



The Chartered Institute of Loss Adjusters

Associateship Examination 2009 (October)

Paper C3

**Adjustment of Claims
Subsidence**

3 ½ Hours

Maximum Marks 200

Answer ALL questions *in Part 1 and 2 questions from Part 2*
Where appropriate, answers should make reference to relevant case law or statute
**PLEASE ENSURE THAT QUESTION NUMBERS ARE ENTERED CLEARLY AND IN
FULL ON THE COVER OF YOUR ANSWER BOOK AND IN YOUR ANSWER BOOK**



PART 1
ANSWER ALL QUESTIONS

QUESTION 1

a) Explain the implications on the adjustment of a claim each of the following, using examples:

1. Public Authorities' Clause

(8 Marks)

2. Professional Fees Clause

(8 Marks)

3. Debris removal Clause

(8 Marks)

b) Set out the calculation (figures need not be included) that you would use to determine a stock loss using the stock reconciliation basis.

(8 Marks)

c) Explain with rationale, demonstrating impartiality and methods to mitigate the loss, how you would deal with salvage in either of following situations:

1. Smoke logged clothing in a retail outlet (Claim £10,000)

2. Minor irremovable staining to carpets and clothing, in a household situation, caused by an escape of water from a cold water tank (Claim £10,000)

(8 Marks)

TOTAL 40 MARKS



QUESTION 2

a) When dealing with claims for Business Interruption in the following scenarios explain what action you would recommend to mitigate loss of turnover and state any savings which you might be able to identify.

i) Fire damage has occurred within the kitchen of a licensed hotel. Various essential items of catering equipment within the kitchen area has been destroyed and smoke has permeated the remainder of the ground floor including the reception and bar areas. It may be necessary to source some of the replacement catering equipment from overseas suppliers and lead times of approximately three months have been quoted. The smoke damage to the remainder of the ground floor is, generally, fairly superficial affecting decorations, other internal surfaces, furniture and equipment etc within the reception and bar areas.

ii) A firm of solicitors occupies rented offices on the ground floor of a building in multiple tenure. A burst pipe occurs within the roof space of the building and all the office accommodation, including that occupied by the solicitors is extensively waterlogged. In addition to the business interruption element, your Principals policy covers trade contents etc but the building owners are liable for any structural repairs. To allow for the necessary drying out procedures it is estimated that it will be at least three months before the premises can be occupied again.

iii) An old caravan has been converted for use as a snack bar and this is permanently located in a lay by adjacent to a busy main road. The Insured normally trades here during daylight hours Mondays - Saturdays. One night the snack bar is accidentally impacted by a heavy goods vehicle attempting to park in the lay by and, together with its contents, the caravan is totally destroyed. During the course of your enquiries you find that the Insured was apparently trading without the necessary Local Authority licence and that measures were in fact in hand to enforce the removal of the converted caravan from the lay by. However, the Insured had already made arrangements to move the caravan to an alternative site in an adjoining Local Authority area where less stringent trading regulations applied.

(24 Marks)



b) You are dealing with a fire loss under a commercial policy which covers property damage and business interruption. The Insured are retail carpet suppliers and they occupy a self contained unit attached to an adjacent much larger unit which is a separate business in entirely separate ownership and is used as a furniture warehouse. The fire originated in the furniture warehouse and both that building and its contents were severely damaged. In addition to the damage to the Insured's premises there is a business interruption claim. Temporary repairs enable the Insured to trade but there is a continuing loss of turnover.

Explain if any of the following losses would be covered. For the purpose of this exercise you may make whatever assumptions you wish regarding the business interruption cover but you must explain fully the assumptions made.

i) Loss of turnover in the week immediately following the fire, during which time the local authority refused permission for the premises to trade while the extent of the damage to the warehouse was assessed.

ii) Costs incurred by the Insured in an advertising campaign designed to make customers aware that the fire, which received substantial publicity in the local media, had not affected their premises and that they continue to trade.

iii) Loss of turnover during the period in which the permanent repairs are undertaken. These repairs cannot be undertaken independently of the work on the warehouse. The damage adjacent is so severe that the repairs do not begin until more than twelve months from the date of the fire.

(16 Marks)

TOTAL 40 MARKS



QUESTION 3

- a) Explain briefly the difference between Contribution at Common Law and Contribution in accordance with ABI Rules. Provide one example of each.

(10 Marks)

- b) In all parts of the following question, all workings must be shown:

- i) In a Policy with a pro rata average condition, calculate the sum payable

Agreed loss before application of excess	£	50,000
Sum Insured	£	100,000
Value at Risk	£	175,000
Excess	£	500

(10 Marks)

- ii) In a Policy with a pro rata average condition, calculate the sum payable

Agreed Loss (subject to salvage)	£	175,000
Sum Insured	£	90,000
Value at Risk	£	175,000
Residual salvage value	£	10,000
Excess	£	500

(10 Marks)



iii) In a Policy subject to average under the reinstatement memorandum calculate the sum payable

Agreed loss (before excess)	£	20,000
Sum Insured	£	100,000
Value at Risk	£	140,000
Excess	£	100

(10 Marks)

TOTAL 40 MARKS



PART 2

ANSWER 2 QUESTIONS ONLY

Question S1

You are dealing with a claim for new bungalow constructed approximately three years ago. It is located on a hillside in a development of similar type properties. It is also reported that a new housing development has recently commenced further down the slope.

The adjusters report suggests that the cause of the damage is unknown but it appears to be either subsidence of made up ground or landslip.

Tests reveal the drain to the side of the property is a public sewer and predates the development. It is known to have a history of leaks and blockages.

- a) What are the key policy exclusions that are likely to apply to a circumstance such as this and on what basis would they apply?

(10 Marks)

- b) Under what circumstances would you deal with the claim as under the escape of water peril?

(6 Marks)

- c) If you need to monitor the movements on a landslip, what things are normally monitored?

(3 Marks)

- d) If the cause was landslip, what are the main reasons for landslips occurring?



(8 Marks)

e) What opportunities exist for a contribution/recovery?

(10 Marks)

f) Why is it unlikely that there will be a successful recovery against the Local authority? (Quote case law as appropriate)

(3 Marks)

TOTAL 40 MARKS

Question S2

Dealing with subsidence disputes can be a necessarily complex and lengthy business - for adjusters as well as for insurers. This is a question which relates to the handling of subsidence disputes.

Settling subsidence disputes sometimes involves applying basic principles that have been overlooked along the way. The most basic, of course, is '*what is subsidence?*' To insiders, the answer is usually obvious, but all that most home owners know about subsidence is that they don't want it. And subsidence is rarely defined in policies.

a) Provide description of subsidence as meant by the Subsidence Peril, clearly distinguishing subsidence from settlement.

(8 Marks)

b) What is the recognised case from 1991 that drew a distinction between subsidence and settlement?

(2 Marks)

c) Provide 3 examples of typical causes of subsidence

(6 Marks)



d) Provide 2 examples of typical causes of settlement

(4 Marks)

e) Complications can arise if the policyholder changed insurers around the time when - as later becomes evident - subsidence movement and damage was already occurring (possibly without the policyholder's knowledge). What is the current ABI principle that should be applied in this situation to resolve the position?

(1 Mark)

f) What three options are under the agreement and explain which Insurer deals with the claims under each option

(3 Marks)



g) There are eight provisos to the agreement - name 6

(6 Marks)

h) Interim payments may be collected from insurers - what is the financial limit below which interim payments will not be collected

(1 Mark)

i) The following situation illustrates one of the more common types of dispute we see involving claims for subsidence. Insurer denies liability for subsidence damage on the grounds that it occurred before its own policy came into force the insured's expert established that the damage continued to occur after the start of the policy under which the claim was now being made. The evidence was that the movement (and damage) was progressive. That meant that the property had been damaged by an insured event during the period when Mr K was insured. As is the case under most policies, this results in a claim and may engage insurer's liability.

j) What was insurers' strict responsibility under the policy?

(3 Marks)

k) What are the practical options in terms of dealing with the claimant in the circumstances detailed above?

(3 Marks)

l) As a subsidence expert, what would be your advice be to insurers in the above circumstances.

(3 Marks)

TOTAL 40 MARKS



Question S3

- a) The owner of a tree has a responsibility to make sure that it does not cause damage to a neighbour's property. If it is established that a tree is causing damage, the owner of the tree may be compelled to prevent further damage in three ways. Name the three ways.

(6 Marks)

- b) A recovery action may be brought against a tree owner in either nuisance and/or negligence.

What are the three key points which need to be established to be successful in an action in nuisance?

(6 Marks)

- c) What are the four key things a claimant must show to prove that a tree owner has been negligent?

(8 Marks)

- d) The case of *Paterson v Humberside County Council* 1995 was relevant in establishing that a tree is an effective and substantive cause of damage. Name four areas of evidence that could support that a tree is an "effective and substantial cause of damage".

(8 Marks)

- e) What was the significance of the case of *Rupert St John Loftus v London Borough of Ealing* (2003) in the context of "cause of damage" as detailed above?

(2 Marks)

- f) Sometimes the tree owner refuses to take action and consideration is given to an injunction. In awarding an injunction, the courts will consider whether a money award could be given instead. The case of



Shelfer v City of London Electric Lightening Company (1895) established four elements when damages may be given in substitution, name them.

(8 Marks)

g) What was the 1991 case which supported these tests?

(2 Marks)

TOTAL 40 MARKS