

# CHARTERED INSTITUTE OF LOSS ADJUSTERS

## DIPLOMA READING AND LEARNING GUIDE FOR PRINCIPLES OF INSURANCE – DP2

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## Introduction

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This guide has been prepared for members of the CILA undertaking the Diploma qualification and in particular paper DP2, 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 Principles of Insurance (DP1) and bespoke learning material for Customer Service and Ethics (DP3).

## How to use this Guide

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The CILA recommends text books for the two Principles of Insurance examinations (DP1 and DP2) and this guide supplements these books and provides a framework for studying for the qualification. The text books are highlighted under the section “Where to Start”.

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 to ensure 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 DP2 syllabus and some 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, such as websites.

## DP2, The Principles of Insurance

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### Thoroughly Understand

1. Legal principles relating to transfer of ownership of real property and goods
2. Proximate cause
3. Contribution
4. Subrogation.

### Understand

1. The operation of the insurance market, including composite insurers, insurance brokers, Lloyd’s syndicates and brokers, and the main functions of loss adjusters, loss assessors, underwriters, intermediaries, the Financial Services Authority, Financial Ombudsman Service and risk managers.
2. The role of professional bodies, including the CILA, trade associations and regulatory authorities.
3. The following legislation, relevant to insurance:
  - Fires Prevention (Metropolis) Act 1774
  - Hotel Proprietors Act 1956 in relation to insurable interest

- Third Parties (Rights against Insurers) Regulations 2016
- Water Industry Act 1991, s 209
- The Control of Asbestos Regulations 2012
- The Riot Compensation Act 2016
- Equality Act 2010 in relation to the handling of losses
- Fraud Act 2006 in relation to the handling of claims
- Limitation Act 1980
- Consumer Protection Act 1987
- Data Protection Act 1998
- Bribery Act 2010
- The Money Laundering Regulations 2007.

## Where to Start

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Your starting point should be the syllabus, which is included in this guide. The syllabus is divided between subjects that you must “thoroughly understand” and those that you must “understand”, the difference 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](mailto:info@cila.co.uk) to request confirmation of your entry to forward to Witherbys.
- **Law Made Simple**, David Barker, 13<sup>th</sup> Edition - available from Amazon.

In addition, you can access, at no cost, all the statutes at [www.legislation.gov.uk/ukpga](http://www.legislation.gov.uk/ukpga)

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

## DP2 Examination

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The examination requires you to answer ten questions in two hours. This is roughly 12 minutes per question. Your answers 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.

## Key Learning Points – Thoroughly Understand

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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.

## **The Legal Principles Relating to Transfer of Ownership of Real Property and Goods**

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This subject is related to insurable interest and responsibility for property. Principles of Insurance (DP1) included the principle of Insurable Interest. The point at which transfer of ownership occurs may affect Insurers’ liability. Often Loss Adjusters are asked to settle claims where there are considerations concerning ownership and responsibility for goods and real property. Law Made Simple covers the law of property. As ever, the text book provides some interesting questions at the end of the chapter, which you should review.

It is also worthwhile gaining an understanding of the law of succession, which concerns the transfer of property after the death of the owner.

## **The Principles of Insurance**

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







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SYLLABUS SUBJECTS





# 1. SYLLABUS SUBJECTS

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## Proximate Cause

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Understanding the principle of Proximate Cause is crucial. This principle relates to the cause of loss or damage and is relevant because insurance policies cover loss or damage resulting from various causes. The causes covered by a policy are known as Perils, examples of which include Fire, Lightning, Explosion, Impact and Storm.

The principle of Proximate Cause is explained in Property Insurance Law and Claims and you should read the relevant chapter carefully.

As you read Property Insurance Law and Claims, you will see the essential and very helpful legal case is *Pawsey v Scottish Union* (1908). To demonstrate a good understanding of the principle, you should be able to quote the definition of Proximate Cause given by the judge in this case and explain the case itself.

In addition, to broaden your understanding, it is important to be clear on other issues contained within the chapter, such as Concurrent Causes and the Financial Ombudsman's two tier test for Storm. <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/28/28-poormaintenance.htm>



### Test Yourself

- a) Provide a definition of Proximate Cause using case law.
- b) Explain the Financial Ombudsman Service (FOS) two tier test for storm in relation to Proximate Cause.
- c) Explain the relationship between Perils and Proximate Cause.

## Contribution

Contribution concerns the sharing of losses where there is more than one insurance policy covering the same loss. This is explained in Chapter 10 of Property Insurance Law and Claims.

Be careful as Property Insurance Law and Claims highlights the ABI Rules on Contribution which now no longer exist. It is important that you research the case law, specifically King and Queen Granaries, mentioned in the same paragraph as the ABI rules, as this explains the common law position.

There are a number of methods of apportioning, or sharing, a loss where there is more than one policy in force. You should understand the different methods and it is essential to be able to show a clear understanding of the Independent Method of Apportionment and the Sums Insured Method. In the exam, you could be asked about the other methods too.

## Subrogation

The principle of subrogation refers to the rights of an insurer to step into the shoes of a policyholder and to pursue an action in the name of the policyholder to recover their loss against a third party who may be responsible for the loss.

Subrogation is linked to indemnity in that the policyholder may not recover a sum greater than their loss. The easiest way to understand this is a practical example.

Laura owns a large house and there is an escape of water from a washing machine which destroys a carpet. Her insurers consider that the damage is covered by the policy and pay for a replacement carpet.

However, it is established that the washing machine was faulty and that there is a legal liability on the supplier to pay for the damage resulting from the escape of water.

If Laura were to recover from the washing machine supplier, she may receive a total sum of money greater than her loss.

The principle of subrogation allows the insurer to take up the rights and remedies available to Laura, and this is known as subrogation.

Chapter 11 of Property Insurance Law and Claims explains:

- The rights of the insurer under common law and under the typical policy conditions
- The right to take over the action in the policyholder's name
- The Loss Adjusters' role
- The distribution of money recovered.

## Key Learning Points – Understand

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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:

### The Market, Trade and Professional Bodies

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You are expected to understand the parties involved in the insurance arena. You should read Chapter 2 of Property Insurance Law and Claims to understand the marketplace in general.

In addition, you should understand the role of professional bodies. A review of the following section of the CILA website will be of benefit: <http://www.cila.co.uk/cila/about-cila>

In addition you should understand the roles of the following:

The Association of British Insurers <https://www.abi.org.uk/about-the-abi/about-us/>

The British Insurance Brokers Association (BIBA) <https://www.biba.org.uk/about/about-biba/>

The Financial Ombudsman Service (FOS) <http://www.financial-ombudsman.org.uk/about/index.html>

Financial Conduct Authority (FCA) <https://www.fca.org.uk/about/the-fca>

### Legislation

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The syllabus requires an understanding of the relevant parts of the following Acts. In addition to the detail below, you should refer to <http://www.legislation.gov.uk/> This is a fantastic resource providing free access to all UK legislation.

### Fires Prevention (Metropolis) Act 1774

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Although this Act contains the word Metropolis, it is not restricted to towns and cities.

For our purposes, we are concerned with Section 83 of the Act. This section provides that any person or persons having an interest in a property can demand that the insurance money is used to reinstate the property and is not paid to the policyholder. This could apply, for example, where a tenant wishes his tenancy to continue following repairs to the property and therefore does not wish the landlord to take a cash settlement.

A second issue of interest to loss adjusters is liability for fire damage. If you are a liability adjuster, you will be looking at this as a defence to damage caused by the escape of fire. Property adjusters will be looking at it to consider whether a recovery is possible.

In brief, someone may be held liable for damage caused by fire under common law if the fire was caused:

- (a) Deliberately/wilfully
- (b) By negligence, or

- (c) By the escape, without negligence, of a fire that was brought into existence by some non-natural user of the land.

The defendant will also be liable if:

- (a) He brought onto his land things likely to catch fire, and kept them there in such conditions that, if they did ignite, the fire would be likely to spread to the claimant's land
- (b) He did so in the course of some non-natural use, and
- (c) The thing ignited and the fire spread.

### **Section 86 of the Fires Prevention (Metropolis) Act 1774**

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This section modifies the common law, stating:

“And no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall ... accidentally begin, nor shall any recompense be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding; ...”

However, Section 86 has been interpreted restrictively and a fire will not be accidental if it was started negligently or due to a nuisance.

### **Hotel Proprietors Act 1956**

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This Act has interest to loss adjusters in that it specifies that hotel owners can have a liability to guests for their property. This is featured in Property Insurance Law and Claims.

If you are thinking of an Act/statute that provides for an insurable interest, you now have it!

Also, the next time you visit a hotel (in the UK) look for the Hotel Proprietors Act notice in reception. In 34 years, the writer has only found one that fails to display it!

### **Third Parties (Rights Against Insurers) Regulations 2016, as Amended by the Insurance Act 2015**

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This legislation allows a third party to issue proceedings directly against the insurer. The original Act was dated 1930 and there have been some updates to take account of revised insolvency laws. In particular, the new Act removed the need to restore a dissolved company in order to make a claim.

The Third Parties (Rights against Insurers) Act 2010 Act modernised and simplified the Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930. The Act extended to the whole of the UK.

The 2016 Regulations amend this still further and:

- has been updated to reflect changes in insolvency laws since the 1930s, such as voluntary procedures
- lists the insolvency and insolvency-type circumstances (including dissolution) in which the 2010 Act may apply to companies
- will remove the requirement for claimants to restore dissolved companies that have been struck off the register in order to resolve claims against insolvent insured parties.

The law applies where a company incurred a liability:

- and entered a state of insolvency on or after 1 August 2016
- before 1 August 2016 and the insolvency started on or after 1 August 2016
- on or after 1 August 2016 and the insolvency started before 1 August 2016.

If both the liability was incurred and the state of insolvency entered before 1 August 2016, the Third Parties (Rights against Insurers) Act 1930 will continue to apply. In these circumstances, the company will need to be restored to pursue personal injury claims. This is an important provision.

### **Water Industry Act 1991, Section 209**

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Section 209 of the Water Industry Act concerns liability for loss or damage following an escape of water. It can be found at <http://www.legislation.gov.uk/ukpga/1991/56/section/209>

In brief, the Act provides a route for a recovery from a water authority following an escape of water. Take a look at this section and note the circumstances in which a recovery may be possible. You should consider this in terms of Subrogation.

### **The Control of Asbestos Regulations 2012**

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The detail on this section can be found on the CILA Technical Library. You should log into MYCILA on the website and read the ABI/CILA briefing on this.

### **Equality Act 2010**

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Rather than looking at the Act, it is worth reviewing the guidance provided at <https://www.gov.uk/discrimination-your-rights/types-of-discrimination>

It is of utmost importance that loss adjusters follow the letter and the spirit of the law.

### **Fraud Act 2006**

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In relation to claims handling, you should be familiar with the offences provided by the Act in relation to Fraud and the typical wording of a policy Fraud Condition. You should also review the guidance provided at <http://www.legislation.gov.uk/ukpga/2006/35/notes>

### **Limitation Act 1980**

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This Act governs the length of time in which a right of action exists in relation to a claim. In brief, the purpose of this is to prevent cases being brought after considerable periods of time.

Law Made Simple explains the law of limitations of actions. Loss adjusters handling liability claims will need to understand these rules and the consequences of exceeding a time limit.

Property loss adjusters similarly should understand the rules. Failure to bring a subrogated case to Court in time could result in the loss adjuster being held liable for the loss of opportunity for the recovery.

The examination will also require knowledge of the exceptions.

The information contained in Law Made Simple is sufficient, but the Act may be found at <http://www.legislation.gov.uk/ukpga/1980/58>

You should also note that the Enterprise Act 2016 has amended the Limitation Act and that the limitation period for damages for late payments of insurance claims is one year from the date of the last payment by the Insurer in respect of the relevant loss.

## Consumer Protection Act 1987

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This Act protects consumers from products that do not reach a reasonable level of safety. It can be found at <http://www.legislation.gov.uk/ukpga/1987/43/contents>

The Act establishes a civil law right of redress for death or injury caused by using defective consumer goods. This right now lies against any supplier (including the manufacturer or importer), rather than simply the person from whom the goods were purchased, as was formerly the case. In relation to insurance claims, the Act gives rights to a recovery in the field of property claims. In the casualty field, it may well create a liability.

The Act establishes a definition of “defect” in relation to safety as follows:

“Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes “safety”, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.”

The General Product Safety Regulations 2005 extend these safety requirements to all domestic consumer goods.

## Data Protection Act 1998

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The Information Commissioner’s Office (ICO) provides a useful guide to the Data Protection Act 1998 and this can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/>

Candidates should also be aware that the General Data Protection Regulations will come into force in May 2018. In particular this will affect consent to pass on data, data portability and retention of data periods. At the time of writing this guide, the regulations are the subject of public consultation.

## Bribery Act 2010

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This Act aims to prevent bribes being made on behalf of companies in an effort to secure business. Further information may be found in the Government quick start guide at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181764/bribery-act-2010-quick-start-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181764/bribery-act-2010-quick-start-guide.pdf)

## The Money Laundering Regulations 2007

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These regulations aim to prevent “laundering” of money obtained through criminal activity. A helpful guide to the Act can be found at <https://www.gov.uk/topic/business-tax/money-laundering-regulations>

The regulations apply to various types of businesses, including:

- most UK financial and credit businesses such as currency exchange offices, cheque cashers or money transmitters



- independent legal professionals
- accountants, tax advisers, auditors and insolvency practitioners
- estate agency businesses
- casinos.

## Summary

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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.

