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# **The Chartered Institute of Loss Adjusters**

## **Associateship Examination 2016 (April)**

### **Paper C3 - Liability**

**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. Discuss and explain the following aspects of the cover normally available under a typical Business Interruption Policy:

- a) Explain the difference between Increased Cost of Working and Additional Increased Cost of Working where the latter extension is included as part of the policy cover
- b) The circumstances under which indemnity under the Denial of Access extension would be available
- c) The circumstances under which indemnity would be available under the Professional Accountants clause
- d) The application of the Material Damage Proviso.

*(20 Marks)*

2. When dealing with claims for business interruption involving the following trades/professions, explain briefly what measures might correctly be taken to mitigate the extent of the loss. In the case of the first three claim scenarios, the premises are rented whilst in case d) (the restaurant) the premises are owned by the Insured but are insured elsewhere.

- a) Retail Grocery Store - estimated interruption period seven days
- b) Tattoo Parlour - estimated interruption period three weeks
- c) Solicitors' offices - estimated interruption period three months
- d) Licensed Restaurant - estimated interruption period twelve months.

*(12 Marks)*



3. Fire damage has occurred within a detached two storey commercial building which provides office accommodation. The building is owned by the Insured and they occupy the whole of the building. The fire originated in the staff kitchen, where extensive damage occurred, the remainder of the building being mainly affected by smoke contamination. Your Principals' Policy includes the building and they appoint you to deal with the claim.

The Insured are represented by Loss Assessors. Specifications and costings for the necessary reinstatement were agreed with the Loss Assessors and the work has now been completed on the approved basis. Your Principals have discharged the agreed claim costs and have closed their file.

Three months later, you are contacted by the Assessors who tell you that the Insured are concerned about complaints from their staff as a result of what appears to be continuing smoke odour. This appears to originate within the roof void and the Assessors suggest that this results from slight smoke soiling to insulating materials, internal roof felting and structural roof timbers. The Assessors maintain that whatever remedial works are necessary to eliminate the residual smoke odours should be carried out as part of the claim.

Having carried out your own enquiries, you agree that there may be some lingering smoke odour but this has not degraded or impaired the functionality of the areas affected. You do not therefore consider that any further works are required. This is challenged by the assessors, who have indicated that they will pursue the matter further.

Outline briefly what recommendations you would make to your Principals.

*(8 Marks)*

**40 MARKS**



## QUESTION 2

1. Define and explain a warranty when applied to a contract of insurance

*(4 Marks)*

2. Discuss briefly the effect of breach of warranty when dealing with a claim under a commercial policy.

*(4 Marks)*

3. Within the context of a contract of insurance, what is meant by the following terms:

- a) Reinstatement Memorandum
- b) 20% Co-Insurance Clause
- c) Contract Price Clause.

*(12 Marks)*

4.a) For several years, the Insured, Mr Smith, has arranged his household insurance, covering Buildings and Contents, with ABC Insurance Company. The policy renewed each year on 20<sup>th</sup> June. Mr Smith was not satisfied with the premium quoted for the renewal due on 20<sup>th</sup> June 2015, no losses having been incurred and no alterations having occurred to the risk, and obtained more competitive terms from XYZ Insurance Company with whom cover was effected as from 20<sup>th</sup> June 2015.

On 16<sup>th</sup> June 2015, Mr Smith and his family went away on holiday, having ensured that the premises were fully secured (no intruder alarm is installed). They returned home on 24<sup>th</sup> June 2015 and discovered that a burglary had occurred, thieves having forced open the rear entrance door to achieve access and then stealing jewellery and other easily portable personal effects. The Insured immediately reported the incident to the Police, who carried out enquiries but found no evidence to identify the culprits. They were also unable to confirm exactly when the incident occurred, none of the Insured's neighbours having heard or seen anything untoward and there being no CCTV or other evidence available to assist them. In their report, the theft is, therefore, recorded as having occurred some time between the 16<sup>th</sup> and 24<sup>th</sup> June 2015.

There is no suggestion that the incident is anything other than fortuitous and genuine so far as the Insured is concerned.



Mr Smith initially submitted a claim to ABC Insurance Company. They have told him that they are unable to assist since their policy had already lapsed by the time the incident was discovered. He then refers his claim to XYZ Insurance Company, who appoint you to act as their Adjusters.

What advice should you provide to your Principals and the Insured in relation to Policy Liability?

*(10 Marks)*

b) In January 2015, your Principals instructed you to deal with a claim submitted for dry rot infestation within a private dwelling, their policy covering the Buildings and Contents against the usual range of perils. Following your investigations, it was established that the dry rot was not associated with the operation of any insured peril and the claim was declined. You explained to the Insured that they would need to remedy the dry rot infestation at their own expense.

A few months later, the premises are damaged by fire. Your Principals instruct you to deal with this further claim and, following investigation, Policy Liability is admitted.

Surveyors are appointed on the Insured's behalf to deal with the necessary repair/reinstatement. They submit a repair schedule for your approval and you note that this includes areas affected by the earlier dry rot infestation. In discussing this issue with the Surveyors, they explain that, due to their financial circumstances, their clients were not in a position to carry out reinstatement of the dry rot damage prior to the fire. The cost of this work had been estimated at £5,000. They also explain that, to satisfactorily reinstate the fire damage, it will be necessary to include the areas affected by the dry rot that had been included within the earlier claim. You then refer to your own in-house surveyors for further advice and, on completion of their review, they confirm that it is not possible to reinstate the fire damage in isolation and the remedial scheme must necessarily include the areas previously affected by dry rot.

What advice should you provide to your Principals regarding Quantum?

*(10 Marks)*

**40 MARKS**



### QUESTION 3

1. Outline briefly the main provisions of the following legislation and explain how it might be relevant to the adjustment of a property claim:

- a) Rehabilitation of Offenders Act 1974
- b) Fires Prevention (Metropolis) Act 1774
- c) Riot (Damages) Act 1886
- d) Consumer Insurance (Disclosure and Representations) Act 2012

*(20 Marks)*

2. What advice would you provide to your Principals in the following scenarios:

- a) You are appointed to deal with a claim for escape of water which has occurred at a detached two storey house. It originated in the bathroom on the first floor when the connection to the cold feed to the washbasin failed due to normal wear and tear. The areas mainly affected are the lounge and entrance hall. Prior to your involvement, disaster and restoration contractors had already been appointed by your Principals in accordance with delegated authority arrangements. On attending the premises, their personnel deemed that the carpet in the entrance hall, which extended to the staircase and landing, was damaged beyond restoration as was the sofa forming part of a three piece suite in the lounge. They informed the Insured, Mr Jones, that these would be removed for disposal. They apparently also told the Insured that “the claim would cover the cost of replacing the complete three piece suite and also the undamaged carpet if a match was not possible”.

The Policy, which had been in place for three months prior to the incident, is subsequently avoided since your enquiries establish that Mr Jones had supplied incorrect and inaccurate information to various questions that were put to him when applying for cover. You inform him that, in the circumstances, your Principals cannot assist him financially. In response, Mr Jones points out that, due to the actions of the contractors, he is left with the remains of a three piece suite which he regards as useless and carpets which, it has since been shown, can no longer be matched. He states that, if he had been aware that his claim would not succeed, he would have



retained both the carpet and the sofa and attempted to restore them. He asks what your Principals intend to do to resolve the position. Explain the correct outcome.

*(10 Marks)*

- b) You are instructed to deal with a claim for fire damage which has occurred at a small detached bungalow. Your Principals' policy covers both Buildings and Contents. Due to the extent of the damage, the property will not be fit for habitation until permanent repairs are completed.

The Insured, who are an elderly retired couple, own a touring caravan which they park on the driveway to their bungalow. In discussions with your Principals prior to your involvement, they have indicated that they would be quite happy to live in the caravan until the building repairs are completed. On meeting the Insured at your initial site visit, you discuss these arrangements with them and find that they are quite content to remain in the caravan. You do explain to them that, should it become inconvenient or uncomfortable to remain in the caravan, particularly since building repairs will continue through the winter months, they should contact you again to discuss other possible arrangements.

About one month later, your Principals are contacted by the Insured's son, who normally works overseas but has returned to visit his parents. The son, who is now authorised to deal with the claim on behalf of his parents, alleges that your Principals have taken advantage of an elderly couple by not offering "proper alternative accommodation", leaving them in a damp caravan during the winter (exacerbating certain health problems of which you were not aware), exposing them to the noise and disturbance associated with the on-going building works and not offering them any compensation for providing their own caravan. State the advice you should provide.

*(10 Marks)*

**40 MARKS**



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

**QUESTION L1**

You are instructed to investigate an EL claim for a serious injury to the site Foreman on a Construction site who has fallen from a ladder whilst fitting cladding.

The Policy is subject to a condition that the Insured are limited to working on buildings of 2 storeys or less.

During your investigation you discover the Insured have correctly described themselves as General Building Contractors but they have disclosed to Insurers that their Wage Roll is far less than it really is and the number of employees has also been understated.

- a) Making whatever reasonable assumptions you wish, write the Policy Liability section of your Report. (20 Marks)

- b) Making whatever reasonable assumptions you wish, make notes which demonstrate the issues you will cover in the legal liability section of your Report (20 Marks)  
**40 Marks**

**QUESTION L2**

You act for the Products liability insurer of a company based in the UK that imports electric hair straighteners from Taiwan. They have received a claim from a Domestic (Buildings and Contents Insurer) who is dealing with a fire at their Insureds home which they suggest started when a set of hair straighteners overheated and ignited a bed cover that they were resting on. The fire occurred some 12 months ago.

- a) Provide an outline of the questions you would raise and documents that you might request from the Domestic Insurer (10 Marks)

- b) Specify the information you would require to consider the claim from the insured (10 Marks)



- c) What are the potential legal liability issues that you should consider. Detail what further enquiries that would be necessary in addition to any enquiries detailed in your answer to a) or b)

(15 Marks)

- d) Describe how your considerations would have altered had the fire been 4 years ago.

(5 Marks)

### QUESTION L3

Explain on 4 of the following 5 highlighting their importance in liability claims:

- a) The Objectives of the Pre-Action Protocols
- b) Cuthbert v Gair (2008)
- c) Claims Notification Form
- d) Part 20 Proceedings
- e) Fire Prevention (Metropolis) Act 1774

(10 Marks each)

**40 Marks**