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**The Chartered Institute of Loss Adjusters
Advanced Diploma Examination 2017 (October)**

Paper C3 - Liability

3½ Hours

Maximum Marks 200

Answer Any Five out of Six Questions

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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ANSWER ANY FIVE QUESTIONS FROM SIX

QUESTION 1

You are instructed to deal with a claim for water damage at Home Farm Cottage, Darrington. Darrington is a village situated on the flood plain of the River Am. The risk address is of brick construction under a pitched tiled roof. The building has solid walls and, being built in 1823, has no damp-proof membrane.

The Policyholder, Sid Perks, advises that his family has owned the building for at least 130 years and he believes that his great-great-grandfather may well have had the house built. Sid is 93 years of age, partially sighted and, due to the onset of arthritis, is unable to climb up or down stairs. As a result, he sleeps on the ground floor in a small room that was previously used as an office. Adjacent to the room is a bathroom.

Sid has no relatives nearby, his partner having died fifteen years before. He has a carer, Phoebe, who is employed by a local agency, Care4You.

Phoebe is present when you visit and is asked by Sid to explain the problem to you. From your conversation, you ascertain that there is a leaking radiator on the first floor. Water has been dripping into the living room and the lath and plaster ceiling has bowed and is likely to collapse. The bathroom used by Sid has also been affected. Sid warns you that the wall panelling in that room is dangerous - he believes that his late brother installed a partition in the room in the 1960s and "foolishly" used asbestos in the construction.

It is apparent from your inspection that the pipe leading to the radiator has been leaking for several months. When asked, Phoebe says that she first told Sid about the leak around seven months ago, but he told her that there was no need to worry. When the large crack in the ceiling appeared four weeks ago, he became more interested and last week he finally agreed to allow Phoebe to contact the Insurers.

You ascertain quickly that the bathroom is not fit to be used due to the extent of water damage to the asbestos partition. You are concerned that the asbestos has been significantly disturbed. Sid has no other facilities accessible to him.

Further, you identify that there is evidence of dry and wet rot in the building.

- a) Explain, providing your rationale, the issues you would take into account to consider the matter of late notification to enable the Insurers to make a reasonable decision on Policy liability on late notification.

(15 Marks)

- b) Irrespective of the decision concerning the late notification, you are asked to provide guidance to the Insurers on the matter of Alternative Accommodation. Provide, with an explanation as to why, what information you would obtain and provide to Insurers to decide on liability for Alternative Accommodation.

(15 Marks)



- c) Stating assumptions as relevant, explain what your recommendations to Insurers would include in terms of how they might base their decisions on Policy liability with regard to the Late Notification and Alternative Accommodation.

(10 Marks)

40 MARKS

QUESTION 2

- a) Explain what is meant by the following terms under a Business Interruption Policy:

- 1) Gross Profit
- 2) Rate of Gross Profit
- 3) Savings
- 4) Declaration Linked.

(20 Marks)

- b) You are handling a claim for Impact to the front of a shop by a motor vehicle. The owner of the shop is claiming that her business has been interrupted as a result and that a claim will be made under the Business Interruption Policy.

During the Period of Indemnity, a famous cycle race, which draws crowds from across the world, takes place. The cycle race passes the front of the shop. Taking advantage of the situation, the shop owner opens for extended hours and takings on that day are approximately 10 times greater than would be expected on any other day. Seeing this, you realise this has almost made up for the entire loss suffered by the Policyholder for Business Interruption. The Insurers therefore suggest to you that there ought to be no payment to the Policyholder for loss of profit. Explain, with your rationale, how this would normally be dealt with under a Business Interruption Policy.

(20 Marks)

40 MARKS

QUESTION 3

Having been appointed to handle a claim for the theft of a Rolex watch under a typical All Risk Policy, you have ascertained a number of facts around the circumstances that warrant greater consideration.

The circumstances of the event are that Mark Hepdon had been accompanying his 25-year-old brother on a weekend trip to a European city. By his own admission, Mark advises that the weekend was quite a big occasion and involved considerable consumption of alcohol, river rafting and a visit to a casino.

Mark tells you that he is not in the habit of drinking alcohol and in fact this was the first time in 2 years that he had done so.



He remembers wearing the watch on the Saturday evening. He recalls this because Matt Crawford, a former colleague, asked him for the time and, seeing the Rolex, he made continuous reference to the obvious wealth of Mark until Eddie Grundy, his brother's best friend, asked Matt to stop talking about Mark in that way.

Mark tells you that he had mixed fortunes at the casino. He remembers at one stage he lost a considerable amount of money, but by the end of the night he thinks he was about even.

The following afternoon, Mark woke in a hotel room - not his own room or indeed his own hotel. There was another man in the room, David Archer, who had been part of the party but had chosen to stay elsewhere as he preferred privacy and some quiet time. David advised Mark that he had found Mark strolling outside the casino at 3 a.m. and had taken him back to his hotel to ensure he came to no harm. David is sure that the watch was not present when he found Mark because Mark kept showing him the watch on his wrist but the watch was missing. David could not get any real sense from Mark and took no action other than to take him back to his hotel.

- a) With particular reference to the Policyholder's duty to exercise reasonable care, provide your recommendation to Insurers, stating your rationale and evidence to support your rationale. You should include relevant case law and other authoritative decisions (you are NOT required to prepare this as a report or letter). (20 Marks)
- b) Provide, with relevant statutes and case law to support your answers, the definition of **TWO** of the following Perils:
- 1) Storm
 - 2) Fire
 - 3) Theft
 - 4) Riot.

Your answers should include an explanation of how you would determine whether a particular peril has operated.

(20 Marks)

40 MARKS



QUESTION L1

You are instructed by the Product Liability Insurers of the Insured, who are suppliers of bulk flour to the food industry.

On 1 July 2017, the Insured supplied European Bakery with 10 tonnes of bulk EB flour. The Insured delivered the flour that day into a specified silo at the European Bakery premises. The silo is dedicated to the storage of EB flour.

The contract for the sale of the flour provided that the Insured would supply EB flour to a specification agreed with European Bakery in the course of discussions regarding the bakery production of their doughnut products. Of particular importance are the gluten, protein and crumb structures within the flour. The specification requires protein levels to be in the range of 12.3 to 13.3%. The Insured were aware that excess protein in flour creates a poor quality doughnut mix and tough unpalatable doughnuts.

In accordance with normal procedure, a Technician from European Bakery took a sample of the bulk flour from the Insured's tanker as the flour was being delivered into the dedicated silo. The sample was tested and two days after delivery it was discovered that the flour had excess protein at 13.3 to 13.8%. European Bakery demanded that the Insured return immediately to remove and replace the flour. The Insured agreed to the removal and replacement, but stated they could not attend for a further two days.

During this time period, it was determined that there had been a quantity of EB flour in the dedicated silo at the time of the delivery on 1 July 2017. Flour had been taken from the silo and used for doughnut production. European Bakery stated that the doughnuts produced by them during the period 1 to 4 July 2017 failed to meet production quality. They attributed this to the incorporation of the out of specification flour supplied by the Insured.

European Bakery have presented the following claim:

Sample testing and analysis of flour	£ 2,000
Removal of flour from silo	£ 5,000
Replacement flour	£ 8,000
Bakery product spoilage	£45,000
Storage and disposal of bakery product	<u>£12,000</u>
Total	<u>£72,000</u>

The presented claim includes information that all doughnut production following discovery of the poor quality product on 3 July 2017 was withdrawn from distribution and placed in



the European Bakery storage facility under quarantine conditions. The stated claim for this product includes wasted ingredients, labour, overheads and packaging. The claim includes a budget cost for the disposal of the product, after inspection, to a landfill site.

The instructions you have received from the Insurers require you to consider this claim in relation to legal liability and quantum with a report issued to the Insurers incorporating your enquiries and recommendations.

- a) Outline the enquiries that you would undertake as part of your initial investigation. Explain the legal liability and quantum aspects of the case that occur to you and confirm the enquiries you would pursue that would allow you to make appropriate recommendations in your Preliminary Report.

(20 Marks)

- b) Outline your thoughts on the claim settlement proposal you might recommend if legal liability was established and any obtained supporting documentation was satisfactory. You are permitted to make any reasonable assumptions when submitting your answer provided these are satisfactorily explained.

(12 Marks)

- c) Consider the elements of the claim presented against the Insured in this case. Are there any aspects or part aspects of the presented claim that you consider fall outside the Policy Indemnity the Insured are likely to receive from Insurers under a standard Product Liability Policy? Outline your reasons for any stated areas of uninsured legal liability.

(8 Marks)

40 MARKS



QUESTION L2

Answer **FOUR** of the following:

- a) It was determined by the Lord Chancellor that with effect from 20 March 2017 the discount rate applied to personal injury cases would be reduced from 2.5% to - 0.75%. What effect would this lowering of the discount rate have on the reserves held by Insurers for personal injury liability claims prior to the date of the amendment?
(10 Marks)
- b) In relation to an Employers Liability Claim involving a work-related personal injury, list 10 documents that you are likely to require in the course of your investigation and to ensure compliance with the Pre-action Protocol standard disclosure list.
(10 Marks)
- c) When considering an Employers Liability Claim under the Pre-action Protocol for low value personal injury claims, when does the 40 working day investigation period commence when (i) the Claimants submit a Claim Notification Form directly to the Defendant Insurers' Claims Portal and (ii) when the Claimant's Solicitors submit a letter to the Insured advising of the claim and requesting details of the Insurers' Claims Portal so that a Claim Notification Form can be sent?
What is the time period for paying the Claimant's Solicitors' costs following their submission of a Stage 2 Settlement Pack under the Claims Portal?
(10 Marks)
- d) What is meant by Qualified One Way Costs Shifting ("QOCS") in relation to liability claims? Explain the circumstances in which QOCS applies and briefly explain why the concept was introduced.
(10 Marks)
- e) Outline 5 exclusions you would expect to see listed in a standard Public Liability Policy.
(10 Marks)

40 MARKS



QUESTION L3

You are instructed by the Public and Product Liability Insurers of ABC Boilers.

In August 2015, a fire broke out in a lean-to adjoining a private house owned by Mr & Mrs Smith. The lean-to is the property utility room incorporating a domestic heating boiler that had been manufactured by ABC Boilers in June 2014. The boiler had been sold and distributed through wholesalers and retailers from whom Mr & Mrs Smith purchased the item in July 2014. It was installed within their home by DEF Contractors in July 2014.

Mr & Mrs Smith submitted a claim for fire damage to their Household Insurers. Appointed Adjusters investigated the claim and finalised settlement under the Mr & Mrs Smith Policy in December 2015.

In May 2017, ABC Boilers receive a Letter of Claim from Solicitors instructed by the Mr & Mrs Smith Insurers. They present a claim at £58,550 as follows:

Buildings damage	
Contents damage	
Mr & Mrs Smith Policy excess	
Loss Adjuster fees	
Forensic fees	
Interest	
Total	£26,960
	£14,990
	£ 200
	£ 2,700
	£ 5,700
	£ 8,000
	£58,550

The buildings claim relates to a new lean-to roof, the replacement of the boiler and its housing unit and redecoration work throughout the property. The contents claim relates to domestic appliances, tools and equipment within the lean-to.

It is alleged in the Letter of Claim that the fire was due to a defect in the boiler when it was manufactured. A Forensic Report obtained by the Insurers states that the fire was caused by hot flue gases escaping from the boiler heat exchanger and igniting combustible materials within the boiler. The report states that this occurred due to the inadequate tightening of a polymer seal assembly or due to the premature degradation of the seal itself.

When submitting the Letter of Claim to their Liability Insurers, ABC Boilers state that there has never been a problem with their product in their 10 years of production, that they produce several thousand boilers each year and that they have used the same Italian seal suppliers since production commenced.



(a) Outline the enquiries that you should make as part of your initial investigation and the reasons for these.

(20 Marks)

(b) Draft the Legal Liability Section of your Preliminary Report to Insurers outlining the possible grounds upon which a legal liability might attach to ABC Boilers. Include reference to any arguments you identify that might allow you to defend the claim or involve other possible Defendants.

(12 Marks)

(c) With reference to the Insuring Clause of your Principal's Public and Product Liability Policy, explain the basis of any indemnity available to ABC Boilers regarding any established legal liability. Outline any relevant Policy exclusions you might expect to find in the Policy wording.

(8 Marks)

40 MARKS