

GEN 3B (COMMERCIAL) EXAMINATION PAPER

INSTRUCTIONS TO CANDIDATES

Two hours are allowed for this paper, which is in two parts.

The paper carries 150 marks.

PART A

Answer 6 questions in Part A.

Each question carries 10 marks.

60 marks are available.

PART B

Answer 2 questions from Part B.

Each question carries 45 marks.

90 marks are available.

PART A – THIS PART OF THE PAPER CARRIES 60 MARKS.

ANSWER 6 OF THE FOLLOWING SHORT QUESTIONS. EACH QUESTION CARRIES 10 MARKS.

1. Name ANY four circumstances in which the insurer will pay for damage caused following a fire, as it is so closely connected with the fire that it is regarded as covered by the policy.
2. Define the objective of a declaration policy.
3. List the risks which are usually excluded from an industrial '*all risks*' policy.
4. Outline the basic undertaking of a business interruption policy and define what the '*rate of gross profit*' represents.
5. State the steps involved in calculating a business interruption claims settlement figure.
6. Outline how the **Civil Liability and Courts Act 2004** affects Employers' Liability Insurance.
7. Explain how the nature of commercial motor cover has been extended by European legislation.
8. Explain how a professional indemnity claim may arise against a professional.

PART B – THIS PART OF THE PAPER CARRIES 90 MARKS

ANSWER 2 OF THE FOLLOWING ESSAY QUESTIONS. EACH QUESTION CARRIES 45 MARKS.

9. Ethel, a colleague of yours, is in the process of undertaking her Certified Insurance Practitioner examinations with the Insurance Institute of Ireland and is confused by one section of the material damage fire and special perils chapter she is studying. You offer to help her out and she asks you to describe the cover provided by any four perils insured under a material damage fire and special perils policy.
10. Describe any six extensions which may be purchased under business interruption insurance cover.
11. Mr and Mrs Rogerson own a small business based in Killarney and have been reading recent business journal articles on the growing '*claims culture*' in Irish society. They are worried about the financial repercussions which a claim taken by or against their business might have on their financial situation. They are exploring the option of purchasing a Commercial Legal Expenses insurance policy and have come to you for advice. In terms of this policy, explain to the Rogersons the events which are insured and those which are not covered, by way of six examples in each case.
- 12.
- (a) Mr Rocky Road is the owner of a small firm with five vehicles on the road. Explain the nature of motor fleet policy cover to him by summarising the cover provided, including additional benefits provided by some insurers on the market. (25 marks)
 - (b) Mr Rocky Road is thinking of expanding his business interests into the area of car dealership. Briefly explain the options open to him, as a motor trader, in terms of motor insurance coverage for the vehicles involved. (20 marks)

Students should note that the solutions below contain the text material which should be included in an examination answer. The solutions, however, do not reflect the style of answer to be provided by the student. The key word in the examination question (e.g. differentiate, state, outline, discuss etc.) indicates how the material should be presented by the student. For example, a question which asks the student to '*Describe*' would require a detailed account of the main features with examples, while a question which asks a student to '*Define*' would require the student to state in precise terms (quote legal definitions if appropriate) or provide a summary of all essential elements with no interpretation. The provision of the answer in the format requested by the key word is strongly linked to the awarding of full marks.

1. The circumstances in which the insurer will pay for damage caused following a fire are:
 - property damaged by water or other extinguishing agents used for extinguishment purposes;
 - damage caused by the fire brigade in the execution of its duties (for example, in gaining access to a fire);
 - property blown up to prevent a fire spreading;
 - damage occasioned by falling walls or parts of a building in which a fire takes place;
 - loss of or damage to property removed from a burning building caused by rain or theft or damage during removal, provided that the removal was justified and that the insured takes steps as soon as reasonably possible to protect the removed property from further damage.

2. Declaration policies apply to stock insurances only (other than farming stocks) and are intended to give maximum cover and, at the same time, to avoid over-insurance with its consequent over-payment of premium. The objective of the declaration policy is to cater for fluctuating stock values at risk over the year.

3. The following risks are usually excluded:
 - faulty design or workmanship;
 - inherent vice, latent defect;
 - collapse, cracking of buildings;
 - corrosion, rust, vermin;
 - unexplained shortage;
 - water damage if premises disused;
 - wind, water damage to property in the open.

4. The basic undertaking in a business interruption policy is to pay the sum produced by applying the '*rate of gross profit*' to the shortage in turnover resulting from the damage. This shortage is found by comparing the turnover in the months immediately following the damage with that in the corresponding period in the previous year. The rate of gross profit is the percentage which gross profit bears to the total turnover of the business.

5. In the specific terms of the business interruption policy, the claims payment is calculated in stages as follows:
 - The rate of gross profit is ascertained.
 - The shortage in turnover is calculated by comparing the turnover in the indemnity period with the standard turnover.
 - In ascertaining the shortage in turnover there must be taken into account the receipts for business transacted elsewhere than at the premises during the indemnity period;
 - Apply the rate of gross profit to the fall in turnover (after necessary adjustment to produce the 'would have been' position).

6. **The Civil Liability and Courts Act 2004** repealed various sections of the 1957 and 1991 Acts. It established a procedure (under the InjuriesBoard.ie (previously PIAB)) whereby all personal injury claims (except medical negligence) have a 2 year limitation period. This period does not run while the case is with the InjuriesBoard.ie, but on release, there is a 6 month window or the remainder of the limitation period within which to bring the claim to court. The InjuriesBoard.ie assesses the value of the injury with reference to the Book of Quantum.

7. The **Road Traffic Act 1961** substantially extended the compulsory nature of insurance and various Road Traffic Acts since then, together with EU Directives, further improved the position for victims of motor accidents. European legislation implemented in Ireland has reduced national differences in the treatment of motor vehicle insurance and established harmonisation in Europe in respect of minimum indemnity which a policy must provide:
 - unlimited indemnity in respect of the death of, or bodily injury to, any person;
 - indemnity for loss of or damage to property (subject to a minimum of €1 million per claim) belonging to third parties.

8. Liability, for a professional, arises in many ways and examples are given below:
 - Liability normally arises from breach of contract. One of the implied terms in the contract for services between a professional and his client is that reasonable care and skill will be exercised in the services rendered. If the failure to exercise that care and skill results in loss to the client, the professional may be sued for negligence.
 - The present law appears to imply that a professional owes co-existent duties to his client both in tort and in contract.
 - In addition, liability to third parties may arise under the *Hedley Byrne* principle, where in the absence of a contractual or fiduciary relationship, there may be a liability for negligent misstatements which cause financial or physical loss.
 - Liability to third parties may also arise if there is a breach of the duty of care which might be owed. In Ireland, the accepted test for the duty of care is that stated in the Supreme Court by Finlay C.J.:
'The true test...is whether (the professional) has proved to be guilty of such failure as no practitioner of equal specialist or general status and skill would be guilty of in acting with ordinary care.'

9.

Storm: There are differing views on this however storm usually means some sort of violent wind, though wind may not be a necessary ingredient. Exceptional rainfall is generally accepted as being within the cover as well as loss from weight of snow. While not necessarily accepting these definitions, insurers would generally interpret the words liberally. A cloud-burst or hailstorm might be treated by insurers as a storm within the intention of a policy even though there was little wind at the time.

The exclusions under the special perils extensions are some or all of the following:

(a) *DAMAGE BY*

- (i) *the escape of water from the normal confines of any natural or artificial water course lake reservoir canal or dam;*
- (ii) *inundation from the sea whether resulting from storm or otherwise.*

(b) *DAMAGE attributable solely to change in the water table level;*

(c) *DAMAGE by lightning, frost, subsidence, ground heave or landslide;*

(d) *DAMAGE in respect of moveable property in the open, fences and gates;*

(e) *the first €... of each and every loss in respect of each separate premises as ascertained after the application of any condition of Average (Underinsurance).*

- The word '*lightning*' may be deleted from (c) where the peril of fire is included.
- In respect of section (e), an excess of €150 - €500, is applied at each separate premises.

Flood: for insurance purposes is defined as '*Escape of water from its normal confines, or inundation from the sea*'. Cover in respect of flood is granted only in conjunction with storm. The insurance is then expressed to be in respect of storm and flood and exclusion (a) is omitted from the wording given under Point 8 above. The result is that flood cover is still subject to exclusions (b) (c) (d) and (e) of that wording and the same excess amount applies.

If cover for flood is specially requested, it will usually be found that there is selection against the insurer. Flooding can affect a very large area and attain catastrophic dimensions in certain circumstances.

Escape of Water from any tank, apparatus or pipe: The cover given for damage following the escape of water from tanks, apparatus or pipes in buildings usually presents few difficulties provided that the property is maintained in a good state of repair. The nature of the contents, if insured, is important because some articles or commodities are highly susceptible to damage by water; e.g. paper, textiles, water-soluble products, foodstuffs, tobacco and seeds. Multiple tenure risks present particular difficulty because there is often no overall control.

There is always an exclusion in respect of destruction or damage by water discharged or leaking from an installation of automatic sprinklers, because this is insurable as a special peril or under a separate policy. An exclusion of damage which occurs while the premises are untenanted reflects the greater risk of freezing in an unheated building during the winter months and the aggravation of loss that may occur following delayed discovery in unoccupied premises.

An excess always applies. This is now generally €300, except in the case of relatively non-hazardous premises such as private dwellings, offices and churches. There is commonly a warranty that the property be maintained in a good state of repair.

Some insurers exclude loss arising from the overflowing of rainwater pipes and gutters, since these might have become blocked and so give rise to damage which should more properly fall under a storm or flood policy. The term '*pipe*' could apply to a pipe habitually filled with water or one used for the occasional conveyance of water, such as rain water.

Impact: The usual wording is as follows:

IMPACT by any road vehicle or animal (not belonging to or under the control of the Insured or any occupier of the premises or their respective employees)

Cover is restricted to losses resulting from vehicles or animals owned by or under the control of third parties against whom the insured generally has a right of recovery.

When the cover is not so restricted (i.e. the policy has been extended to cover impact by own vehicles), an excess, the minimum being €300, is applied to each and every loss resulting from impact by any vehicle or animal belonging to or under the control of the insured or their employees.

10.

Extensions commonly found include the following:

- **Specified Suppliers:** Premises of named suppliers from which components, goods or materials are obtained or where they are manufactured or processed or where work is done in connection with the business. The additional premium is based upon:
 - the limitation set against each, normally expressed as a percentage of the sum insured required by the insured to protect his dependency upon them; and
 - the rate for the insured perils of such premises. The suppliers are listed in the endorsement and the required percentage is set against each supplier.
- **Unspecified suppliers:** In some cases, the insured might have a large number of small suppliers, but wishes to extend the policy to include them. Although this can be done, the cover will usually be restricted to a smaller percentage than that chosen for the smallest named supplier and will not normally exceed a set monetary limit (e.g. €250,000) or a set percentage (e.g. 10%), whichever is less. The unspecified suppliers' extension includes premises not in the occupation of the insured where the property of the insured is stored, and will in many cases remove the need for a '*property stored*' extension. Unspecified suppliers extensions are not usually granted without a specified supplier being first covered. However, where they are given, an increased rate will normally be charged.
- **Specified customers:** The extension is based on the estimate of maximum trading to each customer named, and rated accordingly. The estimate is given in the form of a percentage (not less than five per cent is normally allowed, as changes in small customers are such that cover is not sought for these), and if understated in the event of a loss the amount payable is proportionately reduced.
- **Property in Transit:** Property of the insured while in transit by road, rail or inland waterway.
- **Contract sites:** Situations where the insured is carrying out a contract, the continuance of such is crucial for the attainment of expected earnings.

- **Public Utilities:** Applies to property at any:
 - generating station or sub-station of the public electricity supply undertaking;
 - land based premises of the public gas supply undertaking or of any natural gas producer linked directly therewith;
 - water works or pumping station of the public water supply undertaking from which the insured obtains water;
 - telecommunications station.
- **Prevention of Access:** Access to an insured's premises may be prevented by reason of damage at nearby premises without damage being done to the insured's own. An extension to provide for this in respect of the perils insured under the policy can be given and it is the practice to charge a flat additional rate for twelve months' indemnity. If the indemnity period exceeds twelve months, a proportionately lower rate would be charged, so that the same premium is obtained as would apply if the cover were for twelve months' indemnity. During recent years there has been an increase in terrorist activities, particularly in the major cities, and this has led to a demand for wider cover especially from department stores where a large loss of turnover could result if the public were denied access even for a relatively short period of time. Accordingly, some underwriters are prepared to offer, either by a further extension to the business interruption policy or by a separate contingency policy, cover against:

...loss suffered as a direct result of access to the property being hindered or denied due to the property or any other premises in the area including any rights of way being

- *occupied by terrorists;*
- *unlawfully occupied by third parties except in the course of a dispute between any employer or employee or group of workers;*
- *closed down or sealed off in accordance with instructions issued (i) by the Gardai or (ii) by any statutory body except where the cause of such closing or sealing off is the condition of the business carried on within the property or any other premises owned or occupied by the insured;*
- *or thought to contain or actually containing an explosive device provided that the Gardai are immediately informed.*

There is no standard wording but the cover is generally subject to a time excess of at least the first twelve hours, and loss arising from any cause within the control of the insured is excluded. The insurance has been described as a form of 'non-damage' denial of access cover.

- **Notifiable / Contagious Diseases;** vermin, defective sanitary arrangements, murder and suicide. Business interruption insurance may be extended, subject to an additional premium, to cover food or drink poisoning, notifiable disease, vermin, defective sanitation, murder or suicide. The potential insured are sub-divided into three categories:
 - Hotels, restaurants and public houses;
 - Schools, private hospitals, etc;
 - Food processors and distributors.

Each category has its own special wording, designed to cater for its own individual potential exposure. All include 'any occurrence of a notifiable disease' as an insured contingency and 'notifiable disease' is then defined as meaning:

...illness sustained by a person resulting from

(a) food or drink poisoning, or

(b) any human infectious or human contagious disease [excluding Acquired Immune Deficiency Syndrome (AIDS)], an outbreak of which the competent local authority has stipulated shall be notified to them.

11.

There are many different schemes available, but the following are the main headings under which cover might be available.

- **Employer legislation:** Legislation has imposed many responsibilities on employers, and employees may have the right to take their grievances to a court or industrial tribunal. A policy may provide for the cost of defence or conciliation procedures and occasionally may even provide for the payment of compensation which might be awarded. The policy covers the costs of fees, expenses and witnesses' attendance at Tribunal and Court hearings and other legal proceedings arising from actions brought by employees.
- **Property and Personal Injury:** Disputes in connection with property are common. For example, tree roots from adjoining premises might be endangering the insured's factory. The insured may wish to claim damages and have the nuisance removed. Problems can arise between landlord and tenant, or there may be disputes with neighbouring businesses or a local authority. The policy covers the cost of the pursuit or defence of civil actions.
- **Contract:** An action may arise out of a supplier's failure to meet required specifications, or a customer's unwillingness to pay. The policy will cover the fees and expenses of legal proceedings by or against the insured.
- **Criminal prosecution:** Prosecutions may be brought against a company, its directors, officers and/or employees. The policy provides for the cost of legal defence i.e. fees and expenses, including an allowance for witnesses' expenses. It does not, however, provide for the payment of fines or penalties.
- **Design, copyright, trade marks:** The policy covers legal fees and other expenses incurred in the pursuit of actions against infringement of industrial or intellectual property rights. Similarly, it pays the cost of defending an action alleging infringement of another's property.
- **Motor vehicles:** There may be a road accident or dispute with a garage which necessitates legal action. For example, the policy could provide for the costs of recovering uninsured losses and the cost of defending motoring prosecutions.
- **Tax Protection:**
 - **Revenue Audits:** Insurers will negotiate on the insured's behalf and represent them in any appeal proceedings in connection with an audit carried by the Revenue Commissioners into the insured's business accounts;
 - **Keeping to PAYE regulations:** insurers will negotiate on the insured's behalf and represent them in any appeal proceedings for a dispute regarding the PAYE or Social Insurance payments, contribution regulations following an audit by the Revenue Commissioners or The Department of Social Community and Family Affairs;
 - **VAT disputes:** This provides cover following an audit carried out by the Revenue for value added tax due, provided the insured has taken reasonable care to make sure that all returns are complete and correct etc.
- **Protecting your license:** This clause now appears on commercial legal fees insurance and provides cover for representation if the insured makes an appeal to a statutory or regulatory authority, court, or tribunal after an event which results in a licensing or regulatory authority suspending, changing the terms of, refusing to renew, or cancelling the insured's license. Cover is not provided for an original application or an application to renew a statutory license OR any license appeal relating to owning, driving or using a motor vehicle.

What is not covered?

- Legal costs that are incurred before the insurer agrees to pay them;
- Any civil claim which does not offer reasonable prospects of success;
- Claims reported over 180 days after the insured incident;
- Any claim directly or indirectly caused by or resulting from any device failing to recognise, interpret or process any date at its true calendar date;
- Any claim relating to the following:
 - any illness which develops gradually or is not caused by a specific or sudden accident;
 - an insured person's alleged dishonesty or violent behaviour;
 - construction work on any land or designing or converting or extending any building;
 - the settlement payable under an insurance policy;
 - written or verbal remarks which damage an insured person's reputation.
- Fines, damages or other penalties which an insured person is ordered to pay by a court or other authority.
- Any claim caused by, contributed to by or arising from:
 - ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from burning nuclear fuel;
 - the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear part of it;
 - war, invasion, foreign enemy hostilities (whether war is declared or not), civil war, rebellion, revolution, military force or coup;
 - pressure waves caused by aircraft or any other airborne devices travelling at sonic or supersonic speeds;
- Any disagreement between the insured person and the insurer which is not covered by the condition covering the resolution of such disputes.
- Any legal action an insured person takes which the insurer or the appointed lawyer have not agreed to or where the insured person does anything that hinders the insurer or the appointed lawyer.

12.

a) **Motor Fleet Policy Cover**

Motor fleet policies covers legal liability to third parties and damage to property and loss or damage by fire or theft or attempted theft and, if on a Comprehensive basis, accidental damage. Cover for damage to third party property is usually restricted to €30 million for cars under the fleet and to €1 million (or up to €6.5 million) for commercial vehicles. Fleet policies automatically cover all changes to the fleet during the course of the policy year, subject to declarations (in arrears).

Cover is as per the standard relevant insurance policy i.e. private or commercial motor and therefore usually includes:

- passenger liability and passenger negligence;
- EU and associated countries requirements;
- trailer cover for attached trailers or, for haulage fleets or large fleets, unspecified detached trailers;
- the reasonable cost of removal of the vehicle/protection of same and return of damaged vehicle;
- legal expenses; and
- medical expenses.

Other benefits can include:

- contingency for employee's vehicles;
- unlicensed drivers provided other terms of the insurance certificate are observed;
- indemnity to vehicle owners;
- indemnity to hirers;
- occasional business use cover;
- breakdown assistance.

Vehicles covered are usually *'Any vehicle belonging to or hired or lent to the policyholder, excluding employees' vehicles'*. The advantage of this approach is that the policy affords an element of "Automatic" cover for policyholders for any mid-year alterations such as temporary or permanent substitutions of vehicles or changes to drivers. For smaller fleets cover may be restricted to specified vehicles. There may be a restriction in cover for inexperienced drivers.

(25 Marks)

(b) **Motor Traders Insurance**

There are specialist tailored schemes available on the Irish market for motor traders but all can be summarised into three main kinds of motor trade policy as outlined below.

ROAD RISKS INSURANCE : This is designed to cover vehicles in the custody or control of the motor trade whilst on the road or temporarily garaged during the course of a journey. It does not provide cover on the insured's own premises. There are three basic schemes - Named driver basis, Trade plate basis and *'Points basis'*. Certificates of insurance are needed for motor trade road risks policies and the particular wording will state the basis of the scheme. There are certain restrictions in cover which apply to road risks policies (when compared with a standard commercial vehicle policy). The cover is very much restricted to named perils: collision, impact, fire, lightning and theft are specifically mentioned. Extensions are possible to provide private use, private hire, frost damage, demonstration and tuition, loan or hire of vehicles to customers and foreign use.

INTERNAL RISKS INSURANCE : The cover provided relates to vehicles which are on the garage premises. The policy will exclude accidents arising on a road or in a public place. Two types of cover are possible - Third party only cover and Damage and Third Party cover. Perils of fire, explosion, theft and frost are specifically excluded. As there is no road risks cover, there is no need for a certificate of insurance. The principal extra benefits which are available are as follows:

- liability cover in respect of damage caused by fire or explosion to customers' cars;
- liability for other fire or explosion damage;
- damage arising from defective workmanship. This is a complicated extension and several different types of cover are possible;
- loss arising through the sale of defective vehicles or goods, similar to products liability cover.

COMPREHENSIVE ROAD AND GARAGE POLICY : This policy combines in one document the cover provided under the road risks policy and the internal risks (damage and third party) policy. It has certain added features e.g. theft of vehicles on the insured's premises, social, domestic and pleasure use by partners, directors or spouses are covered. A certificate of insurance is needed for this class of business because of the road risks cover contained within the policy.

(20 Marks)