



***STRICTLY PRIVATE & CONFIDENTIAL
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**The Chartered Institute of Loss Adjusters
Advanced Diploma Examination 2017 (April)**

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. Explain how the Insurance Act 2015 deals with the following issues:

- i) Breach of Warranty
- ii) Fraudulent Claims.

(25 Marks)

B. Outline the main provisions of the Consumer Insurance (Disclosure and Representations) Act 2012 and explain how these might apply to the adjustment of an Insurance Claim.

(15 Marks)

40 Marks

QUESTION 2

a) Explain the difference between Contribution calculated on the Independent Liability basis and Contribution calculated on the Sums Insured basis.

(8 Marks)

b) The agreed loss is £25,000. The Sum Insured against Policy A is £20,000 and for Policy B the Sum Insured is £50,000. Showing the method of calculation, advise the Contribution payable by each Policy towards the agreed loss.

(8 Marks)

c) Using the same figures as above, and again showing the method of calculation, advise the Contribution payable by each Policy on the Sums Insured basis.

(8 Marks)

d) The insured own a holiday apartment in Spain where they stay on a regular basis. On one occasion, a theft occurs and they submit a claim to your Principals. The Policy covers unspecified Personal Effects with a Sum Insured of £3,000. The claim is in order and is validated at £4,000. Your Principals therefore conclude settlement at £3,000 on the basis of the Sum Insured.

You had previously asked the Insured to provide you with details of any separate Travel Insurance that they may have arranged. Following settlement of the claim, they confirm that a separate Travel Policy is in place and you find that similarly this provides cover for unspecified Personal Effects and with a Sum Insured of £750.

Your Principals wish to know whether any Contribution may be available from the Travel Insurers. What advice do you provide to them?

(8 Marks)

(Continued)

- e) Discuss briefly the potential for Subrogation that may be available in the following circumstances, citing relevant case law and statute as appropriate:

Fire damage has occurred to the Insured's property including both Building and Contents. The fire originated within and spread from the adjoining property. It is known that the occupier of that property is a smoker and the Fire Service have recorded the supposed cause as a carelessly discarded cigarette. At the time of the fire, various family members, some of whom are also smokers, were visiting the neighbour.

(8 Marks)

40 Marks

QUESTION 3

1. In a typical Commercial Policy covering Material Damage and Business Interruption, explain the following terms:

- a) Material Damage Proviso
- b) Increased Costs of Working
- c) Contract Price Clause
- d) 15% Co-Insurance Clause.

(15 Marks)

2. The Insured are suppliers of CCTV and other electronic equipment to trade and commercial users. The stock is packaged in cardboard cartons and stored on shelving in a warehouse owned by the Insured. A burst pipe occurs which saturates the cardboard cartons directly below. You are appointed by Insurers and, following your enquiries, Policy Liability is confirmed. It is accepted that the equipment within the packaging that has been saturated has been rendered a total loss and quantum is evaluated at £7,500.

However, the Insured, with the support of their Brokers, maintain that other packaged equipment adjacent to the area directly affected should also be declared a total loss since there is the risk of malfunction due to ingress of moisture and potential danger to end users. In such event, the supply of potentially defective equipment might impact significantly upon their commercial reputation and to this end, and even if Insurers concede that this additional equipment can be included within the claim, the Insured would not allow any salvage disposal by way of mitigation. There is no immediate evidence that this additional stock has been damaged, its external packaging exhibiting no signs of water staining or dampness. If the claim for this equipment is admitted, the additional claim costs are estimated at £15,000.

In discussions with the Insured and their Brokers, you have suggested, as a possible solution, specialist random sampling to ascertain whether there is evidence of moisture-related damage. This proposed procedure is, however, not acceptable to them and they would require all the equipment to be checked, which would clearly be uneconomic.

(Continued)



In view of the impasse that has been reached, what recommendations do you submit to your Principals?

(20 Marks)

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

Agreed Loss of Gross Profit	£50,000.00
Fees of Claimant's Loss Adjusters	£2,000.00
Accountant's Fee for certifying turnover (at Insurers' request)	£500.00
Sum Insured on Gross Profit	£200,000.00 (Declaration Basis)
Insurable Amount	£300,000.00

(5 Marks)

40 Marks

PART 2
ANSWER 2 QUESTIONS ONLY

QUESTION S1

You are appointed on a retained authority basis for subsidence handling and are instructed to investigate cracking to a glass-roofed, brick-walled extension to the rear of a 1980's house. The extension, which was present at the time of the policyholder's purchase, is permanently open to the main building through an archway within the rear wall of the main building. You are advised that the customer had a previous claim in 2006. 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 2011 from a nearby stream to a depth of 150 mm, but no claim was made as the water only remained in the extension for approximately 2 hours. The floor of the extension is approximately 300 mm 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 an apple tree owned by the insured which is 5 m high and 4 m from the rear wall of the extension. In the back garden, there is a row of 7 m high conifers along the line of the boundary of the rear garden, standing just on the neighbour's side, the nearest being 3 m away.

You measure the property, original and 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.

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

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

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

(10 Marks)

c) 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 in the mid-1980s.

There is no indication of damage to the main dwelling. Upon examination, you discover that the cracks in the extension appear recent. The insured has owned the property since 29th November 2009 and confirms that he has not carried out any repairs nor are there any signs of earlier repair.

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

The policy is written on an All Risks basis and the relevant exclusions are as follows:

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.*

(Continued)



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.

- a) What investigations would you undertake given the circumstances and the scale of the problem?
(5 Marks)
- b) You are advised that, although the Customer has been with the ABC Bank insurance since they purchased the property on 29th November 2009, your Principals have only been underwriting the ABC Bank policy since renewal on 29th November 2011. The claim was made on 2nd February 2012. There are eight Provisos of the ABI Change of Insurer agreement. Outline five and comment on their relevance to the situation described above.
(5 Marks)
- c) You instruct an Arboricultural Consultant. Outline five things that you might expect to see in the expert's report?
(5 Marks)
- d) The tree expert identifies that the roots discovered beneath the extension originate from the oak tree in the verge. Draft a simple letter (one page only) that you would send to the third party assuming it is the Local Authority who owns the tree.
(10 Marks)
- e) What form of monitoring would you undertake? Outline options, timescales and how this might assist any recovery action.
(5 Marks)

(Continued)

- f) What would you have done if the claim related to damage to the floor slab only? In particular, the investigations revealed 750 mm of hardcore. What would 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 2005. The damage relates to a retaining wall forming the edge of the car park, standing 1.20 m high and holding back the higher ground beyond. It is constructed from concrete blocks and is approximately 60 m long. To the side of part of the wall, for approximately 5 m in length, is a small stream.

A claim has been made and details that damage has 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.

- a) Detail the five initial key enquiries you might wish to make. (5 Marks)
- b) Provide a sketch of a typical section through a retaining wall, showing the key features you might expect to find. (5 Marks)
- c) 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 215 mm 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**
 - 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, explain whether a valid claim arises.

(10 Marks)

- d) Explain what you should do if you discover 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)
- e) 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)
- f) Additional facts come to light which result in the claim being declined. The customer 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