



*The  
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*EXAMINATION PAPERS  
FOR  
IP05*

*INCLUDING*

- ✓ *April 2008*
- ✓ *October 2008*
- ✓ *April 2009*
- ✓ *October 2009*

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**IP05**

**THE INSURANCE INSTITUTE OF IRELAND  
APRIL 2008 EXAMINATION PAPER**

**IP05  
INSURANCE LAW  
(WITH REFERENCE TO IRISH LAW AND PRACTICE)**

Three hours are allowed for this paper, which is in two parts.  
The whole paper carries 200 marks.

Answer **ALL** questions in Part I.  
Each question in Part I carries 10 marks.  
140 marks are available.  
Spend no more than two hours on this part of the paper.

Answer **TWO** questions from Part II.  
Each question in Part II carries 30 marks.

## PART I

Answer ALL questions in Part I. All questions carry equal marks.  
Spend no more than two hours on this part of the paper.

Note form is acceptable (only in respect of Questions 1 – 14) where this conveys all the necessary information.

Quote relevant Statutes and case law in support of your answers where applicable.

1. Explain the application of precedence to Irish common law.
2. Outline the grounds on which a written law may be challenged.
3. Differentiate between the '*status*' and '*capacity*' of a natural person.
4. Briefly explain the position of an unincorporated association with regard to:
  - (a) Contract.
  - (b) Tort.
  - (c) Property.
5. Explain the difference between tort and :
  - (a) Crime.
  - (b) Contract.
6.
  - (a) Briefly explain why a contract may not be fully valid in law. (5 marks)
  - (b) Detail the essentials of a valid contract. (5 marks)
7.
  - (a) Distinguish between '*common law*' remedies and '*equitable*' remedies. (4 marks)
  - (b) Briefly describe three equitable remedies. (6 marks)
8.
  - (a) Explain the restrictions on an undisclosed principal in enforcing a contract. (6 marks)
  - (b) State the rights of a third party to enforce such a contract. (4 marks)

9. Explain the role of an agent and the issues that arise in arranging insurance contracts.
10. Explain what is meant by a 'legal' or 'equitable' interest.
11. State the purpose of and describe the main provisions of the **Life Assurance Act 1774**.
12. Differentiate between 'conditions' and 'warranties' in the general law of contract and in insurance contract law.
13. Explain the term 'assignment' and its application to insurance contracts.
14. State the impact of the following legislation on policy indemnity towards parties other than the policyholder in the event of a road traffic accident :
  - a. **Road Traffic Act 1961**.
  - b. **Road Traffic Act 1988**.

## PART II

**Answer TWO of the following FOUR questions.  
All questions carry equal marks.**

**Quote relevant Statutes and case law in support of your answers where applicable.**

15. *"Negligence means more than heedless or careless conduct; whether in omission or commission : it properly connotes the complex concept of duty, breach and damage suffered by the person to whom the duty was owing."*

Discuss this statement having regard to its scope and application in particular situations with regard to the various types of loss and injury.

16.
  - (a) Discuss the effect of the rules governing the duty of disclosure in insurance.  
(25 marks)
  - (b) State the duration of such duty.  
(5 marks)

17. Explain the importance of the common law rules of interpretation in relation to insurance policies.

18. *"Contribution is a corollary of the principle of indemnity".*

Discuss this statement having regard to the conditions that must be satisfied for contribution to arise.



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**INSURANCE INSTITUTE OF IRELAND**

**ASSOCIATESHIP**

**IP05 INSURANCE LAW**  
**(with reference to Irish Law)**

The answers set out below show the main points to be considered by the candidates in answering the questions. In some cases a well reasoned alternative view could earn good marks.

***Examiner's Comments***

This subject is now established in its own right, emphasising as it does the importance of the Law in all facets of insurance practice. These comments are made with a view to assisting the students in their studies and approach to the examination itself.

Having regard to the papers presented, most questions were poorly answered. Regrettably the standard of the papers presented at this examination was lower than should be expected having regard to the importance of the subject.

Candidates seemed unable to relate what theory they knew to the practicalities of the questions asked. In addition there was a marked reluctance to cite Statutes and/or Case Law in support of answers where appropriate to do so. Such citation is an essential feature in answering questions involving Insurance Law. Even in Part I questions, where the answers tended to be too brief, the citing of a relevant case can gain valuable marks. In citing case law it is only necessary to cite:-

- (1) the case and the year
- (2) brief detail of the cause of action
- (3) the decision
- (4) the effects of the decision

A detailed account of a particular case wastes valuable time and curtails the time that would allow you to cite other case law or points of interest in support of your answer and those to other questions.

In regard to Part II of the paper, few of the candidates appeared to appreciate the importance of these questions in enabling them to display their knowledge of the subject. In many instances they concentrated on a particular feature rather than exploring other aspects, the inclusion of which were essential in order to demonstrate that you had a knowledge of the subject.

In regard to questions that are presented in the form of a problem, i.e. case studies, the candidate is required to explore the various facets of the law which could be relevant to the particular case as stated, and present them in a cogent argument, justifying one or more conclusions, or course of action. Unfortunately the majority of candidates undertaking such questions tend to come to a particular conclusion as if the problem as presented was all the evidence needed.

It is important to stress that success in the examination requires serious study of the course materials, which cover both Liability Insurance Practice and the principles of Insurance Law applying to liability insurance.

A good knowledge across the whole of the course syllabus and the ability to apply the knowledge to various situations that may arise in the questions set, is an essential factor for attaining good marks. Such knowledge can only be acquired as a result of thorough and detailed preparation for the examination.

Some features in the papers submitted, which if altered, could assist both the student and examiner were:-

- (1) The non-compliance by the candidates with the instructions on the Examination Answer Book, particularly with Instruction 8 relating to the spacing of the answers. Properly spaced answers ensures that the examiner know which question each answer relates to and allows the examiner to identify marks more easily.
- (2) Well it is understood that students are under time pressure in the examination, they should ensure their handwriting is clearly legible. It is essential the examiner should be able to easily understand the student's script.
- (3) The unnecessary writing out of each question before answering. This is a waste of the limited time available for answering all the required questions and prevents you from expanding your answers with further cases or important points in support of your answer to that question and others because of time constraints.

This would appear to be due to the lack of practice in writing under examination conditions. The candidates are strongly advised to take advantage of their Course Assignments under strict time limits as a means of improving the legibility of their handwriting.

Q 1                      Chapter 1                      Section F

- Written judgments
  - Pronouncement of interpretation of law in a particular area
- Binding precedent
- Persuasive authority
- Distinguished
  - Important and relevant way
- Obiter Dictum
- Ratioi Decidendi

10

- Q 2 Chapter 1 Section J –J2
- Constitutionality of a law
  - Statute –in whole or in part
  - Statutory instrument on basis
    - Person with law-making power has exceeded authority
    - Power should not be delegated
  - All cases referred to High Court
  - Supreme Court will make final determination
  - Presumption of constitutionality
  - Disputes concerning the meaning of a law
    - Interpretation Act 1937
    - Literal rule
    - Golden rule
    - Mischief rule
- 10
- Q 3 Chapter 2 Section A1
- All human beings referred to as natural legal persons
  - Most natural persons possess full range of rights and duties
  - Some e.g. -minors - special status – limited capacity
  - Status – person is of a particular class or group
  - An individual – several statuses each
    - imposing particular obligations
    - giving particular rights
  - Irish citizen - entitled to protection of the State –may be
    - Married – obligations and rights
    - Minor and unmarried - different rights and duties
- 10
- Q 4 Chapter 2 Section C
- Not treated as separate entity – group of individuals with own legal rights and responsibilities
  - Policies in name of *‘the officers, committee and members for the time being’*
- Contract –
- member making contract usually personally liable, other members only if they authorize or ratify
- Tort –
- members generally for own torts committed in course of association business
  - injury due to defect in premises all members liable
  - injury due to negligence of an employee – member who employed him vicariously liable

	<ul style="list-style-type: none"> <li>• Property –</li> <li>• Association cannot own property – no distinct legal existence</li> <li>• Belongs to members jointly</li> <li>• Usual for such property to be held by trustees for benefit of club or association</li> </ul>	10
Q 5	Chapter 3      Section A1/A2	
	Tort	
	<ul style="list-style-type: none"> <li>• Part of civil law</li> <li>• Breach of duty fixed by law</li> <li>• Purpose of action – compensation / reparation for victim of tortious act</li> <li>• Action brought by victims themselves</li> <li>• Standard of proof</li> </ul>	
	Crime	
	<ul style="list-style-type: none"> <li>• A wrong harmful to society as a whole</li> <li>• Aim - punish offender found guilty</li> <li>• Criminal proceedings brought in the name of the State</li> <li>• Standard of proof</li> </ul>	
	Contract	
	<ul style="list-style-type: none"> <li>• Duties fixed by the parties themselves</li> <li>• Set out in contract</li> <li>• Not general duties but duties which arise voluntarily by agreement</li> </ul>	10
Q 6	Chapter 4      Section A2, B	
	Contracts	
	<ul style="list-style-type: none"> <li>• Void - no binding effect</li> <li>• Voidable - binding but either party may set aside on a number of grounds</li> <li>• Unenforceable – contract valid – unenforceable in court if one party refuses to keep agreement. Useful in defense of a claim</li> </ul>	5
	Essentials of a valid contract	
	<ul style="list-style-type: none"> <li>• Intention to create legal relations</li> <li>• Agreement i.e. offer and acceptance</li> <li>• Consideration</li> <li>• Form required by law</li> <li>• Capacity to contract</li> </ul>	5

Q 7 Chapter 4 Section F, F2

Common law remedies

- Most usual – Damages
- Remedies available as a right

Equitable remedies - a matter for the discretion of the court  
4

Types of equitable remedies :

- Injunction
- Order for Specific Performance
- Rectification
- Rescission
- Quantum meruit

6

Total 10 marks

Q 8 Chapter 5 Section E2

- General rule
  - Undisclosed principal can enforce contract against third party
- Restrictions -cannot
  - Sue if they did not exist or lacked capacity when contract made
  - Ratify a contract
  - Sue if contract expressly provided that person making it is the sole principal
  - Sue if third party can prove they had some good reason for dealing with the agent personally

6

- *TP can enforce contract either against*
  - *Agent or*
  - *Principal*
  - *Known as right of election*
- *TP, having elected to sue one, cannot then sue the other*

4

Total 10 marks

Q 9 Chapter 5 Section G / G3

Insurance contracts formed through an agent

- Imputed knowledge
- Who is the principal of an insurance agent ?
- Giving general advice
- Granting cover
- Collecting premiums
- Completion of proposal forms

10

- Q10 Chapter 6 Section A2D
- Legal interest
  - In Ireland must be a legal / equitable interest i.e. one the law will recognise and support
  - Case law – Macaura v. Northern Insurance Co. Ltd. (1925)  
P J Carrigan Ltd and P J Carrigan v Norwich Union and Anr (No 2) (1987)
- 10
- Q11 Chapter 6 Section B2A
- Life Assurance Act 1774 (Gambling Act)**
- Common practice to effect life policies on others with no legitimate interest
  - Purpose of Act to eliminate any legal ambiguity that allowed gambling on another's life
  - Major provisions
    - Must be insurable interest in life or event insured
    - Beneficiary must be named in the policy
    - Insured can recover no more than value of their interest
    - Act does not apply to ships, goods or merchandise
- 10
- Q12 Chapter 8 Section A1A, A1B
- Terms in non-insurance contracts
    - Conditions – relate to important aspects of the agreement
    - Warranties – relate to minor aspects
  - Terms in insurance contracts
    - Conditions and warranties do not have same meaning
    - Warranties are not minor terms but ones of greatest importance
- 10
- Q13 Chapter 9 Section A – A3B
- Assignment – three types. Assignment of :
- Subject matter of the contract
  - Benefit of the contract
  - Contract itself
- Subject matter of contract – if disposed of no insurable interest
  - Benefit of contract
    - Notice to insurer required for direct liability to assignee
    - If no notice assignee's right only enforceable through assignor
    - Insurer's consent not necessary
    - Assignee need have no insurable interest
  - Contract itself – limiting factors
    - Personal contracts not freely assignable
    - Time of assignment – when property transferred
- 10

Q14 Chapter 10 Section A4

- Motor policies often cover persons other than policyholder
  - Named drivers
  - Persons driving with policyholder's permission
- Policyholder can claim indemnity on behalf of such drivers. Insurable interest deemed to be waived
- At common law such drivers cannot enforce the policy themselves
- **Road Traffic Act 1988** reversed this position
  - Made insurer liable to indemnify the person or classes of person specified in the policy
- **Road Traffic Act 1961** allows victim of a road accident to make a direct claim against insurer of negligent driver 10

**Part II**

Q15 Chapter 3 Section C –C6B

- Negligence
- Duty of care
- Case –Donoghue v. Stevenson (1932)
  - Breach of duty
  - Case – Wilsher v, Essex Health authority (1986)
  - Damage
  - Causation and remoteness of damage
  - Cases - Overseas Tankships (UK) Ltd. v. Mort's Dock and Engineering Co. Ltd. (the Wagon Mound )  
- Wilsher v. Leech Brain and Co. Ltd. 10
- Particular situations
    - Negligent misstatement
    - Cases –Hedley Byrne v. Heller and Partners (1963)  
- Wildgust v. Bank of Ireland & Norwich Union (2006) 5
    - Economic loss
    - Cases – Spartan steel and Alloys v. Martin and Co. (Contractors) Ltd. (1973)  
- Glencar Exploration PLC v. Mayo County Council (2002) 5
    - Psychiatric illness
      - Case - Fletcher v. The Commissioner of Public Works in Ireland (2003)
      - Who can sue 5

- Nervous shock
  - Cases - Mullaly v. Bus Eireann [1992]
  - Kelly v. Hennessy [1995]
  - Attia v. British Gas (1987)

5  
30

Q16 Chapter 7 Section B-B6

- Duty of disclosure
  - Sale of goods - examination – caveat emptor
- Positive duty of disclosure in insurance
  - Proposer
  - Insurer
- Uberima fides
  - Carter v. Boehm (1766)
  - Rozanes v. Bowen (1928)
- Reciprocal duty
  - Murphy v. PMPA (1978)
- Material facts
  - Defined - Marine Insurance Act 1906
  - Approved - Chjariot Inns v. Assicurizin Generali (1981)
  - Reasonableness – Marene v. Greater Pacific Insurance (1976)
  - Aro Road and Land Vehicles v. Insurance Corporation of Ireland Ltd. (1986)
  - Olive Curran v. Norwich Union Life Society Ltd. (1987)
  - Kelleher v. Irish Life Assurance Co. Ltd. (1993)
- Nexus question
  - Facts that must be disclosed
    - Physical hazard
    - Moral hazard
  - 5
  - Facts that need not be disclosed
- Duration of duty
  - Common law rule
  - Position at renewal
  - Continuing duty of disclosure
  - Good faith in claims process

10

10

5  
30

Q17	Chapter 10	Section C2 –C2E		
	• Common law rules			
	• Ordinary meaning			
	• Case : Thompson v. Equity Fire Insurance Co (1910)			
	• Technical or legal meaning			
	• Du Maurier (Jewels) Ltd.v. Bastion Insurance Co. Ltd. (1967)			
	• Scragg v. Temperance & provident Institution (1976)			
	• London & Lancashire fire Insurance Co. v. Bolands (1924)		8	
	• Importance of context			
	• Young v. Sun Alliance & London Insurance (1977)			
	• Rohan Investments v. Cunningham (1999)		4	
	• Ejusdem generis rule			
	• Thames and Mersey Insurance Company Lt. v. Hamilton, Fraser Co (1887)			
	• Watchorn v. Langford (1813)		4	
	• Expressio unius est exclusio alterius – specifying one thing implies the exclusion of other things (that are not specified)		4	
	• Ambiguity (contra preferentem rule)			
	• Houghton v. Trafalgar insurance Co. Ltd. (1954)			
	• English v. Western (1940)			
	• Young v. Sun Alliance and London Insurance (1977)		4	
	• Inconsistencies			
	• Hand written/typed –precedence over printed			
	• Policy – precedence over proposal as basis of contract			
	• Express terms overrule any implied terms		4	
	• <b>Unfair Terms in Consumer Contract Regulations 1995.</b>		<u>2</u>	
			30	
Q18	Chapter 11	Section A	Chapter 12	Section E –F5
	• Meaning of indemnity			
	• Castellain v. Preston (1883)			5
	• Contribution			
	• Supports the principle of indemnity			
	• Applies automatically to insurances that are contracts of indemnity			5
	• Double insurance and contribution			
	• Prevents insured from making a profit from his loss			
	• Main concern –sharing of loss between insurers			
	• Governed by common law but principle based on equity			
	• Common law rules frequently modified by			
	• Contribution conditions			
	• Market agreements			5

- When contribution arises
    - Two or more policies
    - Common subject matter
    - Common peril
      - American Surety Co. of New York v. Wrightson (1910) 5
  - Common interest
    - North British and Mercantile v. Liverpool, London and Globe Insurance Co. (1877)
    - Zurich v. Shield (1988)
    - Graham v. American Eagle Fire Insurance Co. (1950) 5
  - Each policy liable for its own loss
    - Legal and general Insurance society v. Sohere Drake Insurance Co. Ltd. (1992) 5
- 30



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IP05

THE INSURANCE INSTITUTE OF IRELAND  
OCTOBER 2008 EXAMINATION PAPER

IP05  
INSURANCE LAW  
(WITH REFERENCE TO IRISH LAW AND PRACTICE)

Three hours are allowed for this paper, which is in two parts.  
The whole paper carries 200 marks.

Answer **ALL** questions in Part I.  
Each question in Part I carries 10 marks.  
140 marks are available.  
Spend no more than two hours on this part of the paper.

Answer **TWO** questions from Part II.  
Each question in Part II carries 30 marks.  
60 marks are available.

**Quote relevant Statutes and case law in support of your answers where applicable.**

## PART I

Answer ALL questions in Part I. All questions carry equal marks.  
Spend no more than two hours on this part of the paper.

Note form is acceptable (only in respect of Questions 1 – 14) where this conveys all the necessary information.

Quote relevant Statutes and case law in support of your answers where applicable.

1. Differentiate between '*public law*' and '*private law*'.
2. Outline the status of the State as a legal person.
3. Explain the features that characterise a company as a legal person.
4. Briefly describe the main forms of trespass.
5. Explain the circumstances under which terms may be implied in a contract.
6. Distinguish between '*misrepresentation*' and '*non-disclosure*' in a contract.
7. Briefly describe the duties of an agent.
8. Distinguish between the authority of an agent who has been appointed by express agreement and that of an agent where the agency agreement is implied.
9. List five categories of person who may have an insurable interest in property and briefly detail the nature of those interests.
10. Differentiate between express warranties, implied warranties and basis of contract clauses. Quote relevant case law in support of your answer.
11. Explain why life policies are freely assignable.
12. Describe an insured's duties under a liability policy in order to be certain of an indemnity in the event of an incident or claim.
13. Explain the effect on a claim under the standard fire policy where two or more perils operate concurrently.
14.
  - i. Define subrogation. (4 marks)
  - ii. Briefly explain how subrogation operates. (6 marks)

## PART II

**Answer TWO of the following FOUR questions overleaf.  
All questions carry equal marks.**

**Quote relevant Statutes and case law in support of your answers where applicable**

15. Discuss the relationship between Irish legislation and that of the European Union. Illustrate your argument with examples of both categories of legislation.
16. Joe Jones, the owner of a small engineering works, has sought your advice with regard to an accident at his premises.

Tom Handy, an employee, was working at a grinding machine when his safety goggles broke. He notified his overseer and requested a new pair of goggles. The overseer agreed to obtain a replacement pair, but instructed Tom to resume his work. Tom was not happy with this instruction as it was unsafe to work without the goggles, nonetheless he returned to his work. A short time later, while working without his safety goggles, Tom received a serious eye injury.

- (a) Advise Mr. Jones as to the potential sources of liability. (20 marks)
  - (b) Outline the defences available to the firm. (10 marks)
17. The doctrine '*uberima fides*' is central to all contracts of insurance.
    - (a) Explain the duties imposed (on the parties) and the reasons for their imposition. (20 marks)
    - (b) Differentiate between non-disclosure and misrepresentation. (10 marks)
  18. "*The company may, at its option, indemnify the insured by payment of the amount of the loss or damage or by repair, reinstatement or replacement*".

The above is a typical wording found in the operative clause of an indemnity policy. Discuss the relative merits of the options available to an insurer for indemnifying an insured.



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**INSURANCE INSTITUTE OF IRELAND**

**October 2008 Draft Answers  
ASSOCIATESHIP**

**IP05 INSURANCE LAW  
(with reference to Irish law)**

*The answers set out below show the main points to be considered by the candidates in answering the questions. In some cases a well reasoned alternative view could earn good marks.*

This subject is now established in its own right, emphasising as it does the importance of the Law in all facets of insurance practice. The number of candidates sitting the examination showed a considerable decrease on the previous sitting. The numbers are disappointingly low for this important subject.

These comments are made with a view to assisting the students in their studies and approach to the examination itself.

Having regard to the papers presented, most questions were poorly answered. Regrettably the standard of the papers presented at this examination remains unacceptably low.

Candidates seemed unable to relate what theory they knew to the practicalities of the questions asked. In addition there was a marked reluctance to cite Statutes and/or Case Law in support of answers where appropriate to do so. Such citation is an essential feature in answering questions involving Insurance Law.

In Part I questions, where the answers tended to be too brief, the citing of a relevant case can gain valuable marks. In citing case law it is only necessary to cite:-

- (1) the case and the year
- (2) brief detail of the cause of action
- (3) the decision
- (4) the effects of the decision

A detailed account of a particular case wastes valuable time and curtails the time that would allow you to cite other case law or points of interest in support of your answer and those to other questions.

In regard to Part II of the paper few of the candidates appeared to appreciate the importance of these questions in enabling them to display their knowledge of the subject. In many instances they concentrated on a particular feature rather than explore other aspects the inclusion of which were essential in order to demonstrate that you had a knowledge and understanding of the subject.

In regard to questions that are presented in the form of a problem, i.e. case studies, the candidate is required to explore, in detail, the various facets of the law which could be relevant to the particular case as stated, and present them in a cogent argument, justifying one or more conclusions, or course of action. Unfortunately the majority of candidates undertaking such questions tend to come to a particular conclusion as if the problem as presented was all the evidence needed.

From the papers presented it was evident that in a large number of cases that the preparation was, at best, minimal. It is important to stress that success in the examination requires serious study of the course materials, which covers the relevant principles of law necessary for the conduct of insurance under the title Insurance Law.

A good knowledge across the whole of the course syllabus and the ability to apply the knowledge to various situations that may arise in the questions set, is an essential factor for attaining good marks. Such knowledge can only be acquired as a result of thorough and detailed preparation for the examination.

Some disappointing features in the papers submitted were:-

- (1) the non-compliance by the candidates with the instructions on the Examination Answer Book, particularly with Instruction 8 relating to the spacing of the answers
- (2) A further disappointing feature is the deterioration in the standard of handwriting, which in a number of instances was almost illegible and in some cases microscopic. It is not sufficient that the student him/herself should be able to read their own handwriting. It is very essential the examiner should be able to do so too.
- (3) The unnecessary writing out of each question before answering. This is a waste of the limited time available for answering all the required questions and prevents you from expanding your answers with further cases or important points in support of your answer to that question and others because of time constraints

This would appear to be due to the lack of practice in writing under examination conditions. The candidates are strongly advised to take advantage of their Course Assignments under strict time limits as a means of improving the legibility of their handwriting

## Part I

Q 1                      Chapter 1              Section A – A4

### Classification

- Public law
- Private law

### Public law

- Constitutional law
- Administrative law
- Criminal law

Private law

- Contract
- Torts
- Trusts
- Property
- Family
- Succession

10

Q 2 Chapter 2 Section A3

- The State – a legal person
- Rights and duties recognised by law
- Prior 1969 – immunity from suit in tort
- Byrne v. Ireland (1972) – State immunity inconsistent with Constitution
- Vicariously liable for acts of its employees
- International law
- Legally bound to other states with which it has treaties
- International treaty obligations e. g.
- Membership of EU
- Can be sued in European Court of Justice for violation of EU treaties

10

Q 3 Chapter 2 Section B1

Legal person

- Separate corporate personality
- Limited liability
- Perpetual existence
- Transferability of ownership
- Combined effect
- Complete separation of company from its owners / shareholders

10

Q 4 Chapter 3 Section D1

Trespass to the person

- Assault
- Battery
- False imprisonment

Trespass to goods

- Conversion

Trespass to land

- Unlawful entry
- Unlawfully remaining
- Unlawfully placing /throwing any material object on the land of another

10

Q 5 Chapter 4 Section C2D

Terms implied by

- Fact
- The Constitution
- Custom or usage
- Statute
- Law

10

Q 6 Chapter 4 Section D4 /D5

Misrepresentation – false statement of fact

Requirements - must be

- One of fact
- Made by a party to the contract
- Material
- Induce the contract
- Claimant must suffer damage as a result

Non-disclosure

- No positive duty of disclosure
- Sale of goods – caveat emptor
- Representations during negotiations
- If it becomes untrue – change of circumstances
- Duty to correct

10

Q 7 Chapter 5 Section B

Duties

- Obey instructions
- Exercise proper care and skill
- Personal performance
- Good faith towards principal
- Account for monies received on behalf of principal

10

Q 8 Chapter 5 Section D1

Authority – can be

- Express actual authority
- Implied actual authority

Express actual authority

- Arise from instructions to agent

Implied actual authority

- Implied authority to do anything incidental to or necessary for completion of contract

- Usual authority  
Express and implied authority carry usual authority i.e. Authority to perform acts usual in particular trade/profession 10

Q 9 Chapter 6 Section D2

Any 5 of the following categories of person would be acceptable :

- Outright owners
- Part or joint owners
- Mortgagees or mortgagors
- Executors/trustees
- Landlord and tenant
- Bailee
- Agent
- People living together
- Finders and people in possession 10

Q10 Chapter 8 Section A2E

Express warranties

- Stated in the policy

Implied warranties

- Sec 39 Marine Insurance Act 1906

Basis of contract clauses

- Warranties arising from answers to questions on proposal and declaration at foot of proposal

Case law

- Keenan v. Shield Insurance Company Ltd. (1988)
- Keating v. New Ireland Assurance Company plc. (1990)

Legislation

- Unfair Terms in Consumer Contract Regulations 1995 10

Q11 Chapter 9 Section A3D

- Means of investment
- Source of protection
- No change in risk – identity of life assured does not change
- Cash / surrender value after a number of premiums paid
- Useful and valuable property
- May wish to sell / transfer to another
- Use as security 10

Q12	Chapter 10	Section B-B3	
		<ul style="list-style-type: none"> <li>• Notice of loss</li> <li>• Time limits</li> <li>• Burden of proof</li> <li>• Loss must be fortuitous</li> <li>• Presumed losses due to negligence covered</li> <li>• Seek to avoid liability with '<i>reasonable precautions</i>' clause</li> </ul>	10
Q13	Chapter 10	Section D4, D4A, D4B	
		<ul style="list-style-type: none"> <li>• Concurrent causes</li> <li>• Occasionally two or more operate together</li> <li>• Where perils are independent (one peril did not lead to the other)</li> <li>• Not only independent, but also interdependent</li> <li>• Insured peril with excepted peril</li> <li>• Insured peril with uninsured peril</li> </ul>	10
Q14	Chapter 12	Section A	
(a)		Definition as per Burnand v. Rodcanochi (1882)	4
(b)		Principle can operate in two ways Insured may succeed in recovering loss twice Insurers request repayment of ' <i>profit</i> ' from double recovery	
		Compensation not received from another source Insurer's right to bring action against third party responsible	6
			Total 10
Part II			
Q15	Chapter 1	Section E1, E2	
		Irish legislation	
		<ul style="list-style-type: none"> <li>• Statutes</li> <li>• Delegated legislation</li> <li>• Statutory instruments</li> <li>• Local Government Bye-Laws</li> </ul>	15

European Union legislation

- Treaties
- Regulations
- Directives
- Decisions
- Recommendations and Opinions

15  
Total 30

Q 16 Chapter 3 Section H –H3, L7,L9.

Sources of liability

- Negligence
- Breach of statutory duty
- Vicarious liability
- Phelan v. Coilte (1993)

10

Defences

- Fault of an employee
- Contributory negligence
- Volenti non fit injuria (O’Hanlon v ESB (1969))

10

Legislation

- Factories Act 1955
- Safety in Industry Act 1980
- Safety, Health and Welfare at Work Act 1989
- Safety, Health and Welfare at Work Act 2005

10  
Total 30

Q17 Chapter 7 Section A / B2

(a)

Uberima fides – utmost good faith

5

Duties of disclosure

- Positive duty
- Reciprocal duty on insurers

Duty

- not to misrepresent any matter relating to the insurance
- to disclose all material facts

Reasons

- Insured has sole knowledge of risk
- Insurer has sole knowledge of policy cover

15

(b) Misrepresentation must

- Be one of fact
- Be made by a party to the contract
- Be material
- Induce the contract
- Cause loss to person relying on it

- May be innocent or fraudulent 10

Case law

- Carter v. Boehm (1766)
- Rozanes v. Bowen (1928)
- Murphy v. PMPA (1978)

Total 30

Q18 Chapter 11 Section D, D4  
Method of providing indemnity

- Operative clause – four methods
  - Payment
  - Reinstatement
  - Repair
  - Replacement
- Case law
  - Raynor v, Preston (1881)
  - Alchorne v. Favill (1825)
  - Brown v. Royal Insurance (1859)
  - Taylor v. Caldwell (1863)
  - Davidson v. Guardian Royal Exchange Insurance (1979)
  - Smith v. Colonial Mutual fire Insurance Co. Ltd. 91880)

20

10

Total 30



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**IP05**

**THE INSURANCE INSTITUTE OF IRELAND  
APRIL 2009 EXAMINATION PAPER**

**IP05  
INSURANCE LAW  
(WITH REFERENCE TO IRISH LAW AND PRACTICE)**

Three hours are allowed for this paper, which is in two parts.  
The whole paper carries 200 marks.

Answer **ALL** questions in Part I.  
Each question in Part I carries 10 marks.  
140 marks are available.  
Spend no more than two hours on this part of the paper.

Answer **TWO** questions from Part II.  
Each question in Part II carries 30 marks.  
60 marks are available.

## PART I

**Answer ALL questions in Part I. All questions carry equal marks.  
Spend no more than two hours on this part of the paper.**

**Note form is acceptable (only in respect of Questions 1 – 14) where this conveys all the necessary information.**

**Quote relevant Statutes and case law in support of your answers where applicable.**

1. Briefly describe the hierarchy of the Courts in civil matters.
2. Explain how disputes concerning the meaning of a law are resolved.
3. Explain the particular difficulties that arise in relation to a contract made with a person of unsound mind.
4. Distinguish between a Lloyds syndicate and a partnership.
5. State the requirements for a claimant to succeed in an action for breach of statutory duty.
6. (a) Define 'consideration. (3 marks)  
(b) State the main rules that apply to it. (7 marks)
7. Explain the rights of an agent in respect of his employment by a principal.
8. Explain the importance of the key elements of insurable interest.
9. (a) Describe the ways in which insurable interest may arise.  
(b) Outline the circumstances in which insurable interest is required.  
(Equal Marks)
10. Discuss the effects of the Financial Regulator's Consumers Protection Code.
11. Explain the purpose of 'continuing warranties' in an insurance contract, illustrating your answer with suitable examples of their use.
12. Distinguish between the assignment of the subject matter and the assignment of the benefit of an insurance contract.

13. Orient Shipping plc. instructed their shipping agent to insure their liability on a new vessel. The agents duly effected a policy in their own name. Subsequently a claim by Orient Shipping plc. was repudiated by the insurers. It is the intention of Orient to sue for enforcement of the contract.

Advise Orient if they can succeed in their action, explaining why with supporting relevant case law.

14. Outline the differences between subrogation and abandonment.

## PART II

**Answer TWO of the following FOUR questions.**

**All questions carry equal marks.**

**Quote relevant Statutes and case law in support of your answers where applicable.**

15. “The law is distinct from other torts in that any statement, which adversely reflects on the name or reputation of another, is capable of being defamatory”.

Discuss this statement having regard to the scope of the tort and its impact on the victim. Cite suitable case law in support of your answer.

16. Discuss the importance of implied terms in the general law of contract and explain the reason for them.

17. Gourmet Foods p.l.c. operate a manufacturing and storage facility on a green field site close to a river. Due to an unprecedented period of heavy rain the river is threatening to burst its banks and flood the area surrounding the facility causing immeasurable damage.

With a view to preventing such damage the company decided to engage a contractor to build flood defences by raising the river bank at a cost of €20,000 including repairs to the building (€5,000) for damage resulting from the work.

The company send the account to their insurers pointing out that their policy covers flood and, if the preventive work had not been carried out, flood damage to their premises and stock far in excess of the expenditure would have occurred.

Discus the liability of the insurers for this claim. Cite relevant case law in support of your argument.

18. “The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely that the contract of insurance contained in a marine or fire policy is a contract of indemnity and of indemnity only.....”

Discuss this statement and its relevance to current indemnity insurance contracts.



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**IP05 INSURANCE LAW**  
**(with reference to Irish Law)**

**Suggested Answers for April 2009**

Please note: Bullet points below are to be expanded on in the students exam answer booklet, bullets only represent the key essential points that should be covered as part of the solution. Though should be fully expanded-on in order to gain the allocated marks.

**Part I – All questions to be answered**

**Q 1 Briefly describe the hierarchy of the Courts in civil matters.**

Chapter 1	Section H2	Marks
Hierarchy of the Courts in civil matters		
<ul style="list-style-type: none"><li>• The Small Claims Court</li><li>• The District Court</li><li>• The Circuit Court</li><li>• The High Court</li><li>• The Supreme Court</li></ul>		10

**Q 2 Explain how disputes concerning the meaning of a law are resolved.**

Chapter 1	Section J2
<ul style="list-style-type: none"><li>• Interpretation Act 1937</li><li>• Modern Acts - definition of key words</li><li>• No definitions - courts decide by reference to logic</li><li>• Courts have adopted 'rules' to assist<ul style="list-style-type: none"><li>• Literal rule</li></ul></li></ul>	

- Golden rule
- Mischief rule
- Do not apply to EU legislation
- Presumptions applying to construction of a statute 10

Chapter 2 Section A5

**Q3 Explain the particular difficulties that arise in relation to a contract made with a person of unsound mind.**

- Contractual capacity restricted to some extent
- Contracts generally valid
- Can be avoided if patient unable to understand nature of agreement and other party is aware of this
- If seriously ill and property under control of the court
  - Contracts attempting to dispose of property not binding
  - Can ratify a contract , which previously did not bind, when cured

10

**Q 4 Distinguish between a Lloyds syndicate and a partnership.**

Chapter 2 Section F

Lloyds syndicate

- Day to day affairs - underwriting agent
- 'names' – provide the financial resources
- liability of each member (name) unlimited
- no member has liability for debts of any other member
- corporate 'names' have limited liability

Partnership

Members - unlimited liability for debts of partnership

Jointly and severally liable for wrongs committed by fellow partners

10

**Q 5 State the requirements for a claimant to succeed in an action for breach of statutory duty.**

Chapter 3 Section G

- Breach of statutory duty
- Statute intended by Oireachtas to allow civil remedies
- Statute must put a duty on defendant and not merely confer a power
- Claimant must prove that a statutory duty is owed to him
- Must be a breach of that duty by defendant
- Damage must be

- Caused by the breach and
  - Of a kind contemplated by the statute
- 10

- Q 6 (a) Define ‘consideration. (3 marks)**  
**(b) State the main rules that apply to it. (7 marks)**

Chapter 4 Section B5/B5A

Consideration

- Definition
  - “ some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given suffered or undertaken by the other” [Currie v. Missa (1875)]

(3 Marks)
- Main rules = Consideration
  - Must be real or genuine
  - Need not be adequate
  - Must not be past
  - Must move from the promisee
  - Must not be something the promisee is already bound to do
  - Case law
    - White v. Bluet (18530)
    - Re McArdle (1951)
    - Stilk v. Myrick (1809)
    - Glasbrook Bros Ktd. V. Glamorgan County Council(1935) (7 Marks)

Total = 10

**Q 7 Explain the rights of an agent in respect of his employment by a principal.**

Chapter 5 Section C

- Rights of an agent
- Remuneration
- Indemnity
  - Exceptions – act not authorised
    - breach of duty
    - act illegal or void
  - Lien
    - Particular or General

10

**Q 8 Explain the importance of the key elements of insurable interest.**

Chapter 6 Section C,C1

Insurable interest – key elements

Subject matter of insurance economic/financial interest

Economic /financial interest

current interest, not merely an expectancy

legal interest

- Case law
  - Castellain v. Preston (1883)
  - Lucena v. Crawford (1806)
  - Macaura v. Northern Insurance Co. Ltd (1925)
  - P.J. Carrigan Ltd. and P.J. Carrigan v. Norwich Union Fire Society Ltd. and Another (No.20 (1987) 10

- Q 9 (a) Describe the ways in which insurable interest may arise.**  
**(b) Outline the circumstances in which insurable interest is required.**  
**(Equal Marks)**

Chapter 6 Section C, C1

- (a) Insurable interest
  - Common law
  - Contract
- (b) When insurable interest required
  - Life insurance
  - Marine insurance

Other insurances – property, pecuniary and liability

(Equal Marks each) 10

**Q10 Discuss the effects of the Financial Regulator’s Consumers Protection Code.**

Chapter 7 Section C2,C3B

Breach of duty by insurers -

- Insured has right to avoid the contract
- Insured has no right to claim damages
- Suggested in recent case that insurer be deprived of right to avoid policy because of its own lack of good faith.

Regulator’s Consumer Protection Code -Some general principles

A regulated entity must:

- Act honestly, fairly and professionally
- Act with due care, skill and diligence

- Not recklessly, negligently or deliberately mislead a customer as to real or perceived advantages /disadvantaged of a product/service
- Seek information relevant to the product
- Make full disclosure of all relevant information

10

**Q11 Explain the purpose of ‘continuing warranties’ in an insurance contract, illustrating your answer with suitable examples of their use.**

Chapter 8 Section A2B

- Continuing warranties applied to ensure good housekeeping e.g.
  - Rubbish to be cleared each night
  - Intruder alarm to be kept in good working order
  - Security of safe keys at close of business
  - Alternatively to high risk practices / activities without insurer’s knowledge
    - No flammable oils stored
    - No work carried out at a greater height than ‘x’ metres
    - No woodworking should take place

10

**Q12 Distinguish between the assignment of the subject matter and the assignment of the benefit of an insurance contract.**

Chapter 8 Section C1/C2

- Assignment of subject matter
  - Household policy – sale of house
  - Motor policy – sale of car
  - No automatic right to assign the policies
  - Usual effect – automatic termination of the contract for lack of insurable interest
- Assignment of benefit of contract
  - Right to recover money under policy - a contractual right
  - Can be assigned to another person
  - Fundamental point
  - Entire contract not assigned, merely the benefit of it
  - No change in the subject matter or
  - Other aspects of the risk

Benefits of the policy payable on exactly same events

**Q13 Orient Shipping plc. instructed their shipping agent to insure their liability on a new vessel. The agents duly effected a policy in their own name. Subsequently a claim by Orient Shipping plc. was repudiated by the insurers. It is the intention of Orient to sue for enforcement of the contract.**

**Advise Orient if they can succeed in their action, explaining why with supporting relevant case law.**

Chapter 9 Section A2

- Yes – They can succeed in their action.
- Why ? –  
A third party can claim on an insurance policy under the rules of agency where they have authorised the policyholder to insure on their behalf.  
The doctrine of undisclosed principal can apply in insurance contracts.
- Case law - Sui v. eastern Insurance Ltd. (1994) 10

**Q14 Outline the differences between subrogation and abandonment.**

Chapter11 Section D4

- Subrogation
  - Right to pursue claim against third party for loss
  - Action not in insurers' own name
  - Cannot recover more than own payment
  - Operates automatically
- Abandonment
  - Confers rights only over subject matter itself
  - If accepted by the insurer, the insurer becomes owner of the goods
  - Insurer can make a profit
  - Need not be accepted by the insurer 10

## Part II – Answer two out of four questions

Q15

**“The law is distinct from other torts in that any statement, which adversely reflects on the name or reputation of another, is capable of being defamatory”.**

**Discuss this statement having regard to the scope of the tort and its impact on the victim. Cite suitable case law in support of your answer.**

Chapter 3      Section K/K5

- Definition
- Essentials of defamation
  - Defamatory statement
  - Reference to the claimant
  - Publication
  - Damage (Slander is not actionable *per se*)
- Forms
- Libel
  - Defamatory statement made in a permanent form e.g. written comment or

Broadcasts of words – **Defamation Act 1961**

Libel actionable *per se* - i.e. without proof of damage

May well be a crime as well as a tort – **Defamation Act 1961**

- Slander
    - A transient or non-permanent for, made verbally
    - Must be proof of loss – exceptions
      - accusation of a crime punishable by imprisonment
      - imputing that plaintiff suffers from an existing infectious or contagious disease
      - imputing adultery or unchastity in a woman
      - statements ‘calculated ‘ to disparage a person in any office, profession, calling ,trade or business by him at the time of publication
  - Reference to the plaintiff
    - Case law – Hutton v. Jones (1910)
  - Publication
    - Must be to a person other than plaintiff
    - May be published more than once – each a separate cause of action
    - Case law – Fitzgibbon v. Eason & son (1910)
  - Innuendo - may not be defamatory on the face of it
    - will be if coupled with certain extrinsic evidence
- Case law - Cassidy v. daily Mirror Newspapers Ltd. (1929)

**Q16 Discuss the importance of implied terms in the general law of contract and explain the reason for them.**

Chapter 4                      Section C2D

• Implied terms	
• Terms implied in fact	
• Not stated – presumed to be intended	5
• Case law	
• Shirlaw v. Southern Foundaries Limited (1939)	
• Carna Foods Ltd. and Edward Mallon v. Eagle Star Insurance Company Ltd. (1997)	
The Moorcock (1889)	
British school of Motoring v. Simms (1971)	
Bournemouth FC v. Manchester United FC (1980)	5
Terms implied by the Constitution	
• Case law	
• Bolger v. Osbourne (2000)	5
• Terms implied by custom or usage	5
• Terms implied bylaw	
• Rights/duties based on terms the automatically applies to agreements	5
• Legislation	
• <b>Sale of Goods Acts 1893 – 1980</b>	
• <b>Marine Insurance Act 1906</b>	
	<u>5</u>
	Total 30

**Q17 Gourmet Foods p.l.c. operate a manufacturing and storage facility on a green field site close to a river. Due to an unprecedented period of heavy rain the river is threatening to burst its banks and flood the area surrounding the facility causing immeasurable damage.**

**With a view to preventing such damage the company decided to engage a contractor to build flood defences by raising the river bank at a cost of €20,000 including repairs to the building (€5,000) for damage resulting from the work.**

**The company send the account to their insurers pointing out that their policy covers flood and, if the preventive work had not been carried out, flood damage to their premises and stock far in excess of the expenditure would have occurred.**

**Discus the liability of the insurers for this claim. Cite relevant case law in support of your argument.**

- Efforts to avoid or reduce loss
  - Insured required to take reasonable precautions to
    - Avoid loss or damage
    - Mitigate loss that actually occurs
  - May apply automatically as a matter of law
  - Steps taken must be reasonable
  - Case law
    - Stanley v. Western Assurance Co.(1868)
    - Canada Rice Mills v. Union Marine and General Insurance Co. (1941)

20

## Prevention costs

Damage to insured subject matter if  
Reasonable result of efforts to  
To avoid or reduce impact of insured peril

Courts have refused to allow  
Recovery of mere prevention costs

## Case law

Yorkshire Water Services v. Sun Alliance and  
London Insurance plc. (1997)

10

Total 30

- Q18 **“The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely that the contract of insurance contained in a marine or fire policy is a contract of indemnity and of indemnity only”**  
**Discuss this statement and its relevance to current indemnity insurance contracts.**

## Chapter 10 Sections A, B1A-B1G, C –C2E

## Meaning of indemnity

Not a rigid rule

Contractual principle of insurance

Parties may agree to pay less or more than a full indemnity

## Case law

Castellain v. Preston (1883)

## Measure of indemnity

Has been described as a claim for unliquidated damages

- Property insurances – general rule
  - Measure of indemnity for loss determined
  - Not by its cost but by its value at time of loss subject to adequacy of sum insured

## Case law

Jabbour v. Custodian of Israeli Absentee Property (1954)

Re Wilson & Scottish Insurance Corporation (1920)

Re Wright and Pole (1834)

Buildings and other classes of property

Case law

Reynolds and Anderson v. Phoenix Assurance Co. Ltd. (1978)

Lapp v. Excess Insurance Co. Ltd. (1979)

Dominion Mosaic & Tile Co. Ltd v. Trafalgar Trucking Co. Ltd.(1990)

- Marine Insurance
  - **Marine Insurance Act 1906**
  - Unvalued and valued policies
- Variations in the Principles of indemnity
  - Factors limiting entitlement to full indemnity
  - Sum insured or limit of liability
    - Other policy limits
    - Under insurance and average clauses
    - Excesses or deductibles
    - Franchise
  - Extensions in operation of indemnity
    - Cover on reinstatement basis
    - 'new for old' cover
    - agree additional costs
    - agreed value cover
    - Partial loss under valued policies
- Case law
  - Elcock v. Thomson (1949)



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IP05

**THE INSURANCE INSTITUTE OF IRELAND  
OCTOBER 2009 EXAMINATION PAPER**

**IP05  
INSURANCE LAW  
(WITH REFERENCE TO IRISH LAW AND PRACTICE)**

Three hours are allowed for this paper, which is in two parts.  
The whole paper carries 200 marks.

Answer **ALL** questions in Part I.  
Each question in Part I carries 10 marks.  
140 marks are available.  
Spend no more than two hours on this part of the paper.

Answer **TWO** questions from Part II.  
Each question in Part II carries 30 marks.  
60 marks are available.

**Quote relevant Statutes and case law in support of your answers where applicable.**

## PART I

**Answer ALL questions in Part I. All questions carry equal marks.  
Spend no more than two hours on this part of the paper.**

**Note form is acceptable (only in respect of Questions 1 – 14) where this conveys all the necessary information.**

**Quote relevant Statutes and case law in support of your answers where applicable.**

1. Differentiate between 'Statutes' and Delegated Legislation.
2. Briefly describe the procedure involved where the constitutionality of a law is questioned.
3. Differentiate between:
  - (a) Companies limited by shares; and (5 marks)
  - (b) Companies limited by guarantee. (5 marks)
4. Briefly explain the responsibilities of a 'minor' in relation to:
  - (a) law of contract;
  - (b) law of tort;
  - (c) criminal law. (Equal Marks)
5. Differentiate between 'public nuisance' and 'private nuisance'.
6. Differentiate between the contractual capacity of a person of unsound mind and an intoxicated person.
7. Explain the principle of 'estoppel', quoting relevant case law.
8. Briefly describe the duties of an agent, quoting relevant case law in your answer.
9.
  - (a) Outline what would constitute breaches of good faith by an insured. (5 Marks)
  - (b) Detail the remedies for such breaches. (5 Marks)
10. Describe the effect of statute law on insurable interest.
11. Explain what is meant by a material fact.
12. Differentiate between 'void insurance contracts' and 'voidable insurance contracts'.
13. Explain the meaning of 'indemnity'.
14. Briefly explain the main sources of subrogation rights.

**PART II**  
**Answer TWO of the following FOUR questions overleaf.**  
**All questions carry equal marks.**

**Quote relevant Statutes and case law in support of your answers where applicable.**

15. “Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do”.
- Discuss this statement and its effect on the different categories of person to whom such duty may be owing. Cite relevant case law in support of your argument.
16. “Problems about causation take many forms. In some cases it may be difficult to separate the effects of a peril that is insured, from the operation of another peril which is excluded because the two are linked together in some way.”
- Discuss the considerations that arise in such situations, quoting relevant case law.
17. Explain in detail how policy cover on a reinstatement basis affects the principle of indemnity.
18. “Where the assured is over insured by double insurance, each insurer is bound as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract” **Marine Insurance Act 1906** Section 80 (1).
- Explain how the insurers comply with the obligation placed on them by the Act



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**October 2009 Draft Answers  
ASSOCIATESHIP**

**IP05 INSURANCE LAW  
(with reference to Irish law)**

**Examiner's Comments Oct 2009**

*This subject, emphasising as it does the importance of the Law in all facets of Insurance practice, is an essential subject in insurance education. This is particularly true in the aftermath of the recent financial difficulties which has spurred the Regulatory Authorities to be proactive in their supervisory role.*

*These comments are made with a view to assisting the students in their studies and approach to the examination itself.*

*Having regard to the papers presented, most questions were poorly answered. Candidates seemed unable to relate what theory they knew to the practicalities of the questions asked. In addition there was a marked reluctance to cite Statutes and/or Case Law in support of answers where appropriate to do so. Such citation is an essential feature in answering questions involving Insurance Law. Even in Part I questions, where the answers tended to be too brief, the citing of a relevant case can gain valuable marks. In citing case law it is only necessary to cite:-*

- (1) the case and the year*
- (2) brief detail of the cause of action*
- (3) the decision*
- (4) the effects of the decision*

*A detailed account of a particular case wastes valuable time and curtails the time that would allow you to cite other case law or points of interest in support of your answer and those to other questions.*

*No candidate appears to appreciate the importance of compulsory Question 9 which carries 25% of the marks for the paper. No one really exploited the full potential of the question to achieve a good mark*

*It is important to stress that success in the examination requires serious study of the course materials, which cover a wide spectrum of legal principles as they relate to the conduct of insurance*

*A good knowledge across the whole of the course syllabus and the ability to apply the knowledge to various situations that may arise in the questions set, is an essential factor for attaining good marks. Such knowledge can only be acquired as a result of thorough and detailed preparation for the examination.*

*Some disappointing features in the papers submitted were:-*

- (1) the non-compliance by the candidates with the instructions on the Examination Answer Book, particularly with Instruction 8 relating to the spacing of the answers*
- (2) A further disappointing feature is the deterioration in the standard of handwriting.*
- (3) The unnecessary writing out of each question before answering. This is a waste of the limited time available for answering all the required questions and prevents you from expanding your answers with further cases or important points in support of your answer to that question and others because of time constraints*

*This would appear to be due to the lack of practice in writing under examination conditions. The candidates are strongly advised to take advantage of their Course Assignments under strict time limits as a means of improving the legibility of their handwriting*

### **Suggested Solutions**

*The answers set out below show the main points to be considered by the candidates in answering the questions.*

**Bullet points below are to be expanded on in the students exam answer booklet, bullets only represent the key essential points that should be covered as part of the solution. These should be fully expanded-on in order to gain the allocated marks.**

**In some cases a well reasoned alternative view could earn good marks**

### **Part I**

Q 1                      Chapter 1                      Section E1

Statutes

- Acts of the Oireachtas voted through both Houses and signed by president

#### **Delegated Legislation**

- Law drafted and signed by a person (usually a Minister) to whom power to make the law has been delegated by the Oireachtas
- Powers are specific and limited to a particular field
- Two types -
- Statutory Instruments ( S I ) – usually to provide detailed rules as provided for under an Act
- Local Government Legislation
- Local authorities empowered to Bye-laws – detailed rules applying to City or County Council - affect only the area under their control

10 Marks

**Q 2                    Chapter1                    Section J1**

- Where constitutionality of legislation challenged
- Must be referred to High Court
- Constitutional issue arises in lower court
- Court must state a case to the High or Supreme Court
- Statute can be challenged on unconstitutionality in whole or in part
- Statutory instrument can be challenged on basis
- Person to whom law-making power delegated has exceeded power
- Such person acting *ultra vires*
- Binding principle for court
- Presumption of constitutionality
- Applies where two or more interpretations
- Bound to adopt constitutional interpretation

10 Marks

**Q 3                    Chapter 2                    Sections B3 - B3B**

Companies Limited by Shares

- A limited company is a separate legal entity
- Must register with Registrar of Companies
- Essential documents
  - Memorandum of Association and Articles of Association
  - Certificate of Incorporation
- Two types
  - Public company - shares bought by public
  - Private company – fund raised by its owners privately
  - Liability of owners (shareholders) limited to amount paid for their shares
  - Must file audited accounts with Registrar of Companies

Company Limited by Guarantee

- Must be registered
- Does not issue shares to raise funds
- Members guarantee its debts up to an agreed and usually nominal amount
- Legal structure favoured by non-profit organisations
- Profits reinvested in the organisation for benefit members/ Customers.

10 Marks

**Q 4 Chapter 2 Section A4**

- Minors' responsibilities
  - Criminal law
    - Children's Act 2001
  - Law of torts
    - Usually responsible for their own acts
- Contract law
  - Bound by contracts for 'necessaries' and beneficial contracts e.g. employment/apprenticeship
    - May own personal property – clothing, books, car, sports equipment

May not hold a legal estate in land i.e. own a house in own name

10 Marks

**Q 5 Chapter 3 Sections E1/E2**

Public Nuisance

- Activity likely to cause inconvenience or annoyance to the public, or a section of it, or interfere with a right common to all
- Treated as a crime
- Only Attorney General may sue
- Where 'special damage' arises individual may sue

Private Nuisance

- Purpose - to protect a person's interest in their land
- To succeed must prove
  - Damage to the land or
  - Enjoyment of it has been affected by defendant's action

10 Marks

**Q 6 Chapter 4 Section B7B/B7C**

**Persons of unsound mind**

- Contractual capacity restricted to some extent
- Contracts generally valid
- Can be avoided if patient unable to understand nature of agreement and other party is aware of this
- If seriously ill and property under control of the court
  - Contracts attempting to dispose of property not binding
  - Can ratify a contract, which previously did not bind, when cured

- **Intoxicated persons**
- Roughly speaking in same position as an insane person
- Voluntary nature of being under the influence
  - Unlikely that such a claim be treated with much sympathy
- If contract not immediately repudiated once effects wear off
  - Will be deemed to have accepted the contract and

It will be found to be fully binding

10 Marks

**Q 7 Chapter 4 Section B8**

- Closely associated with consideration
- Purpose to act as a test for court to ascertain
  - If bargain exists which it can enforce
- Requirements of consideration went further
  - Were applied also to discharge of contractual liabilities
- Meaning
  - Two parties enter contract – first party completes
  - Prepared to waive performance by other party
- If no consideration
  - First party can call on other party to perform at any time
  - As a gratuitous promise no effect in law
- Estoppel means one party may be prevented from going back on its promise
  - Case law
  - Central London Property Trust v. High Trees House (1947)

10 Marks

**Q 8 Chapter 5 Section B**

- Duties of an agent
  - Obey principal's instructions
  - Exercise proper care and skill
  - Perform duties personally
  - Act in good faith
  - Account for all monies received on behalf of principal
- Case law
  - Dunbar v. A & B Painters (1986)
  - Lucifero v. Castel (1877)
  - Keppel v. Wheeler (1927)
  - Hippisley v Knee Brothers (1905)

10 Marks

**Q 9 Chapter 7 Section C – C1**

(a)

Form

- Misrepresentation –fraudulent or innocent
  - Non-disclosure – innocent Or fraudulent
  - If fraudulent sometimes called concealment
- (5 Marks)

(b)

Remedies

- See Table 7.1 Section C1 Page 188
- (5 Marks)  
10 Marks

**Q 10 Chapter 6 Section B1 –B2C**

- Marine insurance
    - Marine Insurance Act 1906
    - Marine Insurance (Gambling Policies) Act 1909
  - Life and other classes of insurance
    - Life Assurance Act 1774
    - Gaming Act 1956 – 1986
- 10 Marks

**Q11 Chapter 7 Section B3**

- Utmost good faith
  - Relates to the duty of disclosure of
    - All necessary facts/circumstances material to a risk
  - How is a material fact defined
  - What is a material fact
  - Statute – Marine Insurance Act 1906
  - Case law
    - Chariot Inns v, Assicurazioni Generali (1981)
    - Marene v. Greater Pacific Insurance (1976)
  - Element of reasonableness
- 10 Marks

**Q12 Chapter 8 Section B**

- Void insurance contracts
  - Agreement completely invalid
  - Binds neither party
  - Cannot be enforced in court
- Reasons
  - No insurable interest
  - Fundamental mistake
  - Contract illegal

- Condition precedent never fulfilled
- Voidable insurance contracts
  - Agreement valid and binding unless and until
  - One party chooses to avoid it
- Reason
  - Breach of good faith ( misrepresentation or non-disclosure) 10 Marks

**Q13**                      **Chapter 10**                      **Section A**

- Indemnity
  - Literal meaning – to save from loss or harm
  - Concept implies that object of insurance is to provide exact financial compensation for insured
- Best expressed in words of Brett L J I Castellain v. Preston (1883)  
 “The very foundation, in my opinion.....that proposition must be wrong” 10 Marks

**Q14**                      **Chapter 11**                      **Sections D-D3**

- Sources of subrogation rights
  - In tort
    - Usually founded in the tort of negligence
    - May arise in nuisance
  - In contract
    - If insured has alternative contractual right of recovery insurers may be able to enforce it
    - Where the custom of the trade to which contract applies
    - Where contract has indemnity (hold harmless ) clause for particular type of loss
  - Subject matter of insurance
- Insured indemnified and subject matter treated as a total loss 10 Marks

## **Part II**

Students are required to answer any two questions out of four supplied questions. Each question in Part II is out of 30 Marks, there are 60 Marks available.

**Bullet points below are to be expanded on in the students exam answer booklet, bullets only represent the key essential points that should be covered as part of the solution. These should be fully expanded-on in order to gain the allocated marks.**

### **Q15 Chapter 3 Section C –C6B**

- Negligence
  - Case – Blyth v. Birmingham Waterworks (1856)
- Duty of care
  - Case –Donoghue v. Stevenson (1932)
  - Breach of duty
  - Case – Wilsher v, Essex Health authority (1986)
  - Damage
  - Causation and remoteness of damage
  - Cases - Overseas Tankships (UK) Ltd. v. Mort’s Dock and Engineering Co. Ltd. (the Wagon Mound )  
- Smith v. Leech Brain and Co. Ltd. 10
- Particular situations
  - Negligent misstatement
  - Cases –Hedley Byrne v. Heller and Partners (1963)  
- Wildgust v. Bank of Ireland & Norwich Union (2006) 5
  - Economic loss
  - Cases – Spartan steel and Alloys v. Martin and Co. (Contractors) Ltd. (1973)
  - Glencar Exploration PLC v. Mayo County Council (2002) 5
  - Psychiatric illness
    - Case - Fletcher v. The Commissioner of Public Works in Ireland (2003)
    - Who can sue 5
- Nervous shock
  - Cases - Mullaly v. Bus Eireann (1992)
  - Kelly v. Hennessy (1995)
  - Attia v. British Gas (1987) 5

Total 30 Marks

**Q16 Chapter 9 Section D –D6**

- Causation
  - Careful drafting-minimises disputes as to meaning of words
- Disputes as to true cause
- Doctrine of Proximate Cause
- Marine insurance Act 1906 S 55(1)
- Easy to state - hard to apply 5
- Insured, excluded and uninsured perils
  - Named perils policy
  - All risks policy 5
- What is the proximate cause
  - Case – Pawsey v. Scottish union and National (1907) 5
- ‘chain of events’
  - Case – Leyland Shipping v. Nurwich Union Fire Insurance Society Ltd. (1918)
- Efforts to avoid / reduce loss
  - Case – Canada Rice Mills v. Union Marine and General Insurance Co. (1941) 5
- Concurrent causes
- Insured peril combines with excepted peril
  - Case – Wayne Tank and Pump Co. Ltd v. Employers Liability Insurance Corporation Ltd (1974)
- Insured peril combines with uninsured peril
  - Case – J.J Lloyd (Instruments) Ltd. v. Northern Star Insurance Co. Ltd. (1987) 5
- Modification of the doctrine
  - Case – Dunmolme v. Bently (1996)
- Burden of proof
  - Case – Spinney’s (1948) ltd. v. royal Insurance Co. Ltd. (1948) 5

Total 30 Marks

**Q17 Chapter 11 Section C2A**

- Measure of indemnity measured not by its cost but:
- By its value at the date of loss and place of loss.
- Cover on ordinary indemnity may be inadequate to restore property.
- May leave them seriously out of pocket.
- Substantial deduction for wear and tear.
- Rebuilding will result in making good wear and tear.
- Reinstatement cover solves problem.
- Insurer will pay a sum equal to cost of rebuilding /replacing property.
- to a condition ‘ equivalent to or substantially the same.’
- beneficial to insured.
- more expensive.

- sum insured higher to cover rebuilding 'as new'.  
no benefit if not rebuilt.

30 Marks

**Q18**                      **Chapter 11**                      **Sections H - H2**

- Basis of contribution
- Maximum liability method
- Loss shared in proportion to maximum cover under each policy
- Example as per textbook
- Problems with method
- May not operate fairly or at all if
- Terms /conditions not the same – not operate fairly
- Range of policies differs – difficult to compare sums insured
- One policy provides unlimited cover (some liability policies)  
method will not work.
- Independent liability method
- Liability of each insurer assessed as if its policy only one in force
- Example as per text book

5

10

5

10

Total 30 Marks