Examination element of M05 Insurance law

CII E05

Version Demo

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Topic Break Down

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QUESTION NO: 1

An insurer appoints an intermediary to issue motor certificates, but privately limits the intermediary's authority to risks with engines below 2,000cc. The insurer gives the intermediary documents which represent that it has authority to arrange motor cover generally. The intermediary arranges cover for a 2,500cc vehicle with a customer who is unaware of the restriction. What is the likely position?

A. The insurer is bound because the intermediary had apparent authority.

B. The insurer is not bound because the intermediary exceeded its actual authority.

C. The insurer is not bound unless the customer can prove that it saw the private authority restriction.

D. The contract is automatically void because the intermediary acted outside its authority.

ANSWER: A

Explanation:

The insurer is likely to be bound by the intermediary's apparent authority. Apparent authority arises where the principal, by words or conduct, represents to a third party that an agent has authority to act on its behalf, and the third party relies on that representation.

Although the intermediary exceeded its actual authority, the insurer's conduct suggested that it could arrange motor insurance generally. The undisclosed engine-size restriction cannot normally be relied upon against a customer who had no notice of it. The insurer may have a separate claim against the intermediary for exceeding its authority, but that does not prevent the contract binding the insurer and customer.

QUESTION NO: 2

For this question more than 1 option is correct. You must select fill the correct options to gain the mark. In what circumstances would an agency agreement be automatically terminated?

A. Disclosure of the name of the principal.

B. Bankruptcy of the principal.

C. Bankruptcy of the agent.

D. Death of the agent.

ANSWER: B D

Explanation:

“Bankruptcy of the principal.” and “Death of the agent.” are circumstances in which an agency relationship is terminated automatically by operation of law. Agency depends on the principal retaining legal control over the affairs and property to which the agent’s authority relates. Where the principal becomes bankrupt, the principal’s estate vests in the trustee in bankruptcy, restricting the principal’s ability to deal with that estate and bringing authority granted in relation to it to an end. This is reflected in section 306 of the Insolvency Act 1986, which provides for the bankrupt’s estate to vest in the trustee: Insolvency Act 1986, section 306.

Death of the agent also automatically ends the agency because the agent’s authority is personal and cannot continue to be exercised after the agent has died. The agent can no longer perform the acts authorised by the principal, and the authority does not pass to the agent’s personal representatives. This follows the established common-law principle that agency terminates on the death of either party, subject to protections that may apply to third parties acting without notice in particular circumstances. The legal basis for the authority and duties of an agent is usefully summarised by the Factors Act 1889, alongside the common-law rules governing creation and termination of authority.

QUESTION NO: 3

A customer enters a shop during heavy rain. A prominent sign at the entrance warns that the floor may be wet and directs customers to use the dry matting provided. The customer ignores the direction, runs across an obviously wet tiled area and slips. In relation to the warning, the occupier's duty is most likely to be discharged because

A. the warning was sufficient to enable the customer to be reasonably safe.

B. an occupier is never liable for an accident caused by a wet floor.

C. the customer accepted all risks merely by entering the shop.

D. a warning removes the occupier's duty of care in every circumstance.

ANSWER: A

Explanation:

Under the Occupiers' Liability Act 1957, an occupier may discharge the common duty of care by giving a warning where, in all the circumstances, it is enough to enable a visitor to be reasonably safe. The warning need not guarantee safety or prevent every possible accident.

Here, the warning was prominent, identified the relevant danger and provided a practical means of avoiding it. The customer's conduct may also amount to contributory negligence, but this does not mean that every warning automatically discharges an occupier's duty.

QUESTION NO: 4

For this question more than 1 option is correct. You must select two options to gain the mark.

Under the doctrine of judicial precedent, which statements are correct?

A. The ratio decidendi of a higher court may bind a lower court.

B. Obiter dicta may be persuasive without being binding.

C. Every statement made by a judge is binding on later courts.

D. The facts of an earlier case automatically bind a court hearing a later case.

ANSWER: A B

Explanation:

The ratio decidendi is the legal principle necessary for the court's decision. Subject to the court hierarchy, it may be binding on lower courts in later cases involving materially similar facts. This is how case law develops legal rules that are applied consistently.

Obiter dicta are observations made by a judge which are not necessary to decide the case. They are not binding, but may be persuasive, particularly where they have been made by a senior appellate court. The facts of an earlier case are not themselves binding; it is the applicable legal reasoning that may have binding force.

QUESTION NO: 5

According to statute law, an unfair term in a consumer insurance contract is defined as one which

A. provides insurance where the scope of cover is narrow compared to the premium charged.

B. is contrary to the requirement of good faith and causes a significant imbalance in the parties’ rights and obligations under the contract, to the detriment of the consumer.

C. has been individually negotiated and is to the detriment of either one of the parties.

D. does not restrict liability for death or personal injury.

ANSWER: B

Explanation:

“Is contrary to the requirement of good faith and causes a significant imbalance in the parties’ rights and obligations under the contract, to the detriment of the consumer” states the statutory test completely. Under section 62 of the Consumer Rights Act 2015, a term in a consumer contract is unfair where both elements are present: it must offend the requirement of good faith and create a significant imbalance between the insurer’s and consumer’s contractual rights and obligations that disadvantages the consumer. This test applies to consumer insurance contracts, subject to the Act’s provisions on the assessment of terms and the limited exclusions for certain core terms where they are transparent and prominent. The assessment is made taking account of the nature of the contract, the other terms of the contract, and the circumstances existing when the term was agreed. If a term is unfair, it is not binding on the consumer, although the contract can otherwise continue where possible. The full statutory wording is available in Consumer Rights Act 2015, section 62. Practical regulatory discussion of fair terms and consumer outcomes is also provided by the Financial Conduct Authority’s Consumer Duty guidance.