

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. The civil law provides a judicial forum
 - (A) to determine guilt and punish an offender by imprisonment or fine or some other appropriate method.
 - (B) for determining culpability by applying the highest standards of evidential proof.
 - (C) in which a person who is found innocent of any criminal wrongdoing is thereby free of all civil liability.
 - (D) to assign fault by developing and interpreting common law principles and applying relevant statute law.

2. The interference with a person's use and enjoyment of living area refers to
 - (A) public nuisance.
 - (B) negligence.
 - (C) private nuisance.
 - (D) infringement.

3. In Québec,
 - (A) civil courts tend to be effectively persuaded by arguments that are supported by case law.
 - (B) civil courts are bound by prior court rulings.
 - (C) parents are not liable for the negligent acts of their children.
 - (D) liability for the acts of others is called delictual liability.

4. Which of the following could lead to a finding of negligence?
 - (A) A vendor of microwave ovens sells an oven that is not fit for cooking, as warranted.
 - (B) A lawyer fails to meet the deadlines for filing court documents on behalf of her client.
 - (C) The infringement on a person's right to enjoy and use his or her property.
 - (D) When one party to a contract fails to observe an important obligation owed to another party to the contract.

5. The automobile exclusion of the standard Commercial General Liability policy excludes
 - (A) special equipment that has been mounted on a vehicle and is being used in its functional capacity.
 - (B) speed or demolition contests or stunt activities.
 - (C) vehicles that are not required by law to be insured by a motor vehicle liability policy.
 - (D) vehicles of others that the insured is working on at the time of loss.

6. The provincial court for the largest legal cases is
 - (A) Superior Court of original jurisdiction.
 - (B) Provincial Court of Appeal.
 - (C) Supreme Court of Canada.
 - (D) District court.

7. Tenant's legal liability insurance
 - (A) covers all fire damage arising out of a tenant's negligence.
 - (B) is not provided by a Comprehensive General Liability policy.
 - (C) is standard coverage under a Comprehensive General Liability policy and covers leakage from a sprinkler system.
 - (D) may not be needed if the tenant pays a portion of the landlord's fire insurance premium.

8. On occasion, when the CGL policy premium is substantial, an insurer may agree to allow the insured to pay in installments. When this is done, the advance premium is re-titled
- (A) minimum premium.
 - (B) total premium.
 - (C) deposit premium.
 - (D) provisional premium.
9. The Bodily Injury and Property Damage section of the Commercial General Liability Policy promises to pay those sums
- (A) intended as punishment and as a deterrent to others.
 - (B) that have been awarded to a third party by a court of law.
 - (C) that an insured has agreed to pay a third party following the occurrence of an accident.
 - (D) that an insured is legally obligated to pay as compensatory damages.
10. The Limited Buy Back pollution coverage option provides limited pollution coverage if the discharge is unexpected or unintentional and detected and reported within a specified time frame and the release
- (A) occurs in a quantity that is routine or usual to the business of the insured.
 - (B) is caused by heat from a fire that becomes uncontrollable and results in the injurious presence of pollutants in or upon land, the atmosphere, or body of water.
 - (C) is from premises the insured owns, rents or occupies or from pollutants brought onto the site by insureds to use in connection with their operations.
 - (D) results in a request, demand or order to test for or clean up pollution unrelated to bodily injury or property damage covered by the policy.
11. The newest exclusion to the CGL, Misinterpretation of Date, was added to
- (A) policies written on an occurrence basis.
 - (B) policies written on a claims-made basis.
 - (C) exclude any failure to read time information correctly from any electronic or computer system.
 - (D) clarify from what date a cause of action begins to run.
12. If the Civil Code of Québec does not cover the material facts specific to a given situation, the courts will
- (A) appeal to the Québec legislature for an amendment to the code covering the area.
 - (B) make a law that will decide the issue at the time and in the future.
 - (C) organize a set of rules with attendant criteria in a logical argument to create precedent.
 - (D) apply the general principles of justice set out in the code.

13. **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.
14. Which of the following scenarios creates a non-owned exposure for the business?
- (A) An employee rents a car in her own name while on vacation
 - (B) The business buys a vehicle and uses it for making sales calls
 - (C) The spouse of an employee uses a company-owned vehicle for personal use
 - (D) An independent contractor uses her van in fulfilling the duties of a contract between her and the business
15. A sidetrack agreement
- (A) gives someone the right to use land belonging to another for a limited purpose.
 - (B) confers upon a tenant the right to occupy certain property.
 - (C) usually requires that a business hold a railway company harmless for injury resulting from the construction or operation of railroad spurs on the business' property.
 - (D) is not an insured contract under the standard Commercial General Liability policy.
16. 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.
17. The Commercial General Liability policy
- (A) excludes coverage for all pollution liability.
 - (B) covers property damage for the escape of pollutants from premises rented to an insured.
 - (C) excludes bodily injury caused by heat, smoke or fumes from an uncontrollable fire that breaks out at the insured's premises.
 - (D) covers pollution liability arising from the insured's products.
18. Which of the following would NOT be covered under the Personal Injury Insuring Agreement of a standard Commercial General Liability Policy?
- (A) A salesclerk detains a customer who is suspected of shoplifting
 - (B) A police officer arrests a driver for impaired driving without probable cause
 - (C) A soft drink manufacturer knowingly makes negative but true statements about a competitor's product
 - (D) An employer provides a slanderous reference of a former employee

19. The court presumes that information is true until or unless evidence is introduced to the contrary when
- (A) the common law doctrine of scienter applies.
 - (B) Onus probandi is invoked.
 - (C) a prima facie case has been established.
 - (D) a judgment acquires the authority of res judicata.
20. Bailees have a higher duty of care placed upon them because
- (A) of a reliance on their expertise by the public.
 - (B) goods placed in their care are usually highly valued and the resulting risk requires greater care.
 - (C) they have a material interest in the property placed in their care.
 - (D) liability is assumed under contract.
21. Unless such liability is created by local statutes or by-laws, a municipality cannot be held liable for
- (A) nonfeasance arising out of the maintenance of highways.
 - (B) misfeasance arising out of weed and insect spraying.
 - (C) nonfeasance in the repair of sidewalks.
 - (D) misfeasance with regard to the operation of public utilities.
22. The defence of denial is pleaded when it can be proven that the
- (A) plaintiff was placed in a position of danger through no fault of the defendant.
 - (B) defendant's actions were not the immediate and effective cause of injury.
 - (C) plaintiff suffered no injury as a result of the defendant's actions.
 - (D) defendant tried to extricate himself from danger and caused damage in the process.
23. When an act interrupts a chain of events caused by negligence and directly results in injury to a plaintiff, a defendant whose actions began the chain of events would use the defence of
- (A) statute of limitations.
 - (B) contributory negligence.
 - (C) intervention of cause.
 - (D) remoteness of damage.
24. Joint and several liability (solidary obligation under The Civil Code of Québec)
- (A) requires that all tortfeasors be sued in an action for negligence.
 - (B) allows a defendant, ordered to pay a judgment, to search for other tortfeasors to share the fault.
 - (C) allows a plaintiff to bring separate actions against all tortfeasors, provided they are all started within the prescription period.
 - (D) allows a plaintiff who has sued one among several tortfeasors to collect the entire judgment from one defendant regardless of how liability is split.

25. The need for tenant's legal liability insurance can be avoided if the
- (A) landlord waives the right to sue the tenant.
 - (B) tenant pays a portion of the landlord's fire insurance.
 - (C) tenant eliminates any hazards that may lead to the occurrence of a fire.
 - (D) landlord's fire insurer is willing to waive subrogation rights against the tenant.
26. Two or more people acting in concert for a common purpose and causing injury or damage to another are known as
- (A) solidary tortfeasors.
 - (B) joint and several defendants.
 - (C) several respondents.
 - (D) joint tortfeasors.
27. A principal is bound by the express authority stated in a contract and also
- (A) by the ostensible authority given an agent to complete the coincidental duties required to fulfill the agreement.
 - (B) for any tort committed by the agent who exceeds the apparent authority of the agency contract.
 - (C) by contracts entered into with third parties by the agent, in which the agent is improperly identified.
 - (D) by commitments entered into by a representative to whom an agent has delegated his or her authority.
28. Supplementary payments are
- (A) certain expenses associated with the defense of an action that the insurer agrees to pay in addition to the limits of insurance listed on the policy.
 - (B) reasonable medical expenses paid if the insured unintentionally injures another person or such person is accidentally injured on the insured premises.
 - (C) advance claims payments made when a claimant is placed in an unusual financial hardship because of an accident.
 - (D) periodic premium payments allowed when the premium is substantial and the normal procedure of paying for premiums in advance has been modified.
29. An electrician is installing a new light fixture in a customer's kitchen. He connects the wires incorrectly causing the fixture to short out when it's turned on for the first time. The electrician gets a shock and drops his screwdriver breaking an imported ceramic floor tile. The fixture is damaged. A Commercial General Liability policy would
- (A) respond for the damage to the fixture and floor tile.
 - (B) respond for the damage to the floor tile only.
 - (C) respond for the damage to the fixture only.
 - (D) not respond for the damage to either the fixture or the floor tile.

30. The condition that allows one insured to bring an action against another insured where more than one insured is named on a Commercial General Liability policy is
- (A) Separation of Insureds.
 - (B) Legal Action Against Us.
 - (C) Duties in the Event of Occurrence, Claim or Action.
 - (D) Other Insurance.
31. The coverage territory clause for the Commercial General Liability policy requires that an action be brought or merited in North America because
- (A) the currency is more stable than in other jurisdictions.
 - (B) settlements are likely to be higher there than in most other areas of the world.
 - (C) underwriters want to reasonably predict the outcome of potential exposures in the most stable environment available.
 - (D) most insurers write business in the United States of America and have claims staff and lawyers available to investigate and defend actions.
32. In products liability, the ladder of supply is used to illustrate
- (A) the priority a claimant must use in working backward to establish who is responsible for injury.
 - (B) how a defective product may get from the manufacturer to the eventual user and cause them harm.
 - (C) the steps an injured party must follow in bringing an action against the manufacturer of the product.
 - (D) how privity of contract prevents rung-jumping, leaving the supplier responsible for any losses the ultimate user of a product suffers.

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

GROUP A. ALL PROVINCES OTHER THAN QUEBEC

- A33. Under common law, landlords warrant that the
- (A) land or premises are exactly fit for the purpose for which they are rented.
 - (B) dwelling premises are exactly fit for the purpose for which they are rented.
 - (C) furnished premises are fit for occupancy at the beginning of tenancy.
 - (D) premises are as safe for the purpose as reasonable skill can make them.
- A34. The extent of the duty of care owed under common law is determined by
- (A) proving that a statute has been breached.
 - (B) assessing if the person making the claim was among the group intended to be protected.
 - (C) applying the same standard to all persons within the same category.
 - (D) measuring the actions of all against those of the common person.

- A35. The A.B.C. rule, used to establish a cause of action in negligence, answers which question under A?
- (A) To whom is a duty of care owed?
 - (B) Was a duty of care breached?
 - (C) Should the loss have been foreseeable?
 - (D) Were damages caused by the breach of a duty of care?
- A36. An occupier's duty of care
- (A) may not be superceded by contract.
 - (B) under statute law, generally requires that an occupier protect all visitors from danger.
 - (C) flows from ownership of property.
 - (D) under common law, is highest for licensees.
- A37. When the legal rule "res ipsa loquitur", is applied
- (A) the burden of proof rests with the plaintiff.
 - (B) the preliminary evidence is sufficient to establish the facts claimed by the plaintiff.
 - (C) the court may infer negligence if the defendant had exclusive control of a thing that caused the plaintiff's loss.
 - (D) the evidence of the defendant is sufficient to rebut the plaintiff's claim.
- A38. **Absolute liability**
- (A) is a common law doctrine that applies to possession of dangerous things.
 - (B) is liability created by statute.
 - (C) may be avoided with an "act of God" defence.
 - (D) may be avoided when the escape of a dangerous object was caused by the plaintiff's own actions.
- A39. Defendants can be excused from strict liability by bringing themselves within the exception of
- (A) act of God.
 - (B) no duty owed.
 - (C) res ipsa loquitur.
 - (D) inevitable accident.
- A40. Under which of the following circumstances does responsibility for proving the allegations of negligence shift, requiring defendants to prove they were not liable for the damages?
- (A) A defendant who had never been diagnosed with a heart condition, has a heart attack on a golf course, loses control of a golf cart and injures another golfer
 - (B) A hockey puck injures a fan during a hockey game
 - (C) A plaintiff would have suffered less serious injuries had he or she been wearing a seat belt
 - (D) A jeweller loses a diamond ring she had accepted from a customer to appraise

**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. Extracontractual prejudice is
- (A) taking advantage of another in matters outside any contractual duty.
 - (B) rendering a judgment based on inadequate facts or insufficient evidence.
 - (C) the consequences of a wrongful act outside any contractual obligation.
 - (D) to place oneself at a disadvantage before entering into a contract.
- B42. A general contractor contracted out the welding portion of a building he was erecting. The subcontractor took a shortcut by failing to put up a fire protective barrier between what was being welded and the wood frame and a fire broke out. Substantial damage was sustained by the building. The general contractor may be successful in shifting responsibility to the subcontractor by raising the defence
- (A) that he respected the rules of conduct.
 - (B) that he was not endowed with reason with respect to welding procedures.
 - (C) of superior force.
 - (D) of intentional gross fault on the part of the subcontractor.
- B43. If it is not possible to determine which, of several persons acting together actually caused damage, they are all
- (A) vicariously liable for reparation.
 - (B) severally respondent.
 - (C) subject to a charge of punitive damages for wilful interference.
 - (D) solidarily liable for reparation.
- B44. The Consumer Protection Act of Québec prohibits a consumer from bringing an action against a merchant or manufacturer when the
- (A) manufacturer pleads it was unaware of any defect.
 - (B) consumer is a subsequent purchaser of the goods.
 - (C) goods form the object of the contract between the two.
 - (D) consumer could have discovered the defect by ordinary examination.
- B45. Superior force is a valid defence including the act of another that results in damages, provided such act is
- (A) unintentional and irresistible.
 - (B) external, unforeseeable and uncontrollable.
 - (C) accidental and not due to gross fault.
 - (D) the unauthorized act of an employee.

- B46. Québec's Charter of Human Rights and Freedoms states that every person must come to the aid of anyone whose life is in peril
- (A) and that when a person does so freely, he is exempt from all liability for injury.
 - (B) unless it involves danger to him or to a third person or he has another valid reason.
 - (C) and he is exempt from all liability unless injury is due to his intentional or gross fault.
 - (D) and he may not in any way exclude his liability for bodily or moral injury caused to another.
- B47. Exemplary damages
- (A) are awarded to compensate for the loss sustained and profit derived by the defendant.
 - (B) are awarded as a preventative measure.
 - (C) are not awarded without evidence of malicious conduct.
 - (D) costs incurred and any profit deprived.
- B48. Under The Civil Code of Québec,
- (A) prescription runs against a minor only with respect to remedies against a tutor.
 - (B) parents with parental authority are liable for a minor's negligence.
 - (C) parents with parental authority are not generally responsible for the negligence of their children.
 - (D) parents are seldom found liable for negligent acts of their children.

(2 marks each = 80 marks)

Section B: Narrative Questions

ALL STUDENTS

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

- Question 2. (a) What is meant by the hierarchy of precedent, in the common law system? (5 marks)
- (b) Describe the origins of The Civil Code of Québec and how a judge will arrive at a decision in a civil case in Québec. (5 marks)
- Question 3. **COMMON LAW**
- (a) Explain the purpose of hold-harmless and indemnity provisions. (5 marks)
- (b) Discuss how a liability policy treats harm expected or intended from the perspective of the insured. What is the exception? (5 marks)

Question 4. **COMMON LAW**

- (a) What standard of competence and conduct is expected from a reasonable person? (5 marks)
- (b) To be liable under the common law a duty of care must exist. How does the law define (in general terms only) those persons to whom a duty of care is owed? (5 marks)

Question 5. **CIVIL CODE**

- (a) Summarize the liabilities placed on manufacturers, distributors, wholesalers and retailers by Sections 1468 and 1469. (7 marks)
- (b) How is liability relieved, to some extent, by Section 1473? (3 marks)

Question 6. **CIVIL CODE**

The Civil Code gives litigants guidelines as to what can be claimed for damages for delictual liability or contractual liability. Explain the rules in the following cases:

- (a) Loss sustained by the holder of a trade secret (2 marks)
- (b) Loss sustained by the non-performance of a contractual obligation (5 marks)
- (c) How damages for bodily injury to a minor should be paid (3 marks)

Question 7. Describe the liability at law of an employer for the acts of an employee. Provide any exceptions to the general rule. (10 marks)

Question 8. The following legal cases have had a great deal of influence on products liability law. Give a brief summary of the facts of TWO (2) of the following cases and the legal rulings that arose from them.

- (a) Buckley v. Mott
- (b) Lambert v. Lastoplex Chemical Co.
- (c) Rivtow Marine Ltd. v. Washington Iron Works (5 marks each=10)

- Question 9. (a) In a Commercial General Liability policy, what is an **aggregate limit** and how is it applied? (5 marks)
- (b) The so-called “care, custody or control” exclusion describes certain types of property that are not covered under the Commercial General Liability policy. Name FIVE (5) of them. (5 marks)

Section C: Application Questions

ALL STUDENTS

- Question 10. A plaintiff suffered a perforation of his bowel during a colonoscopy performed by a urologist. He ultimately died as a result. The risk of perforation is considered to be a common outcome of such surgery. The estate of the plaintiff filed an action for wrongful death against the surgeon.
- If you were the adjuster representing the surgeon’s liability insurer, what steps would you undertake in the investigation of this claim to determine the liability of the surgeon? (10 marks)
- Question 11. Provide your analysis of the legal position at common law, of the plaintiff and defendant in the following scenario. In your answer, indicate the type of tort involved, the basis for your assessment of liability and the defences that might be raised and why.
- Bob and Teresa purchased their first home in a quiet, city suburb. Once they had moved in, they discovered that their next-door neighbour had over forty cats in his home. The cats were very noisy at night and a foul smell began to emanate from the neighbour’s house. Despite complaints to the neighbour and city officials, nothing was done to improve the situation, so Bob and Teresa decided to move. However, as their realtor pointed out and they eventually found out for themselves, the smell and debris coming from their neighbour’s yard was affecting their ability to sell their home. They eventually sold their home for \$40,000.00 less than they paid for it. Bob and Teresa filed a lawsuit against their neighbour claiming their moving costs, emotional distress and the loss of the market value of their home. (10 marks)

Section D: Case Study

ALL STUDENTS

Question 12. The following scenario outlines information about a fictional organization. Answers may be in note form, but sufficient information, comment, or interpretation should be given to show that the subject matter is understood.

RILEY'S CRYSTAL

- (a) You are asked to complete a liability inspection on a heritage building in a tourist district of the Halifax waterfront. The building is subdivided into various types of occupancies, including a snack bar, craft workshops of various kinds and gift shops. Riley's Crystal owns the building and operates a hand-blown glass operation. The glass blowing area has a large doorway that is left open for passers-by to view the glass blowers at work. You have been asked to inspect the premises and provide a report to the underwriter outlining the potential liability exposures of this risk. (20 marks)
- (b) Riley's Crystal contracted to provide crystal trophies to be given to medal winners at the 2002 Pan Am Games. The terms of the contract stated that the trophies would be shipped to the games by August 1, 2002. Riley's experienced some labour difficulties, which meant that they were unable to meet the deadline. The coordinator of the games was forced to obtain substitute trophies from another manufacturer at a much higher price. The games have commenced a legal action against Riley's Crystal claiming the additional costs that were incurred. As the claims adjuster assigned to deal with this claim, provide your evaluation of coverage, under a Commercial General Liability policy, for this claim. How would you proceed with adjustment of this claim? (10 marks)
- (c) One afternoon a family passed by the viewing area of Riley's Crystal. The family was extremely interested in watching the glassblowers make individual crystal pieces. One of the glass blowers approached the family with a piece of hot glass held on the end of an iron rod. As he held the rod out, their four year-old son tripped on a crack in the sidewalk and fell onto the hot glass, producing severe burns to his face. The family has filed an action against Riley's Crystal and its owners for damages arising from his injuries. You are the adjuster handling the claim for the store. Provide your analysis of the issues that should be investigated in order to assess Riley's Crystal's liabilities arising from this accident. Outline any potential defences that might defer liability. (10 marks)

