

C13 INSURANCE AGAINST LIABILITY – PART 1

IMPORTANT

The time allowed for this exam is 3 hours.

Total marks: 200

You must hand in this paper and any paper used for rough work to the supervisor when you leave the examination room. Failure to do so may result in disqualification.

Section A: Multiple-Choice Questions

Part I. ALL STUDENTS

Question 1. For the following multiple-choice questions, fill in the circle of the letter that identifies the most correct answer.

Example: (A) (B) ● (D)

DO NOT MARK THE ANSWERS ON THESE PAGES.

USE THE FIRST PAGE OF YOUR ANSWER BOOK.

1. Intellectual property and marine (admiralty law) fall under the jurisdiction of the
- (A) Privy Council.
 - (B) provincial superior courts.
 - (C) federal courts.
 - (D) provincial appeal courts.

continued over

2. Which of the following would be classified as a tort of negligence?
- (A) A shopper is injured when he slips and falls on a piece of lettuce in a grocery store's produce department.
 - (B) A restaurant supplier fails to deliver the foodstuffs that he and a restaurant owner had agreed upon.
 - (C) A homeowner can't sleep because of a neighbour who plays her drums every night.
 - (D) A tenant of a shopping center loses business when the landlord fails to maintain adequate heating as required under the lease agreement.
3. Under common law, when there is no precedent available, the court decides a case by
- (A) organizing a set of rules in a logical argument in support of its decision.
 - (B) the judge's personal preference based on the facts of the case.
 - (C) applying the precedents of the cases that are closest to the case being heard.
 - (D) applying the general principles of justice set out in the code.
4. A person who enters onto premises with permission of the occupier and has some financial or other material interest in being there is a(n)
- (A) trespasser.
 - (B) invitee.
 - (C) contractual entrant.
 - (D) licensee.
5. Damages awarded when a plaintiff has the right of action but has suffered no real loss are
- (A) minimal damages.
 - (B) general damages.
 - (C) exemplary damages.
 - (D) nominal damages.
6. Under either common law or the Civil Code of Québec, for a victim to collect damages, he or she must show a relationship between a breach of a duty and the damages being claimed. What legal concept can be used to measure this relationship?
- (A) Test of foresight
 - (B) "Duty to your neighbour" principle
 - (C) Rules of conduct
 - (D) Proximate cause rule
7. Our system of civil justice imposes an obligation to compensate another for harm done through negligence as a
- (A) punishment for an offence.
 - (B) warning before criminal charges are laid.
 - (C) natural deterrent for carelessness.
 - (D) reward for the victim.

8. A trucking company is under contract to transport nuclear waste to a storage facility. While in transit on a highway, the truck overturns and the nuclear waste spills onto the road. What legal principle would govern the company's liability for emergency clean-up of the material?
- (A) Causation
 - (B) Absolute liability
 - (C) Volenti non fit injuria
 - (D) Res ipsa loquitur
9. Under common law, a defendant who shows that damages arose from an outside cause over which the defendant had no control, has used the defence of
- (A) denial.
 - (B) inevitable accident.
 - (C) remoteness of damage.
 - (D) no duty owed.
10. An individual that is held responsible for the actions of another is said to be
- (A) vicariously liable.
 - (B) liable by agency.
 - (C) strictly liable.
 - (D) civilly liable.
11. Under Coverage C, Medical Payments of the Commercial General Liability policy, which of the following is covered?
- (A) A nominal amount for lost wages incurred by a third party injured on the insured's premises
 - (B) Reasonable medical expenses incurred by a third party once the insured's negligence has been proven
 - (C) Compensatory damages when an insured is not legally liable but feels a moral responsibility
 - (D) Reasonable medical expenses incurred by a third party regardless of fault on the part of the insured
12. A lift ticket purchased by a skier at a local ski resort contains a disclaimer that the ski resort will not be liable for injuries sustained by skiers at the resort. The skier does not read the disclaimer written on the ticket. Later that day, he is injured when struck by a chair lift. If the skier succeeds in proving that the ski hill's negligence caused his injuries the
- (A) ski hill will escape liability because of the disclaimer.
 - (B) disclaimer increases the ski resort's duty owed to the skier.
 - (C) disclaimer would not be considered by the court.
 - (D) ski resort may be found liable if the skier can prove that he did not knowingly renounce his rights.

13. Rule A of the A.B.C. “rule” for establishing a cause of action for negligence examines
- (A) if a duty of care was breached.
 - (B) whether or not a loss was foreseeable by the tortfeasor.
 - (C) if damages were actually caused by a breach.
 - (D) whether the defendant owed the plaintiff a duty of care.
14. In class actions, *res judicata*
- (A) bars any further actions by individuals to claim for the same right.
 - (B) is the authorization from the court that a group requires to institute the action.
 - (C) is a brief presented to the court as proof that a group shares an interest in identical, similar, or related questions of law or fact.
 - (D) grants the status of representatives to those members of a group when the court is of the opinion that they will represent all members adequately.
15. In the legal decision, **Donoghue v. Stevenson** the court found that
- (A) only the purchaser of a product is entitled to claim damages against a manufacturer.
 - (B) a manufacturer must exercise extraordinary care in the preparation of consumer products.
 - (C) the vendor of the bottle of ginger beer was liable.
 - (D) a manufacturer owes a duty to the consumer to take reasonable care in the manufacture of products that would likely harm the consumer.
16. Despite the pollution exclusion, coverage is provided under the CGL for pollution arising from
- (A) the premises exposure for manufacturers.
 - (B) the completed operations exposure.
 - (C) liability assumed under contract.
 - (D) a manufacturing process involving the application of heat.
17. A manufacturer produces waffle irons. A plaintiff claims that she purchased a waffle iron from a store and it caught fire and caused damage to her kitchen. In Canada, the
- (A) plaintiff must prove that the product was defective, the defect caused the damages and the defect resulted from the manufacturer’s negligence.
 - (B) manufacturer is automatically deemed to be liable thus the burden of proof shifts without the plaintiff having to prove negligence.
 - (C) manufacturer must prove its innocence because a close examination of the processes used and quality control is not available to the plaintiff.
 - (D) plaintiff must prove the product was defective when it left the manufacturer after which absolute liability applies and the manufacturer has no possible defence.

18. A liability policy written on an occurrence basis will respond for injury or damage caused
- (A) prior to the inception of the policy and discovered during the policy term.
 - (B) prior to the inception of the policy and reported during the policy term.
 - (C) during the policy period and reported after the expiry of the policy term.
 - (D) prior to the policy term but discovered and reported during the policy term.
19. The standard Commercial General Liability policy provides coverage for
- (A) voluntary medical payments to employees of the insured.
 - (B) exemplary damages.
 - (C) loss of use of tangible property belong to others.
 - (D) personal injury assumed under a contract other than an “insured contract.”
20. Tenants’ Legal Liability under the standard Commercial General Liability wording provides coverage for the insured’s legal liability for
- (A) damage to the rented premises caused by escape of water.
 - (B) damage caused by pollution.
 - (C) the failure of electronic data processing equipment.
 - (D) damage to the rented premises caused by smoke.
21. Time element pollution coverage provides for some limited pollution coverage if the discharge is unexpected or unintentional and
- (A) detected and reported within a certain time frame.
 - (B) occurs in a quantity that is usual to the insured’s business.
 - (C) cleanup begins within 120 hours of discharge.
 - (D) pollution remediation work can be completed within 120 hours.
22. Under the standard Commercial General Liability policy, which of the following is NOT excluded?
- (A) Personal injury
 - (B) Automobile
 - (C) Injury to employees
 - (D) Intentional injury
23. The standard Commercial General Liability policy defines “your product” as including
- (A) products manufactured by others in the insured’s name.
 - (B) work performed on your behalf.
 - (C) tangible property owned by the insured.
 - (D) representations made with respect to the performance of goods or products.

24. Which of the following would attract coverage under the standard Commercial General Liability policy?
- (A) Employees injured in the course of employment
 - (B) Aircraft
 - (C) Automobiles
 - (D) Special equipment mounted on an automobile while being used in its functional capacity
25. The courts usually allow claims for prejudgment interest for claims arising from contractual obligations. An example of this is the interest on
- (A) non-pecuniary damages that accrue from the date of the notice of claim.
 - (B) general damages that accrue from the date judgment is rendered until the damages are paid.
 - (C) money owing on goods that accrue from the date payment was due.
 - (D) court awards that accrue from the date of the event that gave rise to the damages.
26. The standard Commercial General Liability wording excludes coverage for **alienated premises** which is described as
- (A) real property that is rented by the insured.
 - (B) property that is loaned to the insured.
 - (C) real property that has been given away by the insured.
 - (D) premises loaned to the insured.
27. **Compensatory damages** are
- (A) sums designed to make a third party whole financially with respect to injury.
 - (B) costs of complying with a mandatory injunction.
 - (C) meant solely to punish the insured for acts of gross negligence.
 - (D) gratuitous payments to a third party.
28. In Québec, a class action
- (A) bars any actions by individuals who are not members of the class.
 - (B) requires that each member of the class has the same, not just similar interest in the subject matter of the litigation.
 - (C) is the authorization from the court that a group requires to institute the action.
 - (D) is not binding on all members of the group.
29. When A pretends to act on behalf of B, knowing he or she has no authority, and B later agrees to be bound by the arrangement, agency has been created by
- (A) contract.
 - (B) ratification.
 - (C) estoppel.
 - (D) necessity.

30. When a number of persons are involved in a negligent act that leads to damage, the wrongdoers are known as
- (A) several tortfeasors.
 - (B) joint respondents.
 - (C) joint tortfeasors.
 - (D) several respondents.
31. Vicarious liability means that in situations where damages occur in a certain set of circumstances,
- (A) as described by statutes, there is no defence.
 - (B) the plaintiff need not prove negligence to show another's liability.
 - (C) the end-user has the right to sue the manufacturer of a product notwithstanding the existence of a contract between them.
 - (D) one can be held responsible for the actions of another done on his or her behalf.
32. Under a contract of sale, a legal action may be brought against a seller for breach of contract, if a product is unfit for its intended purpose,
- (A) by anyone who is injured or suffers damages as a result.
 - (B) unless the buyer purchases the goods under a brand name and then no warranty exists.
 - (C) by the buyer on behalf of a friend for whom the product was purchased.
 - (D) unless the buyer purchases a no-name product and as such, must take his or her chances.

Part II. ANSWER EITHER GROUP A. OR GROUP B.

GROUP A. ALL PROVINCES OTHER THAN QUEBEC

- A33. When premium will be paid by installments, the declarations of the CGL will show the premium as
- (A) deposit premium.
 - (B) minimum premium.
 - (C) total premium.
 - (D) advance premium.
- A34. The Form of Business section on the declarations form of a Commercial General Liability policy is important in
- (A) determining the boundaries for the risk the underwriter accepted.
 - (B) analyzing who qualifies as an insured under the policy.
 - (C) assessing the business in which the insured is engaged.
 - (D) evaluating the exposure extended to any claims due to the insured's operations.

- A35. The Farmer's Personal Liability policy includes
- (A) voluntary medical payments for residence employees.
 - (B) coverage for liability arising from the rendering of professional services by the insured.
 - (C) liability for damage to property in the insured's care, custody and control.
 - (D) coverage for liability arising from business pursuits of the insured, other than farming.
- A36. The Voluntary Payment for Damage to Property section of the Farmers' Personal Liability Policy covers
- (A) direct damage to the property of others caused by the insured's negligence.
 - (B) unintentional damage to property of others by an insured even though the insured is not legally liable.
 - (C) property damage caused intentionally by any dependent of the insured residing in the same dwelling.
 - (D) direct damage to the property of others caused by the intentional act of an insured that is 14 years of age or under.
- A37. Currently, the duty of care owed by manufacturers to consumers
- (A) arises only if damages suffered were unforeseeable.
 - (B) arises out of "privity of contract."
 - (C) does not arise unless the product is inherently dangerous.
 - (D) may not arise if a product label contains adequate warning.
- A38. Where res ipsa loquitur is accepted in a products liability action,
- (A) a situation of absolute liability exists.
 - (B) it is up to the manufacturer to prove negligence did not occur in the manufacturing process.
 - (C) the plaintiff has proven its allegations to the satisfaction of the courts.
 - (D) the plaintiff has proven negligence and is not required to prove who is responsible.
- A39. Under a Garage Liability Policy, hoists for servicing and lubricating vehicles
- (A) are excluded.
 - (B) are covered.
 - (C) may be insured upon request and submission of full details of each hoist.
 - (D) can be covered for a modest additional premium.
- A40. Claims arising from which of the following would NOT be covered under a Personal Liability Policy?
- (A) Use of a garden-type tractor of not more than 25 HP used mainly on the insured's property
 - (B) Specified business pursuits of a home-based business venture
 - (C) Motorized golf carts used on a golf course
 - (D) Bodily injury to a household resident other than an employee

**Answer Group B (Québec) only if you have NOT answered Group A (Other Provinces).
If you have completed Group A, go directly to Question 2.**

GROUP B. QUÉBEC

- B41. Under the Civil Code of Québec, the first line of defence flowing directly from Article 1457, the cornerstone of negligence liability, is to
- (A) show that no duty was owed.
 - (B) prove that the cause and result were inevitable.
 - (C) show that the rules of conduct were respected.
 - (D) show that the plaintiff was beyond the range of foreseeable danger.
- B42. Minor children are usually considered to be endowed with reason at the age of
- (A) seven.
 - (B) twelve.
 - (C) sixteen.
 - (D) nineteen.
- B43. Under the Civil Code of Québec, unless otherwise fixed by law, the date for extinctive prescription is
- (A) three years.
 - (B) one year.
 - (C) ten years.
 - (D) three years after a court award.
- B44. In Québec, extracontractual prejudice is the
- (A) consequence of a wrongful act other than a contractual obligation.
 - (B) high duty of care placed upon a person having custodial authority for a minor under contract.
 - (C) law that limits the right to sue creating a no-fault compensation system.
 - (D) injury suffered by an aggrieved party following a breach of a contract.
- B45. When property is given to another for safekeeping, the duty of care of the keeper is
- (A) based on the fulfillment of the mandate he or she has accepted.
 - (B) to act prudently and diligently in the protection of the property.
 - (C) to abide by the rules of conduct according to the particular circumstances.
 - (D) to contribute, as the person entrusted with custody of the property, to reparation made by the owner for damage or injury caused by it.

- B46. The defence of superior force is understood to include an act of God. This defence also allows one person to use the act of another as a defence if the act of another can be proven to have been
- (A) external, unforeseeable and irresistible.
 - (B) dangerous and imprudent.
 - (C) external and unintentional on the part of either person.
 - (D) the act of one not endowed with reason.
- B47. Under the Civil Code of Québec, exemplary damages may be awarded
- (A) only in criminal cases.
 - (B) for unlawful interference with a right under the Charter.
 - (C) as compensation for a debtor's pre-existing liability to a creditor.
 - (D) to compensate for loss of capacity to earn income.
- B48. In Québec, following a court award for damages, a plaintiff has up to three years to seek an additional damage award for
- (A) punitive damages.
 - (B) injuries suffered by a minor.
 - (C) property damage, should hidden damage be discovered within that time.
 - (D) bodily injury if the physical condition could not be determined with sufficient precision at the time of the judgment.

(2 marks each = 80 marks)

Section B: Narrative Questions

ALL STUDENTS

Answer **ONLY SIX (6)** questions from among Questions 2 to 9.

Question 2. Describe **limitation periods** and discuss their importance. (10 marks)

Question 3. **COMMON LAW**

What is meant by **onus of proof**? How can the onus be shifted?
Give ONE (1) example of a situation when the onus is shifted. (10 marks)

Question 4. **COMMON LAW**

Describe the following coverages and explain why they may be needed.

- (a) Bailees' coverage (5 marks)
- (b) Voluntary compensation for employees (5 marks)

Question 5. **CIVIL CODE**

Identify FIVE (5) lines of defence or methods of limiting liability that might be available to a defendant under the Civil Code of Québec in an action for negligence. (10 marks)

Question 6. **CIVIL CODE**

Discuss the liability imposed by the Civil Code of Québec as it relates to the duty of care for the following:

- (a) liability of a manufacturer (5 marks)
- (b) contractual liability (5 marks)

Question 7. Identify FIVE (5) types of risk generally considered to be hazardous. For each risk identified, give one example of an inherent exposure that would cause the risk to be considered hazardous. (10 marks)

Question 8. Distinguish between the terms **accident** and **occurrence** as they are used in the standard Commercial General Liability policy. (10 marks)

Question 9. Explain the legal concept of **joint and several liability** under common law OR the **solidary obligation** under the Civil Code of Québec. (10 marks)

Section C: Application Questions

ALL STUDENTS

Question 10. Your insured manufactures swimming pool equipment, which it sells at its own retail outlet. A customer purchased a swimming pool slide that he installed on his outdoor pool. The purchaser did not keep the original box or manufacturer's instructions dealing with the installation and safety precautions for the user of the slide. The purchaser's teenage daughter slid headfirst into the pool and suffered significant damage to her spine. She has filed an action against the manufacturer of the slide. Your insured is concerned about this claim and wants to know if the customer's action will succeed. What would you tell your insured about the law in Canada pertaining to this matter and how the insured's liability may arise? (10 marks)

Question 11. Your insured is a sub-contractor who contracted to erect the steel frame of a new convention centre in your city. During the construction process, a large steel truss that formed a major portion of the building's support system was anchored into the base of the building. The threaded steel bolts that were used for the anchoring process were manufactured by a fastener supply company but ordered by the project's general contractor. The truss collapsed during installation resulting in the death of one construction worker and injury to several others. The collapse caused significant damage to other portions of the construction project. Investigation into the cause of the collapse revealed that the steel bolts used in the anchoring of the truss were too small and not consistent with the plans and specifications of the building's design engineer. Discuss the potential liability of your insured as a result of this occurrence.

(10 marks)

Section D: Case Study

ALL STUDENTS

Question 12. Students are presented with certain facts and background information about a fictional organization. This material should be carefully reviewed. All parts of the question should be answered. Answers may be in note form but sufficient information, comment, or interpretation should be given to show that the subject matter is understood.

TRIPLE A LAUNDRY AND DRY CLEANERS

The Triple A Laundry and Dry Cleaning Corporation is a small urban business that operates in rented premises at two locations. The business provides on-site laundering of clothing as well as dry cleaning services. The operation specializes in the dry cleaning and preservation of bridal gowns. The business provides home delivery of customer's dry cleaning with company-owned vans and employee-owned vehicles.

The business's insurance policy is up for renewal. You are the insurance broker for the drycleaner.

- (a) Identify TEN (10) liability exposures of Triple A Dry Cleaners. (20 marks)
- (b) Prepare a recommended liability insurance program for the company, using any of the coverages discussed in this course. Mention all necessary sections of coverage and extensions applicable. (10 marks)
- (c) The insurance program you have suggested is now in place and the following incident has occurred.

While operating a clothes press, an employee of the insured

accidentally caused a fire when his cigarette fell into a trash bin. The fire caused significant damage to the dry cleaning premises and destruction of all of the customers' clothing that was on the premises. The fire caused smoke damage to neighbouring businesses. Chemical dry cleaning solutions on the insured premises were ignited by the fire, releasing noxious fumes into the air. Local businesses and residences were evacuated for 24 hours. The businesses are seeking compensation for loss of business and smoke damage. The residents want compensation for hotel and food expenses incurred while they were out of their homes.

How would the insurance you have recommended respond to this claim?

(10 marks)

