationship may be created and **three** ways in which it may be terminated. (10)

2. (a) List **two** major sources of English law (other than equity) and **two** minor sources of English law. (4)
- (b) Outline **three** principles or remedies which derive from equity in our law and legal system. (6)

3. Explain what is meant by the 'neighbour principle' (or 'neighbour test') in the context of the law of torts. (10)

4. (a) In the context of European law, distinguish between Regulations and Directives. (6)
- (b) Give **two** examples of recent Directives (dated 2000 or after) of immediate relevance to insurance. (4)

5. Explain the doctrine of promissory estoppel in the context of the law of contract. Use a decided case to illustrate your answer. (10)

6. Distinguish between the pairs of terms in **each** of the following:
 - (a) misrepresentation and non-disclosure (in the context of good faith); (3)
 - (b) conditions precedent to liability and conditions precedent to the contract (in the context of insurance contracts); (4)
 - (c) the subject matter of insurance and the subject matter of the insurance contract (in the context of insurable interest). (3)

7. (a) Using life insurance as an example, distinguish between a legal assignment and an equitable assignment, outlining the steps that must be taken in each case. (7)
- (b) Describe briefly the advantages to the assignee of taking a legal rather than an equitable assignment. (3)

8. (a) Distinguish between strict liability and vicarious liability. (6)
- (b) Give an example of **each** of the above. (4)
9. Edward pays £50 to visit a football match in London. On the back of his ticket there is the following statement:
- '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 their negligence or not.'
- While he is watching the match Edward's seat collapses. This causes Edward to injure his leg and spill a pint of beer over the expensive suit that he is wearing, ruining it completely. He claims compensation from the owners of the football ground but they refuse to pay him anything, referring to the exclusion clause on the back of his ticket.
- Advise Edward of his legal rights, making particular reference to the effect of the exclusion clause. (10)
10. In insurance a proposer's duty to disclose material facts does not extend to situations in which the insurers have waived disclosure of certain information.
- Explain briefly what is meant by waiver in this context and give **three** types of situation in which waiver may be deemed to have taken place. (10)
11. Outline the principle(s) of law illustrated by **one** of the following cases:
- *J. J. Lloyd (Instruments) Ltd. v Northern Star Insurance Co. Ltd.* (1987) ('The Miss Jay Jay').
- OR
- *Banque Financiere de la Cite S.A. v Westgate Insurance Co Ltd* (1991). (10)
12. A fire breaks out in Gordon's restaurant and the fire brigade use large amounts of water to put out the flames. A crowd gathers to watch, and some unruly members throw stones at the windows, causing more damage. Gordon has a fire insurance policy, but no other form of insurance. Gordon claims for the three losses detailed below.
- Explain whether each of the three losses is likely to be covered by his fire policy. Give reasons for your answer and cite relevant case law where appropriate.
- (a) The fire damage. (2)
 - (b) Water damage caused by the fire brigade. (3)
 - (c) Glass breakage caused by members of the crowd. (5)

Questions continue over the page

13. Explain briefly **each** of the following, illustrating your explanation with an example in each case:
- (a) continuing warranty; (5)
 - (b) warranty of opinion; (2)
 - (c) implied warranty. (3)
14. (a) Explain the operation of the 'proportionality principle' in the context of the duty of utmost good faith. (8)
- (b) State the circumstances in which the proportionality principle would be difficult to apply. (2)

Part II questions can be found on pages 8 and 9

PART II

Answer TWO of the following FOUR questions.

Each question is worth 30 marks.

15. (a) Explain the rules which the courts apply when attempting to resolve disputes about the meaning of words in insurance policies. Illustrate your answer with cases drawn from insurance. (22)
- (b) Explain whether these rules always provide a clear solution to such disputes. Give a reason for your answer. (8)
16. (a) Identify **three** of the main duties that an agent owes to his principal and **three** remedies available to the principal where an agent is in breach of his duties. (12)
- (b) On 25 March, Kevin learns that his rich Aunt Mabel has bought him a watch, worth £20,000, that is to be given to him on his birthday 1 April. Unfortunately, the watch is stolen on 31 March and Aunt Mabel who had not insured the watch, changes her mind and decides not to give Kevin anything.
- Explain, giving reasons for your answer, whether it will be possible for Kevin to claim the insurance money if:
- (i) Kevin had insured the watch for £20,000 in his own name on 26 March, without telling Aunt Mabel about it; (6)
- (ii) Kevin had insured the watch for £20,000 in Mabel's name on 26 March, without telling Aunt Mabel about it. (12)
17. (a) Gerald insures his yacht under a marine policy. It covers perils of the sea but excludes defective design. The yacht sinks in a severe storm and when the yacht is recovered, an expert marine engineer affirms that its design is defective. The insurers therefore refuse to pay. However, the marine engineer also states that, had it not been for the storm, the yacht would not have sunk.
- Explain the principles that govern the liability of the insurers in this case, citing case law in support of your answer. (12)
- (b) Lucinda has a personal accident policy that covers death and disablement caused by 'accidental, external, visible and violent means'. She falls from her horse and suffers injuries that require hospital treatment. Whilst in hospital she contracts influenza from a member of the nursing staff and, being in a weakened state from the accident, dies from the disease.
- Explain whether the personal accident insurers are liable under the policy, citing case law in support of your answer. (10)
- (c) A department store has a fire policy underwritten by the XYZ Insurance Company but no other form of insurance cover. One day the fire alarm is set off by a customer who lights a cigarette whilst standing beneath a smoke detector. Somebody shouts 'fire!' and panicking customers rush to get out of the building. China and other fragile goods to the value of £500,000 are broken in the crush.
- Explain whether XYZ Insurance Company have any liability for this loss, giving reasons and citing case law in support of your answer. (8)

18. (a) Subrogation rights normally arise in tort. State **two** other ways in which subrogation rights can accrue, illustrating each one with an example. (6)
- (b) Explain what is meant by 'contractual waiver of subrogation' and discuss briefly the circumstances under which subrogation rights may be waived contractually. (9)
- (c) St Roderick's Cathedral is struck by lightning, causing damage to the value of £2,000,000. The XYZ Insurance Company pays for the loss in full but then discovers that the head priest at the cathedral, has organised a special televised appeal to help pay for the damage. He has raised £500,000 in this way. There is also a cathedral restoration fund, which stood at £300,000 at the time of the fire.
- Len, the claims manager for XYZ Insurance Company, thinks that he should reclaim both the sum of £500,000 collected by the head priest via the televised appeal and also the £300,000 from the cathedral restoration fund, by way of subrogation.
- Advise Len as to the correct legal position, giving reasons for your advice and quoting case law where appropriate. (15)