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

Paper C3 - Subsidence

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:
 - a) Storm
 - b) Fire
 - c) Theft
 - d) Riot.

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

(20 Marks)

40 MARKS

QUESTION S1

Under a typical 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 circa 1969, with the extension added in the mid-1990s.

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

A 12 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.*

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) Detail the investigations that you should undertake given the circumstances and the scale of the problem. Explain the relevance of the enquiries. (10 Marks)
- b) You instruct an arboricultural consultant. Outline five things that you would require the arboriculturist to include in their report. (5 Marks)
- c) The arboricultural consultant identifies that the roots discovered beneath the extension originate from the oak tree in the verge. Draft an appropriate letter that you would send to the third party, assuming it is the Local Authority who owns the tree. (10 Marks)
- d) Detail the form of monitoring that you should undertake. Explain your rationale and include timescales and details as to how this is intended to assist any recovery action. (5 Marks)
- e) 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 S2

You are called to inspect commercial property which consists of a steel-framed portal building with a garden and a tennis court. The premises were built in 2014. The damage relates to a retaining wall forming the edge of the garden and tennis court, standing 1.20 m high and holding back the higher ground beyond. It is constructed of concrete blocks and is approximately 160 m long. To the side of part of the wall, for approximately 5 m in length, is a stream. However, when you are on scene, the stream is dry and you are advised that it usually only contains water following heavy rain.

A claim has been made detailing 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 should make. (5 Marks)
- b) Provide a sketch of a typical section through a retaining wall, showing the key features you would typically 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) *DAMAGE or 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 the above report from the engineer, explain whether you consider there is a need for further investigations/enquiries to determine whether a valid claim is likely under the policy. Outline the pros and cons of your various arguments.

(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 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

QUESTION S3

You are appointed on a retained authority basis to investigate a subsidence claim. The matter under investigation involves a detached house built in 2008 with a single storey extension to the rear. You are instructed to investigate cracking to the extension. You are advised that the Insured had a previous claim in 2011. Unfortunately, the details of the claim are not available as the policy is arranged through a building society and they transferred their insurance to another carrier on 1st January 2017. The only information you have is that the expenditure on the previous claim amounted to £15,500.

Following the visit, you establish that the extension was originally built in 2009 by the current owner and to the rear the site slopes downwards away from the house.

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. The owner recalls that there was some form of grouting undertaken to the floor slab.

There is a small 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 conifers on the boundary but in the neighbour's garden. These are 5 m high and the nearest is 2 m away.

You measure the original house and the extension and discover the sum insured is only 75% of the value at risk.

The policy is a typical domestic policy with the 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 in a preliminary report to Insurers including, in bullet point form, the main points you would raise under each section and an explanation as to why the information is relevant.
(20 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.
(10 Marks)
- c) You subsequently discover following your further investigations that the cause related to abandoned chalk mines. What other investigations would you consider, what type of options for repair would you expect to see and how would this affect any possible subrogation. Include case law if appropriate and explain how you would ensure that the Policyholder is treated fairly.
(10 Marks)

40 MARKS