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**The Chartered Institute of Loss Adjusters**  
**Associateship Examination 2015 (October)**

**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**

A. In a standard fire policy, Insurers seek to protect their right of recovery by means of the Subrogation Clause. Explain 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 L1**

You are engaged as the Liability Adjusters for The South Railway Company who have a franchise to operate passenger services by rail from Southern England to London and the Midlands.

On the 1<sup>st</sup> February, the Meteorological Office issues a severe weather warning for the following day anticipating freezing conditions. The warning is general and covers the entire area in which The South Railway Company operates.

You are advised that there is cover in force for:

- Public Liability
- Employers' Liability.

On the 2<sup>nd</sup> February, the cold weather has materialised and a passenger, Jim Milner, is planning to catch a train to London. Jim is on time for the train and walks along the platform, which has had grit spread along it. Jim wishes to get to the front of the train and, as he approaches the far end of the platform, it becomes apparent that the platform is still icy in this area. He continues to make his way and, in the course of doing so, he slips and falls sustaining a soft tissue injury. Jim drops a bag containing an iPad and house keys. The iPad is damaged and his keys fall onto the railway line.

Sally Steele, an employee, sees the incident but is taking a break and is in an area reserved for staff smoking. She prefers to finish her cigarette before going to Jim's aid. Simon Constable, the station supervisor, realises Jim is in difficulty and shouts to Sally telling her to go to Jim's aid. She runs over the icy stretch, slips and falls and also sustains a minor injury.

You have been instructed by Insurers to attend site and investigate on their behalf. You are to carry out enquiries into Policy Liability, Legal Liability and Quantum.

- a) Outline the enquiries that you should make as part of your site investigation and the rationale for these. Confirm the action plan that you should recommend to Insurers in your Preliminary Report.  

*(20 marks)*
- b) You decide that a statement should be taken from Simon Constable. Specify the salient points that would be required within the statement to validate Policy Liability, legal liability and quantum.  

*(10 marks)*
- c) Detail why you would need to verify the Insured's Payroll, Turnover and Description of Business to enable you to determine whether the policy operates.  

*(10 marks)*

**40 MARKS**



## QUESTION L2

- a) Detail the aims of the Pre-Action Protocols. *(10 marks)*
- b) List 10 documents that might be required and that form part of the standard disclosure list for fast track disclosure for work-related Personal Injury claims. *(10 marks)*
- c) Contrast the requirements of a CPR compliant Letter of Claim with a Claims Notification Form required within the Portal for a personal injury claim. *(10 marks)*
- d) Provide a draft Discharge Form to confirm the damages settlement of £10,000 for a personal injury claim arising from a trip and slip claim on a public highway. *(10 marks)*

**40 MARKS**

## QUESTION L3

- a) Outline the provisions of the Rehabilitation Code, explaining the responsibilities of the different parties as set out in the Annex to the Pre-Action Protocol for Personal Injury Claims. *(20 marks)*
- b) What is a Part 36 offer and when might it be used? Also, under the Civil Procedure Rules, what is the impact of the Claimant beating a Part 36 offer in Court? *(10 marks)*
- c) Explain the principle of legal precedent and the phrase “obiter dictum”. *(10 marks)*

**40 MARKS**