



# The Chartered Institute of Loss Adjusters

## Associateship Examination 2015 (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**

- A. In a typical fire policy, Insurers seek to protect their right of recovery by means of the Subrogation Clause. Explain very briefly the provisions of this Clause and whether it alters, in any way, the position applicable under Common Law. *(8 marks)*
- B. Discuss, with reasoning and by reference to statute and case law as appropriate whether recovery may be available in the following circumstances. In each case, you represent the building insurers.
- i) A detached private dwelling insured by your Principals is severely damaged by fire. This originated in a timber outbuilding in the garden of the neighbouring house and spread to the boundary fence and then to the adjoining conservatory of the insured's property. The cause of the fire was not positively established but may have been due to an electrical defect, the outbuilding being connected to the mains supply. *(8 marks)*
- ii) A building used for commercial purposes insured by your Principals and rented to a Tenant is damaged by an escape of water. Enquiries show that the cold water feed to a newly installed dishwasher in the staff kitchen failed due to being fitted incorrectly. The work was carried out personally by the Tenant who is not a qualified plumber. *(8 marks)*
- iii) The position is the same as ii) above, but on this occasion the work had been carried by an independent plumbing contractor. *(8 marks)*
- iv) The front boundary wall and part of the front elevation of the Insured's bungalow have been damaged following impact by a lorry. Enquiries show that the driver of the vehicle was forced to swerve to avoid a pedestrian who attempted to cross the road without checking that it was safe to do so. The pedestrian admits to being at fault but holds no insurance to cover any potential liability. The vehicle Insurers deny liability, but it was subsequently established that the driver was using a hand-held mobile phone at the time of the incident and was issued with a fixed penalty notice for this offence. *(8 marks)*

**40 MARKS**



## QUESTION 2

- A. You are instructed to deal with a claim under a domestic Policy for the theft of jewellery and personal effects following forced entry into the Insured's property. Cover had been arranged with your Principals in January 2015 and the theft occurred in June 2015. Continuous Cover had previously been arranged with other Insurers, the Policyholder explaining to you that he always "shopped around" at renewal to secure the best available premium.

Following investigation, you find that the claim is in order and that there is no evidence that the loss has been overstated or exaggerated. However, during your investigations, you find that the Insured was imprisoned for six months in 2012 for persistently flouting driving bans which had been imposed during the previous five years for various motoring offences, including dangerous driving and driving without insurance. This is not disputed by the Insured who explains that his behaviour at the time was due to "personal issues" and he has not reoffended in any way since his release from prison.

You include these details in your Report to your Principals who instruct that they wish to avoid the policy for what they term as "material non-disclosure" on the basis that the history of driving offences and, in particular, the prison sentence should have been declared on application for Cover. Before conveying this decision to the Insured, they ask for your views and further advice.

For this purpose, they supply you with a Statement of Fact compiled at the application stage which the Insured has agreed is accurate. On reviewing this documentation, you note that the only relevant question appears to be:

"Have you within the last five years been convicted of any criminal offences other than motoring?" The Insured has replied in the negative.

There is no question that seeks disclosure of any term of imprisonment.

The document also refers to any material facts that should be disclosed.

Report further to your Principals to advise them how they should proceed, including reference to any specific legislation and case law.

Would your advice be the same in dealing with a claim under a commercial policy where the Insured is a sole trader and has not disclosed the term of imprisonment?

*(30 marks)*

- B. You have been instructed by Insurers to deal with a claim for fire damage to household contents. The sum Insured against Contents is £25,000 but you calculate that this is not adequate and that the Value at Risk is £75,000. The claim is in order and is validated at £10,000. You report to Insurers to this effect and, at the same time, seek their instructions regarding the underinsurance. The Policy stipulates that Insurers may either refuse to pay the claim or pay a proportion of it.



In view of the degree of underinsurance, Insurers decide to take the former option and refuse to pay the claim. They request you to notify the Insured to this effect.

Having done so, the Insured challenge the position and maintain that they were not warned on applying for cover of such drastic consequences. They point out that, during the application process, they were asked “what is the total value of the contents to be insured” and they gave the figure of £25,000. In noting this information, Insurers’ representative commented that this figure should be accurate and, if it was low, “they would not get the full value back” in the event of a claim. This is confirmed in the recording of the conversation

During your further enquiries, the Insured explain that they had understood the question to mean “what is the total value of the contents you want to be insured?”, whereas Insurers tell you that they intended the question to mean “what is the total value of all of the contents of the home you want us to insure?” From their interpretation of the question, the Insured consider that this has been accurately answered and that the full validated claim should be paid without penalty.

What advice would you provide to your Principals?

*(10 marks)*  
**40 MARKS**

### **QUESTION 3**

- A. You are instructed to deal with a claim for malicious damage to a fast food take away outlet. This occurred late at night and was caused by a number of inebriated youths who were refused service for being offensive to the Insured’s staff and other customers. The Police were called to the scene, but by that time the individuals responsible had disappeared and have not been traced. Your Principals provide cover for Trade Contents, Stock, Tenant’s Improvements and Business Interruption. The Buildings are covered under a separate Policy arranged by the Landlords through different Insurers. The Policy is subject to various warranties and, following your initial enquiries, you are able to confirm compliance, but with one exception. This relates to the cleaning of ducts from the frying range to prevent accumulation of fat deposits etc. The warranty requires cleaning at six monthly intervals and records maintained to this effect. However, you find that the last time they were cleaned was 12 months prior to the incident and the Insured attributes this to an administrative error on his part.

Significant damage has occurred to the frying range and other catering equipment. The Insured has been told by his suppliers that none of this equipment can be repaired and must be replaced. In the case of the frying range, a lead time of three months is specified.

The Insured is pressing for approval to replace the equipment and for an interim payment under the business interruption claim so that he can continue to pay his staff until the business reopens. This will be subject to satisfactory completion of the separate building repairs for which, at this stage, a three week period is estimated.



What initial advice would you give to both your Principals and the Insured?  
(15 marks)

B. Explain the term “Stock Reconciliation Basis” and discuss the circumstances in which it might be appropriate to quantify the loss on this basis, outlining any specific issues and procedures that might be applicable.

(10 marks)

C. Vandals, hurling bricks, damage the shopfront window of a ladies clothing retailer specialising in high class fashion and designer labels. Some of the stock on display has clearly been damaged by impact by the bricks and glass fragments. Other stock on display, remote from the point of impact, appears to be unaffected. However, the Insured is emphatic that all the shopfront display stock should be dealt with as total losses since there is the risk that some glass fragments may be found in other items. This could have adverse consequences for the business if such stock was sold and then found to have been damaged in this way. How do you deal with this issue?

(10 marks)

D. Calculate the amount payable by Insurers in the following circumstances. All workings must be shown.

Agreed Loss of Gross Profit	£25,000
Loss Assessor's Fee	£2,000
Accountant's Fee for certifying turnover	£350
Sum Insured	£100,000 (Declaration Basis)
Insurable Amount	£125,000

(5 marks)

**40 MARKS**



**PART 2**  
**ANSWER TWO QUESTIONS ONLY**

**QUESTION S1**

You are appointed on a retained authority basis to investigate a subsidence claim. The matter under investigation involves a detached bungalow built in 1992, with an extension to the rear that was added in 2006. In addition, there is a detached double garage. It is not known when this was built but it was sometime between 1992 and 2006. You are instructed to investigate cracking to both the garage and the extension.

It is apparent that the damage to the garage has been in existence for some considerable time.

Following the visit, you identify a number of trees around the property both in the Policyholder's garden, the neighbouring property and on the verge of the highway.

There is no indication of cracking or damage to the original bungalow. Upon further examination, you discover that there is evidence of previously repaired cracks at the junction of the extension and the main dwelling. Underlying ground conditions are known to include clay.

The most significant vegetation is an oak tree, which is 24 m high and 10 m from the side of the property, located on the verge and only 5 m from the side of the garage.

There is also an oak tree in the rear garden of the Policyholder's property which is 20 m high and 8 m from both the corner of the extension and the garage.

The vegetation in the neighbouring property also includes oak trees, but they are more than 15 m away.

You are advised that the original bungalow is on piled foundations but the extension and the garage are on a raft, but no further details are available.

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

Subsidence or heave of the site on which the buildings stand or landslip.

Excluding loss or damage:

- i) To swimming pools, hot tubs, tennis courts, service tanks, central heating oil tanks, ground source heating pumps, terraces, paths, drives, walls, fences, gates and hedges unless your home is damaged by the same cause and at the same time.
- ii) Caused by the compaction of infill.



- iii) Occurring while the buildings are undergoing demolition, structural alterations or structural repairs.
- iv) Caused by settlement.
- v) Caused by river or coastal erosion.
- vi) Arising from defective design, defective materials, or faulty workmanship.
- vii) Arising from movement of solid floors, unless the foundations beneath the exterior walls of your home are damaged by the same cause and at the same time.

**BUILDINGS** Your home, and its permanent fixtures and fittings including:

- i) tennis courts, paved terraces, paths, drives, walls, fences, gates and hedges;
  - ii) permanently installed:
    - a) swimming pools;
    - b) hot tubs;
  - iii) permanently connected:
    - a) drains, pipes and cables;
    - b) service tanks and central heating oil tanks;
    - c) wind turbines, solar panels and ground source heating pumps;
- all sited within the boundaries of the land belonging to your home.

A. Outline the main headings you would include in your preliminary report including, in bullet point form, the main points you would raise under each section.

*(16 marks)*

B. Detail the investigations you would expect an engineer or surveyor to make to establish the cause of the problem and explain the importance/reason for each type of investigation.

*(8 marks)*

C. The engineering evidence suggests that the damage to the garage and extension was caused by settlement.

Outline to Insurers the difference between settlement and subsidence, quoting case law as appropriate.

*(6 marks)*

D. If you confirm that the cause was in fact clay shrinkage, what other investigations would you consider to support the consideration of any remedial action and possible subrogation?

What type of options for repair would you expect to see and how would this affect any possible subrogation against the neighbour or local authority? Include case law if appropriate.

*(10 marks)*

**40 MARKS**



## QUESTION S2

You are instructed by Insurers to investigate cracking to a purpose-built block of flats. The building is three storeys high with four flats on each floor. The property is around 8 years old. You are instructed by the Insurers who underwrite cover for the freeholder of the whole block. The Insurers have only been on cover for 9 months.

The freehold of the building is owned by XY Holdings Ltd and they utilise ABC Management Company. The management company has obtained a report from an engineer that suggests the site may be suffering from ground heave.

It is a perils based policy, extract below.

Subsidence, Ground Heave and Landslip

DAMAGE caused by Subsidence or Ground Heave of any part of the site on which the property stands or Landslip excluding:

- a) the first £1,000 of each and every loss in respect of Section 1 at each separate premises as ascertained after the application of any Condition of Average
- b) DAMAGE to yards, car parks, roads, pavements, walls, gates and fences unless also affecting a building insured hereby
- c) DAMAGE 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
- d) DAMAGE which originated prior to the inception of this cover
- e) DAMAGE resulting from
  - i) demolition, construction, structural alteration or repair of any property, or
  - ii) groundwork or excavation at the premises.

### Special Conditions

Insofar as this insurance relates to DAMAGE caused by Subsidence, Ground Heave or Landslip:

- a) The Insured shall notify the Company immediately they become aware of any demolition, groundworks, excavation or construction being carried out on any adjoining site
- b) The Company shall then have the right to vary the terms or cancel this cover.

A. Describe what enquiries you would make and the key points you would report to Insurers.

*(18 marks)*



- B. Subsequent desk-top enquiries reveal the property is constructed on 11 m deep piles with ground beams with anti-heave provision.

What investigations and testing would you ask the engineer to implement?

*(8 marks)*

- C. You discover that flats 3 and 4 also have their own building insurance through their building society. Also, flats 11 and 12 are sub-let by the lease holders.

Nine out of the twelve leaseholders have contents insurance.

There is a potential need to move all residents out to facilitate the repairs.

What enquiries and recommendations should you make in respect of the Alternative Accommodation?

Policy section on AA

Alternative Residential Accommodation

If as a result of DAMAGE the residential portions of the Property Insured are unfit to live in or access is denied the Company will pay insofar as they are not otherwise insured:

- a) the costs of reasonable alternative accommodation and temporary storage of residents' furniture
- b) the cost of reasonable accommodation in kennels or catteries for residents' dogs and cats

Provided the liability of the Company under this Extension shall not exceed 33.3% of the Sum Insured on the Property Insured which has been damaged

*(6 marks)*

- D. The owner of flat 6 makes a complaint about the scope of the work and delays. He advises that he wants the matter referred to the Financial Ombudsman.

How should you deal with this?

*(4 marks)*

- E. As part of the claim, it is identified that there is damage at high level to the roof, which is in part due to roof spread. Explain in detail how the claim should proceed in the absence of the Insured repairing the damage as a result of roof spread.

*(4 marks)*

**40 MARKS**



### QUESTION S3

A claim is made in August 2015. You are called to inspect a commercial two storey property which is formed from an in situ concrete frame with curtain walling. The first floor is storage and office space. The ground floor is a packing area. The premises were built in 2006. The contract to build the unit was carried out by AN Builders. The building control was undertaken by BI Independent Inspection who acted as approved inspector. The identity of any of the other parties is unknown.

The Insured is the owner-occupier of the building and they distribute parts for the automotive industry. You notice that some of the equipment on the ground floor has packing under the legs to accommodate the movement in the slab.

There is damage in two areas:

1. Damage relates to a 1.5 m high retaining wall forming the edge of the car park. It is constructed from concrete blocks and the wall is approximately 40 m long.

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

The claim states that damage 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.

2. On inspection, you notice damage to the floor slab and associated car park areas. In some instances, the slab has moved downwards by up to 250 mm. There are signs of localised repairs.

#### Key Policy information

Deductible of £10,000 for subsidence

#### Policy Coverage

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
  - 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.

A. Detail the initial key enquiries you might wish to make and confirm what you would report to Insurers.

*(10 marks)*

B. A structural engineer's report is obtained in respect of the wall 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 215 mm concrete blocks.

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. Is there any basis for considering the claim under any other section of the policy? Include case law if appropriate.

*(10 marks)*

C. It is confirmed that there is a valid claim for damage to the slabs. What steps should be necessary to undertake an appropriate design for the repair and what types of solutions might be considered?

*(6 marks)*



- D. If liability is accepted, explain the various options on how the claim might proceed, detailing various settlement options and the type of repairs that could be undertaken.

Also discuss whether there are any options for subrogation, outlining the strengths and weaknesses of each case. Quote case law if appropriate.

*(14 marks)*  
**40 MARKS**