

CHARTERED INSTITUTE OF LOSS ADJUSTERS

DIPLOMA READING & LEARNING GUIDE FOR PRINCIPLES OF INSURANCE – DP1

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Introduction

This Guide has been prepared for members of the CILA undertaking the Diploma qualification and in particular paper DP1, the Principles of Insurance.

This qualification is overseen by the Council of the CILA (members of which are all Chartered Loss Adjusters) and Bournemouth University. It is a level four qualification.

Please note that there is another learning guide for DP2 and bespoke learning material for Customer Service and Ethics (DP3).

How to use this Guide

The CILA recommends text books for the two Principles of Insurance examinations and this Guide supplements these books and provides a framework for studying for the qualification.

You should follow this Guide as a basis for completing the learning, but as we all learn in different ways, you should build in your own preferred methods of learning and revising.

Ideally, you will follow this Guide in the order that it is presented so that you cover the syllabus. Reference is made throughout this Guide to “Property Insurance Law and Claims” and “Law Made Simple”. Specific page numbers have not been highlighted due to differing versions. You are recommended to obtain the most up-to-date copies. These text books will be a continual source of reference long after you complete the qualification so investment in them is most worthwhile.

This Guide commences with the syllabus and practical tips. As the course progresses, some self-test questions (which are purely examples and are not taken from the examination) are provided and the Guide recommends other sources of information.

The Syllabus

DP1, The Principles of Insurance 1

Thoroughly Understand

1. Utmost good faith, duty of fair presentation, insurable interest, indemnity.

Understand

1. Claims procedures including onus of proof, acceptance forms, forms of discharge, assignment, mandates, validation of quantum, FCA Handbook ICOBS 8, the role of the Insurance Fraud Bureau.
2. Law of contract, including the contra proferentem rule, offer, acceptance, consideration and bailment. Torts including negligence, nuisance, trespass and the rule in *Rylands v Fletcher* (1868) and their defences. Strict liability, absolute liability, statutory duty.
3. Risk, peril, moral and physical hazard.
4. The following legislation relevant to insurance:
 - Rehabilitation of Offenders Act 1974, Sections 1, 2, 4, 5 and 9
 - Unfair Contract Terms Act 1977, Sections 1, 2, 3, 4, 5, 11, 12, 13 and 14
 - Law of Property Act 1925, Part II, Sections 40, 41, 47, 61, 62 and 63

- Supply of Goods and Services Act 1982, as amended
- Public Order Act 1986, Part I, Sections 1, 2, 6, 8, 9 and 10
- Riot Compensation Act 2016
- Consumer Insurance (Disclosure and Representations) Act 2012
- Insurance Act 2015
- Theft Act 1968.

Where to Start

Your starting point should be the syllabi, which are included in this Guide. The syllabi are divided between subjects that you must “thoroughly understand” and those that you must “understand”, the difference between the two being the depth of knowledge you must achieve as set out in the handbook.

The following text books are essential:

- A good quality dictionary such as the Concise Oxford Dictionary
- Property Insurance Law and Claims – available from Witherby Publishing
<http://www.witherbyinsurance.com/property-insurance-law-and-claims.html> There is a discounted price of £30 for those taking CILA examinations. Email info@cila.co.uk to request confirmation of your entry to forward to Witherbys.
- Law Made Simple, David Barker, 13th Edition – available from Amazon.

In addition, you can access, at no cost, all the statutes at www.legislation.gov.uk/ukpga

An additional resource is the Chartered Insurance Institute – Insurance Law (M05/P05) study text.

DP1 Examination

The examination requires you to answer ten questions in two hours. This is roughly 16 minutes per question. Your answer should be provided in short format essays.

The examinations are in English and as the role of a Loss Adjuster requires good communication skills you are expected to have a command of English consistent with a professional person. You may wish to consider a book such as Collins Grammar Rules to help you understand the best ways of constructing clear and concise sentences.

The Principles of Insurance

You are expected to thoroughly understand the subjects in this section of the syllabus. This is because a detailed understanding is fundamental to the role of a Loss Adjuster.

Key Learning Points – Thoroughly Understand

To demonstrate that you thoroughly understand a subject, you will require an in-depth knowledge of the subject itself, including the relevant statutes, case law and other references.

Do not mistake “thoroughly understand” with the need to use complex language to explain the principle. The better you understand a principle, the easier you will find it to explain. This will apply in the exam. As an Adjuster, you will need to explain complex principles to people who may have little concept of the laws of insurance.



1

UTMOST GOOD FAITH



1. UTMOST GOOD FAITH

Contents

Utmost Good Faith

Deliberate or Reckless Misrepresentations

Careless Misrepresentations – Claims

Careless Misrepresentations – Treatment of Contract for the Future

The Duty of Fair Presentation – Non-Consumer Policies

Contracting Out

Utmost Good Faith

The principle of utmost good faith can be traced back to the case of *Carter v Boehm* (1766) and the Marine Insurance Act 1906. In summary, these established the policyholder's duty of utmost good faith to:

1. Disclose all material facts to underwriters, whether or not the policyholder has formally been asked to disclose such facts, and
2. To make sure that every material representation they make to insurers before the insurance contract is entered into is true.

You should recognise that this places a duty on both policyholders and insurers.

Following enactment of the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015, the principle of utmost good faith has to a degree become redundant. However, the objectives of these two Acts, in relation to disclosure of material facts, can be better understood by appreciating the principle of utmost good faith.



Activity

*Read the chapter on Utmost Good Faith in Property Insurance Law and Claims to gain an understanding of the principle. Remember that it is sometimes referred to as *uberrima fides*, which is simply Latin for utmost good faith.*

The principle of utmost good faith has been modified. When the Consumer Insurance (Disclosure and Representations) Act 2012 came into force on 6th April 2013, it removed the duty on consumers to disclose material facts that a prudent underwriter would take into account when calculating the premium or policy terms. This duty is replaced by a duty to take reasonable care not to make a misrepresentation. The test regarding misrepresentation of the risk is whether the consumer policyholder has made misrepresentations that are careless, reckless or deliberate. In such cases, the insurer does have a right to impose penalties for the misrepresentation. If the misrepresentation does not fall within these categories, the insurer has no rights to restrict or reject payment in the event of a claim, even if they consider the misrepresentation to be material.

One of the factors to be taken into account when determining whether or not a consumer has “taken reasonable care” is whether or not the questions asked of them at policy inception were clear and specific.

For this reason, consumer proposal forms, whether on-line or otherwise, should have been modified to avoid misrepresentations that were neither careless, reckless nor deliberate.

In the event of a misrepresentation, Schedule 1 of the Act provides for the following remedies to Insurers (the numbering is taken direct from the Act):

Deliberate or Reckless Misrepresentations

- 2** *If a qualifying misrepresentation was deliberate or reckless, the insurer—*
- (a) may avoid the contract and refuse all claims, and*
 - (b) need not return any of the premiums paid, except to the extent (if any) that it would be unfair to the consumer to retain them.*

Careless Misrepresentations – Claims

- 3** *If the qualifying misrepresentation was careless, paragraphs 4 to 8 apply in relation to any claim.*
- 4** *The insurer’s remedies are based on what it would have done if the consumer had complied with the duty set out in section 2(2), and paragraphs 5 to 8 are to be read accordingly.*
- 5** *If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid.*
- 6** *If the insurer would have entered into the consumer insurance contract, but on different terms (excluding terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.*
- 7** *In addition, if the insurer would have entered into the consumer insurance contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.*
- 8** *“Reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 6), where—*

$$X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$

Careless Misrepresentations – Treatment of Contract for the Future

- 9** *(1) This paragraph—*
- (a) applies if the qualifying misrepresentation was careless, but*
 - (b) does not relate to any outstanding claim.*
- (2) Paragraphs 5 and 6 (as read with paragraph 4) apply as they apply where a claim has been made.*
- (3) Paragraph 7 (as read with paragraph 4) applies in relation to a claim yet to be made as it applies in relation to a claim which has been made.*

- (4) *If by virtue of sub-paragraph (2) or (3), the insurer would have either (or both) of the rights conferred by paragraph 6 or 7, the insurer may—*
 - (a) *give notice to that effect to the consumer, or*
 - (b) *terminate the contract by giving reasonable notice to the consumer.*
- (5) *But the insurer may not terminate a contract under sub-paragraph (4)(b) if it is wholly or mainly one of life insurance.*
- (6) *If the insurer gives notice to the consumer under sub-paragraph (4)(a), the consumer may terminate the contract by giving reasonable notice to the insurer.*
- (7) *If either party terminates the contract under this paragraph, the insurer must refund any premiums paid for the terminated cover in respect of the balance of the contract term.*
- (8) *Termination of the contract under this paragraph does not affect the treatment of any claim arising under the contract in the period before termination.*
- (9) *Nothing in this paragraph affects any contractual right to terminate the contract.*

The Duty of Fair Presentation – Non-consumer Policies

It is most important that you are also aware of the effects of the Insurance Act 2015 in relation to utmost good faith, as outlined below:

The Insurance Act 2015 was given Royal Assent on 12th February 2015 and came into effect on 12th August 2016.

You should be aware that the Act also deals with the following:

- Warranties and other terms
- Insurers' remedies for fraudulent claims
- An amendment to the Third Parties (Rights against Insurers) Act 2010.

The new duty under the Insurance Act 2015 on non-consumers is one of fair presentation by the insured, so it is important to understand what a fair presentation is.

(3) A fair presentation of the risk is defined as one:

- (a) *which makes the disclosure required by subsection 4,*
 - (b) *which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and*
 - (c) *in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.*
- (4) *The disclosure required is as follows, except as provided in subsection 5*
 - (a) *disclosure of every material circumstance which the insured knows or ought to know, or*
 - (b) *failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.*
 - (5) *In the absence of enquiry, subsection (4) does not require the insured to disclose a circumstance if—*
 - (a) *it diminishes the risk,*
 - (b) *the insurer knows it,*

- (c) *the insurer ought to know it,*
- (d) *the insurer is presumed to know it, or*
- (e) *it is something as to which the insurer waives information.*

Remember that the Insurance Act 2015 applies only to non-consumer insurance contracts; consumer contracts are dealt with under the Consumer Insurance (Disclosure and Representations) Act 2012.

Contracting Out

Under Section 15 the 2015 Act, any term within a contract that puts a consumer in a worse position than they would be in under Parts 3 or 4 of the Act is effectively null and void. With regard to non-consumer insurance contracts, it is possible to “contract out”, but only where the insurer satisfies Section 17 of the 2015 Act, which requires compliance with the “transparency requirements”.

These requirements oblige the insurer to bring the disadvantage of the contracting out term to the attention of the Insured and this must be in a clear and unambiguous manner.

Schedule 1 of the 2015 Act sets out insurers’ remedies for qualifying breaches of the duty of fair presentation.

If a qualifying breach was deliberate or reckless, the insurer:

- (a) may avoid the contract and refuse all claims, and
- (b) need not return any of the premiums paid.

If the breach was neither deliberate nor reckless, there is a range of other remedies depending on the reason for the breach.



Test Yourself

- A) *Explain the policyholder’s duty of fair presentation as set out by the Insurance Act 2015 and detail what an Insurer must do if they wish to contract out of the provisions of the Act.*
- B) *Detail the remedy available to the Insurer in the event of a deliberate qualifying breach of requirement of fair presentation.*

It is worth looking at the Act and familiarising yourself with the layout. Like an insurance policy, the Act contains different sections and in some cases definitions. Acts are designed to deliver what Parliament intended on the day they were passed. However, they are open to interpretation, just like policy wording. You can read the Act, challenge the wording and perhaps develop some interesting interpretations. You should of course consider what Parliament had in mind and who they might have been seeking to protect.



Test Yourself

1. *Provide five examples of facts material to physical hazard and explain why one of them is material.*
2. *Provide five examples of facts material to moral hazard and explain why one of them is material.*
3. *Provide the remedy available to Insurers for a careless misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012.*
4. *Explain why consumer proposal forms often contain “help text”.*



INSURABLE INTEREST

2

2. INSURABLE INTEREST

Contents

Insurable Interest

Case Law

Insurable Interest

Insurable interest is linked with indemnity and you will see that they are dealt with in the same chapter of Property Insurance Law and Claims.

You will need to know the following features of insurable interest:

- The creation of insurable interest as a statutory requirement and the legislative history
- The link to indemnity
- How insurable interest may be created, such as by contract, statute or ownership
- The definition of insurable interest
- When insurable interest needs to exist
- How policy wordings can affect the principle
- Case law and in particular *Castellain v Preston* (1883), *Coven Spa v Hong Kong Chinese Insurance Co Ltd* (1999) and *Moore v Evans* (1918).

Case Law

The introduction of case law provides an excellent opportunity to consider the following FAQs:

1. How many cases should I learn? You should be able to recite cases concerning the main points of law to support your answers in the examination.
2. How much detail do I need to know? Cases are identified by their citation. *Law Made Simple* contains a Table of Cases which provides the full citation, such as *Hyde v Wrench* (1840) 3 Beav. 334; 4 Jur.1106. However, for examination purposes, *Hyde v Wrench* (1840) would be acceptable. Whilst the year is not vital, you will avoid possible alternative cases by including it.

The following table is a tried and tested method of learning cases and provides an outline of what you will want to learn for each case. Why not set up your own table of cases?

Name of case	Key information or circumstances	Reason for knowing
<i>Castellain v Preston</i> (1883)	The assured, in a case of a loss against which the policy has been made, shall be fully indemnified but shall never be more than fully indemnified.	Indemnity

This table should be reproduced on separate sheets of paper. By folding the sheet to show one column you may test your knowledge as follows:

By looking at *Castellain v Preston* (1883), you should be able to recall “The assured, in a case of a loss against which the policy has been made, shall be fully indemnified but shall never be more than fully indemnified” and Indemnity.

Similarly, by looking at “The assured, in a case of a loss against which the policy has been made, shall be fully indemnified but shall never be more than fully indemnified” you will be able to recall the other two columns – *Castellain v Preston* (1883) and Indemnity.



Activity

Using a dictionary, obtain a definition of “indemnity”. This is a good starting point for an extra mark in the exam. Then read the chapter on *Insurable Interest and Indemnity in Property Insurance Law & Claims*. Use the dictionary to look up any words that are not in common parlance, so that you can explain the principle in everyday language.



Test Yourself

1. Explain the relevance of one of the following legal cases to the principle of insurable interest: *Castellain v Preston* (1883), *Coven Spa v Hong Kong Chinese Insurance Co Ltd* (1999) and *Moore v Evans* (1918).



INDEMNITY

3

3. INDEMNITY

Contents

Indemnity

Key Learning Points – Understand

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Onus of Proof

Acceptance Forms and Forms of Discharge and Assignment Mandates

Validation of Quantum

FCA Handbook ICOBS 8

The Role of the Insurance Fraud Bureau (IFB)

Law of Contract

Bailment

Indemnity

Indemnity is a fundamental principle of insurance contracts, which aim, after a loss has occurred, to place the policyholder in the same financial position as they were in immediately prior to the loss.

Property Insurance Law and Claims provides details of the principle of indemnity in the second half of Chapter 4.

This principle is associated with insurable interest. When measuring how much a policyholder may receive, it is worth considering the limit of their financial interest, in addition to the actual value of the item lost or damaged.

For example, if Robert has a 50% share of a house with the other 50% of the house being owned by Lynda, the indemnity principle means that Robert can only be paid up to a maximum of 50% of the value. If Robert receives more than this, the policy has more than the extent of his financial loss.

Policies often pay “reinstatement” costs or “replacement as new”, but most will restrict such payments by saying “only where the cost of replacement or reinstatement is actually incurred”. The policy may be flexible on when and where reinstatement or replacement takes place and an Adjuster should verify the policy wording in these key areas before giving advice to the Insurer or the policyholder.

The measure of indemnity, particularly around reinstatement or replacement, is too often a cause for dispute. This can be avoided by understanding the principle of indemnity and the policy wording before negotiations on finances commence. In other words, agreeing the principle first and then working out the figures will most likely bring parties to an amicable solution.

Disputes surrounding reinstatement or replacement as new are also encountered where the cover is provided but there is reason to consider the policyholder has no desire to replace or reinstate. Again, by openly discussing possibilities and the policy requirements at an early stage, these disputes can be avoided.



Test Yourself

1. Using case law, provide a definition of indemnity.
2. Explain how the principle of indemnity may be modified.

Key Learning Points – Understand

The next section of the syllabus requires that you “understand” the subjects specified. Whilst the requirement is less than “thoroughly understand”, the examiner will still expect you to be able to explain the subjects, so you must have an understanding much deeper than simply being aware of the topic. If when you revise you think to yourself “oh yes I have heard of that”, your knowledge is insufficient!

You will see that quite a large part of the syllabus relates to statutes. You are not expected to have detailed knowledge of entire statutes, but you should understand the parts that are relevant to insurance claims practice. Here the syllabus assists you as it highlights the relevant sections of the acts.

The first part specifies the following topics:

Claims Procedures

This includes onus of proof, acceptance forms, forms of discharge, assignment, mandates, validation of quantum, FCA Handbook ICOBS 8 and the role of the Insurance Fraud Bureau (IFB).

Onus of Proof

Onus of proof relates to two issues – proof of the cause of the loss and the extent of financial loss. Section 6.2 of Property Insurance Law and Claims refers to proximate cause and highlights the onus, or as it is referred to the burden of proof, in relation to the cause of a loss.

Note that the onus to prove the cause of the loss is the policyholder’s whereas the duty to prove that the cause results from an excluded cause is the Insurers’. This means that, in the case of All Risk cover where the loss is covered unless excluded, it is for the policyholder to show that a loss has occurred but for the Insurers to prove that it was caused by an excluded peril if the Insurers seek to exclude the loss.

Acceptance Forms and Forms of Discharge and Assignment Mandates

Details of these can be found in Property Insurance Law and Claims.

Acceptance forms are not always required by Insurers. However, their purpose is to demonstrate that the policyholder has agreed to a final settlement. It is most important that, when used, the document states clearly that it is subject to the approval of the Insurer. This means that the document is not binding on Insurers. If it were binding, Insurers may be liable even if they do not accept the proposal, as the Adjuster is acting as an Agent of the Insurer.

The amount proposed should be stated in words and figures and there should be a statement that the offer is in full and final settlement. The policy number should also be quoted as should the risk address concerned.

Validation of Quantum

Validation of quantum concerns verification of the amount involved in the loss. It is mainly concerned with the insured loss, but there may be circumstances where the non-insured part of the loss may also be relevant.

It could be argued that it is for the policyholder to prove the extent of the loss. However, to treat the customer fairly, it may well be reasonable to provide the policyholder with assistance.

In any event, both the policyholder and the Insurer will be entitled to receive from the Loss Adjuster ample evidence to demonstrate how the quantum has been substantiated.

Initially, it will be for the policyholder to submit the claim and this would usually include the amount claimed. However, it is common for insurers and adjusters to appoint restoration companies and contractors. Whilst this is with the consent of the policyholder, it would not be fair for the loss adjuster to appoint a restoration firm to undertake work and then expect the policyholder to justify the costs.

There are a number of ways in which losses can be validated in terms of quantum. In some cases, it is a question of measuring and counting. The classic example given of counting is where wooden stock is destroyed by fire. Within the remains, there are, for example, four metal wheels for each unit. We could therefore ascertain that if 390 wheels are found, it would be reasonable to accept that 100 units were affected.

Other means of demonstrating the quantum of a stock loss is by reference to stock records – remember you are interested.

Chapter 9 of Property Insurance Law and Claims provides further details of validation of quantum.



Test Yourself

1. Explain who is responsible for demonstrating the extent of loss.
2. Provide an explanation of a reasonable method of validating the extent of fire loss of a stock of carpet.

FCA Handbook ICOBS 8

This section considers the Financial Conduct Authority (FCA) and in particular the Insurance Conduct of Business 8 (ICOBS 8). Whilst ICOBS 8 rules relate to consumer policyholders, they should also be borne in mind when handling non-consumer policyholder claims.

This may sound complicated, but the FCA and their rules on conduct of insurance business are in fact a relatively simple matter. ICOBS 8 can be found at <https://www.handbook.fca.org.uk/handbook/ICOBS/8/1.pdf>

The rules state the following:

ICOBS 8.1.1 An insurer must:

- (1) *handle claims promptly and fairly;*
- (2) *provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;*
- (3) *not unreasonably reject a claim (including by terminating or avoiding a policy); and*
- (4) *settle claims promptly once settlement terms are agreed.*

You must know these rules and they should be your guiding principles. Remember they are the legal essentials and breaches can have legal consequences. Ethical standards are covered in the Diploma course and it is clear that a breach of the FCA rules would not be in keeping with a professional Loss Adjuster.

The second section of ICOBS 8 relates to situations where it is unreasonable to reject a consumer policyholder's claim:

ICOBS 8.1.2 A rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is:

- (1) in relation to contracts entered into or variations agreed on or before 5 April 2013, for:

 - (a) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or*
 - (b) non-negligent misrepresentation of a fact material to the risk; or**
- (2) in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a customer and the misrepresentation is not a qualifying misrepresentation; or*
- (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a pure protection contract):

 - (a) under a 'life of another' contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an 'own life' contract, the insurer could have rejected the claim under this rule; or*
 - (b) the warranty is material to the risk and was drawn to the customer's attention before the conclusion of the contract.**

ICOBS 8.1.3 For the purposes of ICOBS 8.1.2R (2) a "qualifying misrepresentation" is one made by a consumer before a consumer insurance contract was entered into or varied if:

- (1) the consumer made the misrepresentation in breach of the duty set out in section 2(2) of the Consumer Insurance (Disclosure and Representations) Act 2012 to take reasonable care not to make a misrepresentation to the insurer; and*
- (2) the insurer shows that without the misrepresentation, that insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms.*

The Role of the Insurance Fraud Bureau (IFB)

The IFB state that their mission is "To lead the insurance industry's collective fight against organised fraud".

You will need an understanding of the role of the IFB and should review their website at <https://www.insurancefraudbureau.org/>

Law of Contract

This topic is covered in Law Made Simple. Important elements to understand are the essentials of a valid contract, offer, acceptance and consideration, the intention to create legal relations, contra proferentem rule, the doctrine of performance, void, voidable and illegal contracts, discharge of a contract, remedies for breach of contract, privity of contract, assignment and interpretation of contracts.

Law Made Simple includes exercises that you can use to check your understanding.

Bailment

This matter is dealt with in Property Insurance Law and Claims. Your interest is with regard to responsibility for goods, but you should also pay careful attention to the policy wording regarding what goods are covered.



4

TORTS



4. TORTS

Contents

Torts

Strict Liability and Absolute Liability, and Statutory Duty

Risk

Perils

Moral and Physical Hazard

Torts

These are covered very well in Law Made Simple. Do not be tempted to go straight to the individual torts. First read up on the origins of torts. Whilst the Anglo-Saxons' initial handling of criminal and civil wrongs is unlikely to form part of our examinations, understanding the origins helps put the law into context. This will only take 5–10 minutes.

Having gained a quick understanding of the origins of the law of tort, you will have also learned the Latin word *tortus* meaning crooked or twisted and the Norman French word *tort* meaning wrong. You didn't expect to be working in three languages did you! We will use more Latin as we go on. Don't be concerned about this; we'll only use it so you can show off your immense knowledge when the mood takes you ...

Read through the Tort chapter in Law Made Simple, concentrating on the torts listed in the syllabus. These are negligence, nuisance, trespass and the rule of *Rylands v Fletcher* (1868).

For each tort, there are legal cases that provide examples or ways in which judges will decide whether there is a liability. There are also defences to actions. It is most important that you learn legal cases that support or define a tort. You should also understand the defences, and again legal cases to support this will assist.

You may find it easier to learn cases that mean something to you. Perhaps the names involved mean something to you or the circumstances are a little amusing. Pick cases that are easy for YOU to remember.

Negligence is the most fundamental tort and you should understand that:

- A duty of care was owed
- There was a breach of that duty of care
- Damage/loss resulted.

Donoghue v Stevenson (1932) is a case you simply must know and understand. It involves ginger beer and a partially decomposed snail – what's not to like! It is the ultimate “neighbour” test and demonstrates to whom a duty of care is owed. It also explains that the duty of care creates a requirement to do something a reasonable person would do, or not to do something that a reasonable person would not do.

A useful acronym to help you remember the components of negligence is “Do you know your **DBC?**”

- Duty owed
- Breach of duty
- Causation – breach resulted in the damage/loss.

Strict Liability and Absolute Liability, and Statutory Duty

These topics are covered in Chapter 8 of Law Made Simple, as indeed are all the essential elements of torts, defences, etc. Case law is also covered very well. Remember you don't need to know every case but having a selection to choose from is most useful.

Choose cases that are memorable. For example, *Sayers v Harlow Urban District Council* (1958) explains the partial defence of contributory negligence. Take a look at the circumstances and outcome. Now, I fail to recall names immediately after they are announced to me, but this case was brought to my attention in 1979 and I simply cannot choose to forget it. If this case doesn't work for you, others will – I promise!

It is important to understand the limitations on when actions may be brought and the different limits that apply to minors and those incapacitated. If the time limit is exceeded, you will not be able to recover monies on behalf of Insurers.



Test Yourself

1. Explain, using case law, the principle of duty of care in relation to negligence.
2. Provide two examples of defences to the tort of negligence and explain what the defendant needs to demonstrate to rely on these defences.
3. Laura, a full-time occupational therapist, decides that she wishes to keep bees. One day in May the bees swarm and make a temporary home in Donald's garden three houses away in the same terrace. Donald pays £100 to have the swarm removed and subsequently learns that Laura had failed to check for tell-tale signs that her bees may swarm. He wishes to pursue an action against Laura, saying she was negligent. Put forward an argument using cases and principles of law to support Donald's case.
4. In the circumstances in the previous case (3), put forward an argument to defend Laura.

Risk

Chambers English dictionary defines risk as hazard, danger, chance of loss or injury, the degree of probability of loss ...

Insurers are concerned with the chance of loss or injury by a defined hazard (peril). The policyholder pays a premium to transfer all or some of the risk to the insurer. This is why it is important that the extent of a risk is known so that the probability can be reasonably considered and an appropriate premium charged for the transfer of the risk.

By understanding this, you will appreciate the connection between risk and the duty of fair presentation of the risk and thereby the possibly penalties insurers might invoke where the representation has not been fair.

The following is largely taken from our Certificate learning material to explain the principle of risk.

The reality is that everything we do has risk attached to it. In fact risk is something that frequently prevents us doing things we would like to do. For example, consider a qualified veterinary surgeon, Peter, who is employed in a surgery. He considers opening his own surgery but perceives the risk of losses by theft, fire or malicious damage to be too great and therefore decides not to attempt the new venture.

Some risks prevent us from doing things, but more often we find ways to accept risks. For example, instead of crossing a road we may choose to use a footbridge or subway. Without taking some risks in life, progress and success would never be achieved. Think of the cricketer batting in the World Cup final. He is bowled a ball that he thinks he could hit for six, but if he takes that shot he risks being caught out. Taking a risk, he hits the ball and scores the six. Later when asked about the shot he says, “it was a calculated risk. I knew that it was a risk worth taking”.

In the 1600, 1700 and 1800s, merchants took huge risks sailing across the oceans to find new markets, goods and treasures that might make them a fortune. At one time, sailors believed they would sail off the edge of the earth – what a huge risk to take!

Perils

The typical perils for which cover is provided are dealt with in Property Insurance Law and Claims. You should read the relevant chapter, focussing in particular on:

- The definition of a peril
- Typical peril exclusions
- Any warranties that might apply to the peril.

Traditionally, it was for the policyholder to prove, on the balance of probability, that the loss or damage was caused by an insured peril. This often left the policyholder in the difficult position of gathering sufficient evidence. More recently, to treat the customer fairly, Insurers have made far greater attempts to establish themselves whether the loss was caused by an insured peril. Whilst it is important to verify the insurers’ philosophy, the mantra of treating the customer fairly in all aspects cannot be overlooked.

Moral and Physical Hazard

Moral and physical hazards are explained in Property Insurance Law and Claims and you should read the appropriate chapter.

You might be asked to provide examples of physical and moral hazards in the exam. Before you go any further, come up with three examples of each and go into the exam prepared. To get you started, here is one of each, but examiners will prefer that you have given this your own thought and developed your own examples.

Moral Hazard example – The policyholder uses illegal substances to assist the production of a small component of goods that are manufactured. The policyholder is adamant that it is safe and that the law is wrong.

Physical Hazard example – The policyholder is a company concerned with road construction. This involves lifting of heavy plant. The crane used to lift the heavy plant is out of production and spare parts are no longer available. As a result, the policyholder has used an unorthodox method of repairing the crane and it is thought to be unsafe.



LEGISLATION RELEVANT TO
INSURANCE

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5. LEGISLATION RELEVANT TO INSURANCE

Contents

Acts

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Acts

The following is a list of Acts that you should review. They can all be found at <http://www.legislation.gov.uk/>

Act	Key Areas	Comment
Rehabilitation of Offenders Act 1974	Rehabilitation periods. Also see Property Insurance Law and Claims.	For our purposes, we are concerned with disclosure of material facts. We are also concerned with defamation of character. Let's say that a policyholder tells you of a conviction that no longer applies as it is "spent". You pass the information on to another person. This could amount to defamation of character as the spent conviction simply no longer exists for our purposes.
Public Order Act 1986, Part I, Sections 1, 2, 6, 8, 9 and 10	This Act provides the legal definition of Riot. Also see Property Insurance Law and Claims.	The Riot Compensation Act 2016 (on which the CILA gave advice to Government officials) provides Insurers with an opportunity to recover money paid out in the event of a riot.
Consumer Insurance (Disclosure and Representations) Act 2012	The details relevant to Loss Adjusters relate to disclosure as detailed in this Guide under Utmost Good Faith.	
Insurance Act 2015	The details relevant to Loss Adjuster relate to disclosure as detailed in this Guide under Utmost Good Faith. This Act has also been amended by the Enterprise Act 2016. This provides for damages for late payment of insurance claims.	You may find that people refer to the Enterprise Act 2016 when talking about damages for late payment. The reality is that the Enterprise Act 2016 was the vehicle by which the Insurance Act 2015 was amended to provide for damages for late payment. In the exam you would be correct in saying that the Enterprise Act 2016 provides for damages for late payment of insurance claims. You may wish to add that this was done by amending the Insurance Act 2015.
Theft Act 1968	This Act provides us with the legal definition of theft. Also see Property Insurance Law and Claims.	Knowing the definition will be useful as you can give it straight to the examiner in the exam! You will need to be able to explain it too.

Summary

As detailed above this is a learning guide as distinct from the learning material. Whilst this document includes some information it is essential that you use the guide to assist you in locating the information to cover the syllabus.

The material you choose to understand the content of the syllabus may of course go beyond the information highlighted.