



STRICTLY PRIVATE & CONFIDENTIAL
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The Chartered Institute of Loss Adjusters

Associateship Examination 2014 (October)

Paper C3

Subsidence

3½ 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.

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PART 1
ANSWER ALL QUESTIONS

QUESTION 1

1. Define the term “Warranty” when applied to a policy of insurance. (4 Marks)
2. List four warranties that might apply to a typical Commercial Policy and two warranties that might apply to a typical Domestic Policy. (6 Marks)
3. Explain briefly the effect of breach of warranty, both in relation to a claim under a Commercial Policy and a claim under a Domestic Policy. (10 Marks)
4. What advice and recommendations should you provide to your Principals in the following circumstances:

The Insured, Mr A, has a portfolio of ten buy-to-let properties, all of which are terraced houses dating from the 1900s, in different areas of an industrial town. Your Principals provide Buildings Cover for all the properties, each of which is separately specified under the Policy. The Policy stipulates, amongst other things, that only “professional lets” are covered, references should be obtained for prospective tenants, each property should be inspected at least every two months and also damage caused by persons lawfully on the premises is excluded.

Mr A manages the portfolio himself and does not employ agents. He is normally diligent in obtaining references from potential tenants and ensuring they are suitable. However, on this occasion, this particular property had been occupied for three years by Mr T who had always been a good tenant. Since he was leaving the area to work elsewhere, he asked the Insured whether a friend of his, Mrs C, could take over as the new tenant. The Insured had met Mrs C on a number of previous occasions when visiting the property and understood that she was employed as a social worker. She seemed to be a respectable individual and could also take up occupation as soon as Mr T left so Mr A agreed that she could become the new tenant, particularly since she could pay six months’ rent in advance. A tenancy agreement was completed on this basis.

Two months later, Mr A called at the property to carry out the normal routine inspection. He had previously attempted to contact Mrs C by telephone to arrange the necessary appointment but without success. Since he was in the area, he decided to make a speculative visit but Mrs C was not at home and he was unable to gain entry. He then wrote to her to arrange a specific appointment for two weeks later. He did not hear from Mrs C but attended there on the appointed date. He then discovered that the front entrance door was temporarily boarded and, on enquiry with neighbours, was told that the Police had recently forced entry and had discovered that the house had been converted into a cannabis factory. The Insured immediately contacted the Police who confirmed these details and also told the Insured that it was suspected that Mrs C had allowed others to use the premises for the cultivation of cannabis. Neither Mrs C nor the other suspects can be traced. In addition, and although the Insured believed that Mrs C was a social worker, it would now appear, from further enquiries that he has carried out, that she worked in an unlicensed bar. The property has sustained significant structural and other cosmetic damage internally following its conversion into a cannabis factory. (20 Marks)

(40 MARKS)



QUESTION 2

1. Discuss the circumstances under which it might be appropriate to evaluate a stock loss using the stock reconciliation method and also comment upon any potential disadvantages of using this method of validation. Explain how the loss would be calculated on this basis (figures need not be included).

(12 Marks)

2. Explain briefly the term “Subrogation” and give one example of how this might arise when dealing with a claim. What initial action should you take once potential subrogation has been identified?

Discuss how the case of Mark Rowlands Ltd v Berni Inns Ltd (1986) impacts upon subrogation.

(14 Marks)

3. In the context of an insurance claim, what do you understand by the term “Salvage” and how should you deal with this if identified during the course of the claim?

(10 Marks)

4. Briefly outline the main features of the following legislation and how they may be relevant to the adjustment of an insurance claim:

- a) Riot (Damages) Act 1886
- b) Hotel Proprietors Act 1956.

(4 Marks)

(40 MARKS)

QUESTION 3

1. In a typical Business Interruption Policy, explain briefly the following terms:

- a) Loss of Attraction
- b) Increased Cost of Working
- c) Departmental Clause
- d) Suppliers Extension.

(12 Marks)

2. In the following scenarios, discuss briefly what action, if any, might be considered to mitigate loss of turnover. Unless otherwise stated, your Principals’ Policy also covers the Buildings and Trade Contents, cover is on the sum insured basis, and the maximum indemnity period is 12 months.



- a) Ladies Fashion Retailer. Estimated period of closure three months.
- b) Gentlemen's Hairdresser. Estimated period of closure five days.
- c) Licensed Betting Office. Privately owned and not part of a national chain. Estimated period of closure five days.
- d) Seaside café. Lock-up detached unit not owned by the Insured and occupied by them as tenants. Unit totally destroyed and interruption period not yet established but could potentially exceed the twelve month maximum indemnity period.

(20 Marks)

3. Explain briefly the following terms found in the Standard Fire Policy and how they would apply to the adjustment of a claim:

- a) Reinstatement Memorandum
- b) Public Authorities Clause.

(8 Marks)

(40 MARKS)



PART 2
ANSWER TWO QUESTIONS ONLY

QUESTION S1

You are appointed on a retained authority basis for subsidence handling. You are instructed to investigate cracking to a glass-roofed extension to the rear of a 1990's house. There is an archway between the main house and the extension and you are advised that the Insured had a previous claim in 2009. Unfortunately, the details of the claim are not available other than the fact that the expenditure on the previous claim amounted to £6,300.

Following the visit, you establish that the extension flooded in June 2013 from a nearby stream to a depth of 150mm, but no claim was made for the water ingress as the water remained in the extension for only 2 hours. The floor of the extension is approximately 300mm lower than the main dwelling.

There is no indication of cracking or damage to the main dwelling. Upon further examination, you discover that there is evidence of previously repaired cracks at the junction of the extension and the main dwelling.

There is a small apple tree owned by the Insured which is 5m high and 4m from the rear wall of the extension. In the back garden, there is row of conifers on the boundary, but these are in the neighbour's garden. These are 7m high and the nearest is 3m away.

You measure the original house and the extension and discover the sum insured is only 70% of the value at risk.

The policy is a typical domestic policy with the normal exclusions relating to the peril of subsidence as detailed below:

- *The first £1,000 (unless a different subsidence excess is shown in your schedule).*
- *Damage caused by coastal or river erosion.*
- *Damage to garden walls, gates, fences, paths, drives, patios, swimming pools, tennis courts, lamp posts, septic tanks and central heating tanks unless the foundations beneath the external walls of your home are damaged at the same time, by the same cause.*
- *Damage to, or resulting from, the movement of solid floor slabs unless the foundations beneath the external walls of your home are damaged at the same time, by the same cause.*
- *Damage caused by demolition, structural alteration or structural repair, excavation, faulty design or faulty workmanship or the use of defective materials.*
- *Damage resulting from the bedding down of new buildings or settlement, shrinkage or expansion.*
- *Damage that is covered under an NHBC Certificate or other similar guarantee.*

Home - The private dwelling shown in your schedule, together with its garages, outbuildings, sheds and greenhouses, all owned or used by you for private and domestic purposes.



1. Outline the main headings you should include on an ABI preliminary report format including, in bullet point form, the main points you should raise under each section.
(20 Marks)

2. Upon investigation, the foundations of the extension appear very shallow, almost resting on the surface of the ground. The local authority state that the extension was subject to building regulations but they failed to pick up on the shallow foundations.

Detail the investigations you should make or expect to see to establish the cause of the problem.

(10 Marks)

3. Outline the prospects of recovery against the various parties, considering the various pros and cons of each case.

(10 Marks)

(40 MARKS)



QUESTION S2

Under a standard delegated authority scheme for subsidence handling, you are instructed to investigate cracking to the two storey side extension of a detached dwelling. The house was built in the 1970s and the extension added in the mid-1980s.

There is no indication of damage to the main dwelling. Upon examination, you discover that the cracks appear recent. The Insured has owned the property since 29 November 2011 and confirms that he has not carried out any repairs, nor are there any signs of earlier repair.

A 10m high oak tree is located on the verge/pavement of a neighbouring property and is approximately 15m away from the side extension.

The policy is written on an all risks basis.

The relevant Exclusions are:

- *Erosion - We do not cover any loss or damage from coastal or river erosion.*
- *Structural movement - We do not cover any loss or damage caused by the movement of your buildings, including bulging, expansion, shrinking or settling and any consequential cracking unless caused by subsidence, heave or landslip.*
- *Subsidence, heave or landslip - We do not cover any loss or damage caused by subsidence, heave or landslip of the site on which the buildings stand, or to patios, terraces, hard tennis courts, swimming pools, ornamental ponds, fountains, cesspits, septic tanks, central heating fuel tanks, footpaths, drives, walls, gates, fences and railings unless the home is damaged at the same time by the same cause.*
- *We do not cover any loss or damage to, or resulting from, the movement of solid floor slabs unless the foundations beneath the external walls of the home are damaged at the same time by the same cause.*
- *Defective design, workmanship, maintenance or materials - We do not cover any loss or damage caused by, or resulting from defective design, workmanship, maintenance or materials. However, we do cover any resultant damage unless another exclusion applies.*
- *We do not cover any loss or damage caused by a mechanical or electrical fault, breakdown or failure. However, we do cover any resultant damage unless another exclusion applies.*
- *Frost - We do not cover any loss or damage caused by frost.*
- *Gradual loss - We do not cover any loss or damage caused by a gradually operating cause including normal deterioration, warping, action of light, frost, damp, corrosion, rust and any kind of rot, mould or fungus.*
- *Consequential loss - We do not cover consequential loss of any kind incurred by you or your family.*



1. What investigations should you undertake given the circumstances and the scale of the problem?
(5 Marks)
2. You are advised that the Insured has been with ABC Bank insurance since they purchased the property on 29 November 2011. It becomes clear that your Principals have only been underwriting the ABC Bank policy since renewal on 29 November 2013. The claim was made on 2 February 2014. There are 8 Provisos of the ABI Change of Insurer Agreement. Outline 5 of those and comment on their relevance to the situation described above.
(5 Marks)
3. You instruct an Arboricultural Consultant. Outline five things that you might expect to see in the expert's report.
(5 Marks)
4. The tree expert identifies that the roots discovered beneath the extension originate from the oak tree on the verge. Draft a simple letter - one page only - which you would send to the third party, assuming it is the Local Authority who owns the tree.
(10 Marks)
5. What form of monitoring should you undertake? Outline options, timescales and how this might assist any recovery action.
(5 Marks)
6. What should you have done if the claim related to damage to the floor slab only? In particular, the investigations revealed 750mm of hard-core. What should you do if the internal walls were built off the floor slabs? Quote case law as appropriate.
(10 Marks)

(40 MARKS)



QUESTION S3

You are called to inspect commercial property which consists of a steel framed portal building with a car park. The premises were built in 2009.

The damage relates to a 1.2m high retaining wall forming the edge of the car park. It is constructed from concrete blocks and the wall is approximately 60m long.

To the side of part of the wall for approx 5m in length is a small stream.

A claim has been made for damage that occurred as a result of ground movement following a period of excessively heavy rainfall. The damage takes the form of cracking, partial collapse and some lateral movement.

1. Detail the 5 initial key enquiries you should make. (5 Marks)
2. Provide a sketch of a typical section through a retaining wall, showing the key features you might expect to find. (5 Marks)
3. A structural engineer's report is obtained which indicates that the damage has arisen as a combination of a build-up of water behind the wall and some localised subsidence. There is no provision for drainage through the wall and the wall is found to be constructed with 215mm concrete blocks.

The policy wording for subsidence is:

Subsidence or ground heave of any part of the site on which the property stands or landslip excluding:

- a) *i) DAMAGE to land insured hereby unless also affecting a Building insured hereby*
ii) CONSEQUENTIAL LOSS in respect of land insured hereby unless a building at the same Premises used by the Insured for the purpose of the Business is also damaged thereby
- b) *DAMAGE or CONSEQUENTIAL LOSS caused by or consisting of:*
 - i) the normal settlement or bedding down of new structures*
 - ii) the settlement or movement of made-up ground*
 - iii) coastal or river erosion*
 - iv) defective design or workmanship or the use of defective materials*
 - v) fire, subterranean fire, explosion, earthquake or the escape of water from any tank, apparatus or pipe*
- c) *i) DAMAGE [IS THERE SOMETHING MISSING HERE?]*
ii) loss resulting from destruction or damage which originated prior to the inception of this cover
- d) *DAMAGE or CONSEQUENTIAL LOSS resulting from:*
 - i) demolition, construction, structural alteration or repair of any property*
 - ii) groundworks or excavation at the same Premises.*



Buildings are defined as follows:

Buildings of the Premises specified in the Schedule including:

- a) landlords' fixtures and fittings*
- b) outbuildings, extensions, annexes, gangways, canopies, fixed signs, temporary buildings, conveniences, lamp posts and street furniture*
- c) walls, gates and fences*
- d) drains, sewers, piping, ducting, cables, wires, aerials, satellite dishes and associated control gear and accessories on the Premises and extending to the public mains but only to the extent of the Insured's responsibility*
- e) Yards, car parks, roads, pavements, forecourts and similar surfaces all constructed of solid materials*
- f) tenants' improvements if the Insured are responsible and property comprising fixtures and fittings (but excluding movable contents) formerly the property of tenants but relinquished to the Insured at the time of the surrender of the lease*
- g) Landlords' Contents as defined below up to a limit of £25,000 unless they are insured by item 2 on the Schedule.*

Based on this report, are you likely to consider a valid claim under the subsidence, heave or landslip sections of the policy based on the exclusion applicable to the subsidence section? Explain your decision.

(8 Marks)

4. Is there any basis for considering the claim also (or instead of) under any other section of the policy? Include case law if appropriate.

(2 Marks)

5. Explain what you should do if you discovered in the course of the initial site inspection that there was actually damage to the wall of the factory and the enquiries reveal that the foundations were on piled foundations. What investigations should you make to determine cause?

(5 Marks)

6. If Liability is accepted, explain the various options on how the claim might proceed and how in these circumstances the loss might be practically adjusted.

(10 Marks)

7. Additional facts come to light which result in the claim being declined. The Insured will not accept the decision that you have made under delegated authority and wants to refer the matter to the FOS. Outline what steps are necessary before this will occur.

(5 Marks)

(40 MARKS)