

ACTEX Study Manual for
CAS Exam 6
Canada

Fall 2019 Edition

Volume I

Victoria Grossack, FCAS



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Actuarial & Financial Risk Resource Materials
Since 1972

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Notes on Past Exam Questions and Answers and the Material

Questions and parts of some solutions have been taken from material copyrighted by the Casualty Actuarial Society. They are reproduced in this study manual with the permission of the CAS solely to aid students studying for the actuarial exams. Some editing of questions has been done. Students may also request past exams directly from the society. I am very grateful to the CAS for its cooperation and permission to use this material. It is, of course, in no way responsible for the structure or accuracy of the manual.

The material is organised roughly in the same manner as the learning objectives, mirroring the organisation of past exams. Some sections are not outlined because they are tables or Excel spreadsheets. However, in most cases either old exam questions or review questions are included to help you learn the material.

Exam questions are identified by numbers in parentheses at the end of each question. CAS questions have four numbers separated by hyphens: the year of the exam, the number of the exam, the number of the question, and the points assigned. For those readings with no or few appropriate exam questions, review questions were created to aid students, numbered R1, R2, and so on. A few recent exam questions were based on several readings but are only included after one of the readings.

An attempt has been made to clean up irrelevant and redundant questions and answers. I have also made a conscientious effort to eliminate mistakes and incorrect answers; I am certain some remain. I encourage students who find errors to bring them to my attention. Please check our website for corrections subsequent to publication.



I thank Peter J. Murdza and Dean A. Westpfahl for their contributions to this manual, which include many summary outlines and past examination answers.

To the students who make use of this manual, feedback is welcome. Good luck on October 29, 2019! VAG

**Marvin G. Baer and James A. Rendall, Chapter 2: “Structure of the Industry,”
in *Cases on the Canadian Law of Insurance* (Sixth Edition), pp. 67–91, 93–100.**

OUTLINE

I. THE INSURANCE INDUSTRY IN CANADA

A. Types of Insurance Carriers

1. Individual underwriters
 - a. Rare in North America
 - b. Lloyd's of London
 - 1) Similar to a stock exchange except open only to members, not the public
 - 2) Types of members
 - a) **Underwriting members** – members who accept risk on their own account, acting through private syndicates and underwriting agents
 - b) **Nonunderwriting members** – members who “enjoy all but insuring privileges”
 - i) **Subscribers** – nonunderwriting members who “act as brokers on behalf of the public and place risks with Underwriting Members”
 - ii) **Associates** – nonunderwriting members who perform services for members, e.g., lawyers, actuaries
2. **Joint stock companies** – for-profit organizations made up of stockholders but managed by its board of directors and officers
3. **Mutual insurance carriers** – corporate insurers whose voting control rests with policyholders rather than stockholders
4. **Reciprocal or interinsurance exchanges** – organizations “of individuals who have joined together for the exchange of insurance”
 - a. Do not issue policies
 - b. Members are individually liable
5. Differences in structure not seen as that important as mainly involve corporate law

B. The Nature of Competition in the Insurance Industry

1. Exemption of insurance from anticompetitive legislation attributable to danger of uncontrolled price competition producing bankruptcies
2. Industry encouraged to charge adequate premiums through the authorization and regulation of rating bureaus
 - a. Principal bureau is the Insurers Advisory Organization (IAO)
 - b. Superintendents also appoint statistical agency, usually the Statistical Division of the Insurance Bureau of Canada (IBC)
3. Rating bureaus also authorized to promulgate policies; since standardized, no competition in this area

4. Superintendent powers
 - a. ON – limited power over rates and unfair and deceptive acts and practices
 - b. All provinces – must approve auto policies, which in some provinces are the subject of legislation
5. Insurance market
 - a. Concentration no greater than other economic areas
 - b. Canadian companies comprise 40% of the market
 - c. Most foreign companies are American

C. Insurance Industry Organizations

1. Insurance Bureau of Canada (IBC)
 - a. Member companies write more than 90% of the P&C private insurance
 - b. Objectives
 - 1) Discuss general insurance
 - 2) Collect and analyze statistical information
 - 3) Study legislation
 - 4) Engage in research
 - 5) Promote better public understanding
2. Two other major industry organizations
 - a. Canadian Life and Health Insurance Association (CLHIA)
 - b. Board of Marine Underwriters
3. Various other insurance organizations
 - a. Life and health organizations, e.g., the Life Underwriters Association of Canada
 - b. Property and casualty organizations, e.g., Association of Independent Insurers
 - c. IBC and CLHIA act as umbrella organizations

II. THE NATURE OF INSURANCE REGULATION

A. History

1. Focus of insurance regulation
 - a. Guarantee financial solvency
 - b. Promote Canadian ownership and Canadian investments
 - c. Promote revenue collection
 - d. Promote market integrity and improve the insurance contract
 - e. Promote the honesty and competence of insurance intermediaries
2. Solvency
 - a. Nineteenth-century legislation seeks to prevent insurer insolvency following the company failures in the U.S. and U.K.
 - b. Methods
 - 1) Control the creation of domestic insurers
 - 2) Licensing of foreign insurers
 - 3) Periodic filing of information
 - 4) Governmental power of enforcement
 - 5) Creation of rating bureaus and in some provinces administrative boards

- c. Reasons for regulation of insurance
 - 1) Loss of public confidence following bankruptcies
 - 2) Short-term price competition seen as not in the public interest
 - 3) Fiduciary nature of insurance as money collected in advance
- d. Protection against insolvency remains a major function today
- 3. Canadianization
 - a. 1868–77 – foreign companies required to maintain sufficient assets in Canada
 - b. Such protects policyholders but also prevents expatriation of capital
 - c. Results in the withdrawal of half of the foreign companies and the expansion of Canadian companies
- 4. Government revenue – 1869–70 comprised about 15% of government revenue; share has declined over time
- 5. Regulating the contract
 - a. 1876 – ON regulates fire policies
 - b. Courts disallow federal attempts at policy regulation, leaving it to the provinces
 - c. Extent of regulation varies with the type of insurance
 - 1) Fire – statutory policy conditions
 - 2) Auto – superintendent must approve forms
 - 3) Other P&C – less regulated
 - 4) Life – laws prohibit certain practices and grant certain rights
 - 5) Other personal lines (e.g., A&S) – legislation combines fire and life features
 - 6) Group life and credit life – regulated by the industry
- 6. Control over insurance intermediaries
 - a. Traditionally, intermediaries have had some independence from insurers
 - b. Examples
 - 1) Agent
 - 2) Broker – term applicable to an agent representing more than one company
 - 3) Adjuster
 - c. Many companies use employees rather than intermediaries
 - d. Principles for regulating life agents in more than one province
 - 1) Single-company representation
 - a) Abandonment of this in most common law provinces
 - b) In such cases, agent's actions governed by a contract with the company, rather than the legislation
 - c) But one-company representation still permitted
 - 2) Company sponsorship for a license
 - a) Basic training concentrated within a company
 - b) But no statutory authorization or the statutory creation of a board of self-regulation
 - c) Some provinces specify prerequisites and some require passage of a standard exam but waivers possible
 - 3) Superintendents participate in the continuing education of agents
 - 4) Life Underwriters of Canada establishes standards of conduct; violation brings penalties

- e. Regulation of other-than-life agents
 - 1) Self-regulation by statutorily established associations
 - 2) Licensing by the superintendent but training by the company
 - 3) Six provinces adopt an exam but waivers possible
- f. Licensing of adjusters varies by province, though most require sponsoring/recommendation by a licensed adjuster
- 7. Direct control over marketing practices
 - a. In general, insurance exempt from general regulation governing the marketing of goods and services
 - b. Several provincial insurance acts prohibit specified unfair acts or practices
- 8. Form of insurance regulation
 - a. Three levels of regulation
 - 1) Legislation
 - 2) Regulations of the Lieutenant Governor in Council
 - 3) Regulations by the superintendent
 - a) Reflect consultations with the industry but public involvement varies
 - b) At times the basis of authority is uncertain
 - b. Recently guidelines preferred over more formal regulation
 - 1) May appear to be a solution while permitting inconsistent activities
 - 2) Seen as more flexible
 - 3) Less open to judicial interpretation as public given no rights
 - 4) Adoption does not require approval of other parts of the government

B. The Constitutional Power to Regulate Insurance – Provincial Jurisdiction over Insurance Law

- 1. No mention in the Constitution Act of 1867 but need seen shortly afterwards with U.S. and U.K. bankruptcies
- 2. Other motives behind federal regulation: promotion of investment and revenue gain
- 3. Provincial focus (e.g., ON) on marketing practices and contractual terms
- 4. Privy Council upholds ON legislation regulating fire policies but finds trade and commerce clause insufficient basis for federal regulatory schemes (1916–32)
- 5. 1932 legislation gives the federal government powers related to the solvency (but not contract provisions) of federally registered companies
- 6. Sees conflicts between federal and provincial regulation as not reflecting a sharp division between laissez-faire and interventionist approaches as at times each level had advocated each of the approaches
- 7. No political tension between the two levels in the last 40 years

C. The Role of the Canadian Council of Insurance Regulators

- 1. Promotes uniformity in provincial regulation
- 2. Comparable functions to the Uniform Law Conference of Canada in areas other than insurance law
- 3. But not limited to the drafting of legislation; also encourages uniform practices
- 4. Much greater public input than in the case of the Privy Council

III. TYPES OF INSURANCE

A. Overview

1. Roles of classification in insurance law
 - a. Provides organizing principles
 - b. Identifies similarities or differences
 - c. Suggests solutions for problems
 - d. Balance generalization and particularization
2. Insurance law seen subject to more inconsistencies than other legal areas (e.g., contracts) for the following reasons:
 - a. Principles of marine law not applicable for newer types
 - b. Limited legislative reform produces a complex patchwork
3. Legal divisions differ from industry's marketing divisions

B. Social and Private Insurance

1. Differences
 - a. Social insurance generally has a universal application but not risk selection
 - b. Social insurance does not have a need to protect the public from gaming
 - c. Social insurance does not require extensive solvency protection
 - d. Different supervision of intermediaries in social insurance as are civil servants
2. Similarities
 - a. Rules to protect the insurance fund and prevent double recovery
 - b. Problems regarding covered events and whether loss is covered by insured event
 - c. Problems involving efficient claims settlements and loss valuation

C. Marine and Nonmarine Insurance

1. Many basic notions are common, e.g., insurable interest, subrogation, etc.
2. Unique marine rules, e.g., general average, abandonment

D. Indemnity and Nonindemnity Insurance: *Glynn v. Scottish Union & National Insurance Co. Ltd.*

1. Question as to whether an insurer has subrogation rights to a third-party payment of medical expenses when it pays the same expenses under an insurance contract
2. Focus on whether the insuring agreement was a personal accident policy, which various authorities see as not a contract of indemnity
3. Court finds that contracts of indemnity are determined by the exact nature of the contract and not by its categorization
4. Sources of categories
 - a. Hazard insured against, e.g., fire insurance
 - b. Antithesis of the hazard insured against, e.g., credit insurance
 - c. Name of the item, e.g., aircraft insurance
 - d. Generic name, e.g., marine insurance

5. Confusion from use of the term “insured” to refer to an item, whereas in reality, is the person owning or being responsible for something
6. Distinctive nature of life insurance contracts
 - a. Annuity payments not seen to resemble an indemnity contract
 - b. Not able to translate a loss of life into a pecuniary loss
 - c. Policy upon a contingency, not a policy of indemnity
 - d. Not based on the idea of compensation
7. Principle of indemnity
 - a. Relief of the financial impact of a contingent event by shifting risk to the insurer in exchange for premium
 - b. Thus principle of indemnity is governing principle
 - c. For this not to apply, specific wording must exist in the contract
 - d. Insured must prove the following to recover
 - 1) Happening of an event that results in the insurer's liability
 - 2) Loss to the insured from the event
 - e. Payment equals the lower of the contract maximum and the amount of the loss
8. Valued policy
 - a. Insurer and insured agree to a specific value
 - b. Insured relieved of having to prove the amount of the loss but must still prove the fact of the loss
 - c. Remains a contract of indemnity
 - d. Contrasts with a policy that pays a fixed sum on the happening of an event
 - 1) Payment regardless of whether the insured suffers a loss, e.g., accidental death policy
 - 2) Reflects the difficulty of proving pecuniary loss
 - e. Personal accident policy can be either one of indemnity (if proof of loss required) or a valued policy (if no proof required)
9. Conclusion that even though the section of the policy dealt with personal accident coverage, since it involved the payment of actual expenses incurred, it constituted a policy of indemnity to which the principle of subrogation applies

E. Classification in the Insurance Act for the Purpose of Regulating the Contract Between Insured and Insurer

1. Overview
 - a. Separate treatment
 - 1) Fire
 - 2) Life
 - 3) Automobile
 - 4) A&S
 - 5) Livestock
 - 6) Weather
 - b. Differences in legislative treatment reflects piecemeal legislative reform
 - c. Complicating factors
 - 1) Very few common law rules superseded
 - 2) Industry product divisions not consistent with legislative ones

- d. Though classifying powers given to the superintendent or lieutenant-governor-in-council, they have not used them
2. *Regal Films Corporation Ltd. v. Glens Falls Insurance Company*
 - a. Insurer resists payment of loss because proof of loss not furnished within 60 days
 - b. Court dismisses the insurer's arguments and orders payment
 - 1) Though titled an inland marine policy, the policy's primary risk was against fire and lightning
 - 2) Statutory provision of requiring proof as soon as practicable rather than a 60-day period applies
 - 3) Plaintiff found to meet the statutory provision
 - 4) In addition, company and insured agreed to a scheme of adjustment, which could not be satisfied within 60 days
 - c. Two questions dealt with in case law
 - 1) What fire losses does the fire section of the Insurance Act cover?
 - a) According to the statutory definition, fire insurance does not include insurance incidental to other classes
 - b) 1959 ON revision of the fire section specifically lists cases where section does not apply; other cases are thus covered
 - 2) Is the fire section applicable to losses from other perils?
 - a) Broad approach proposed instead of narrow classifications found in the Insurance Act but not implemented in the 1955 revision of the Uniform Fire Part
 - b) Various cases produce different interpretations
 - i) Fire section does not apply at all to other perils
 - ii) Fire section applies if fire is the primary risk
 - c) One way of achieving an integrated approach (i.e., having the fire section apply to all perils) is to specify such in the policy provisions but this may not be possible since in some aspects may violate statutory provisions benefiting the insured

F. Group and Individual Insurance

1. Group insurance does not identify the individuals covered
2. Master contract is between the insurer and the sponsor
3. Insureds have only the rights given to them by the sponsor
4. Types of sponsors
 - a. Employers
 - b. Professional associations
 - c. Trade unions
5. Differ from subscription policies where more than one insurer is needed to cover a large commercial risk

G. Classes of Insurance for the Purpose of Licensing Insurers

1. A&S
2. Aircraft
3. Automobile

4. Boiler and machinery
5. Credit
6. Fidelity – insurance of losses from unfaithful performance or involving the guarantee of proper fulfillment of an office's duties
7. Hail
8. Legal expense
9. Liability, excluding aircraft and automobile
10. Life
11. Marine
12. Mortgage
13. Property, including fire, inland transportation, livestock, plate glass, property damage, sprinkler leakage, theft, and weather
14. Surety – guarantee of a contract and payment of penalty for default, excluding credit and mortgage
15. Title

PAST CAS EXAMINATION QUESTIONS

1. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, Canadian insurance regulation since Confederation has focused on five main areas. Identify four of these five areas. (00-7C-63-2)

2. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, members of a reciprocal insurance exchange are held jointly liable for award payments. (01-7C-9-.5)

3. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, in recent years the federal government has not attempted to regulate the form and content of insurance contracts. (01-7C-10-.5)

4. Baer and Rendall, in *Cases on the Canadian Law of Insurance*, compare elements of private and social insurance.
 - a. Identify three differences between private and social insurance.
 - b. Identify three similarities between private and social insurance. (01-7C-52-.75/.75)

5. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, Canadian insurance regulations were designed to guarantee the financial solvency of insurers.
 - a. Briefly describe the three conditions that led to the insurance industry being singled out for such unusual public control.
 - b. Briefly describe three examples of legislation that were passed and designed to guarantee the financial solvency of insurers. (02-7C-44-.75/.75)

6. In the latter part of the nineteenth century, Canadian insurance regulations focused on the financial solvency of insurers.
 - a. Briefly describe three reasons why the insurance industry was singled out for such unusual public oversight during this time.
 - b. Briefly describe three types of legislation that were introduced to guarantee the financial solvency of insurers during this time. (03-7C-25-.75/.75)

7. Which of the following are roles of the Canadian Council of Insurance Regulators?
 1. Encourage uniform practices across the provinces.
 2. Engage in activities to promote a better public understanding of insurance.
 3. Draft legislation.

A. 1 B. 2 C. 1, 3 D. 2, 3 E. 1, 2, 3 (04-7C-5-1)

8. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*:
- Identify the three levels of insurance regulation.
 - Identify the level of regulation favoured by both superintendents of insurance and the insurance industry in recent years.
 - Why was the level of regulation identified in b. the favoured choice? (04-7C-28-.75/.25/.5)
- 9.
- Is a weather derivative, where the insurer agrees to pay the insured a fixed sum if the temperature is above 0° C over some specified time frame, a contract of indemnity or not? Explain your answer.
 - Is this weather derivative a valued insurance policy? Explain your answer. (04-7C-30-.5ea.)
10. Which of the following insurance doctrines are considered to be unique to marine insurance?
1. Contribution 2. Abandonment 3. Constructive total loss
- A. 1 B. 2 C. 1,3 D. 2,3 E. 1,2,3 (05-7C-7-1)
11. The Speedy Insurance Company of Canada issued a policy protecting the Slow Corporation's property in Ontario against loss by fire and hail. The policy effective period runs from January 1, 2005 to December 31, 2005. In the event of a covered loss, the policy stipulates that the insured must furnish proof of loss within sixty days of the event causing the loss. On March 16, 2005, a fire loss causes significant damages to the Slow Corporation's property in Ontario. On May 31, 2005, the Slow Corporation had all the documents to submit the proof of loss. On June 15, 2005, the Slow Corporation furnished the proof of loss to the Speedy Insurance Company of Canada and filed its fire claim. On July 1, 2005, the Speedy Insurance Company of Canada denied the claim on the grounds that the Slow Corporation had not furnished the proof of loss within the sixty days stipulated in the policy. As a result, the Slow Corporation filed a suit against Speedy to collect the insurance proceeds.
- Discuss why the court is likely to rule in favor of the Slow Corporation.
 - What argument might Speedy make in its defence?
 - With regard to the application of the provisions found in the Insurance Act, discuss the Canadian court's position for insurance policies that cover multiple risks.
 - Given the provisions of the Insurance Act as discussed in c., what policy changes should Speedy make to its property policy? (06-7C-12-1/.25/.5/.25)
- 12.
- What are the Insurance Bureau of Canada's (IBC's) five main objectives?
 - Comment on the objectives of the IBC in relation to antitrust laws. (06-7C-13-1.25/.75)
13. Explain why the insurance industry in Canada has been given special status that allows insurers to cooperate in the determination of adequate premiums. (07-7C-8a-1)
- 14.
- Compare and contrast indemnity insurance and the principle of indemnity.
 - For each of the following scenarios, briefly explain whether the principle of indemnity is respected.
 - An endorsement that allows for a specific payment in the case of a total loss on an antique vehicle.
 - A contract with an insurer to pay the insured a fixed sum of money in the event of a snowstorm during a one-day outdoor carnival.
 - An endorsement with a fixed daily dollar limit that provides a temporary replacement vehicle in case of a loss on a private passenger vehicle.
 - A provision in an insurance policy to rebuild a house after a total loss, regardless of the actual cost. (07-7C-11-1/2)

-
15. Identify four primary areas on which Canadian insurance regulation has focused since Confederation. (07-7C-12-2)
16. a. Identify the four main corporate structures for property-casualty insurance
b. Identify and briefly explain which of the four main corporate structures in a. is most suitable as an investment for an individual with no insurance expertise and a large amount of capital to invest. (08-7C-8-1/.5)
17. Answer the following questions with regard to the landmark case *Regal Films Corporation (1941) Ltd. v. Glens Falls Insurance Company*.
- a. Describe the facts of the case.
b. Briefly describe the issues in the case.
c. Briefly describe the ruling in the case. (08-7C-13-1.5/.5/.5)
18. a. Describe two differences and two similarities between social and private insurance.
b. Describe one difference between valued policies and nonindemnity insurance. (09-7C-15-2/.5)
19. According to Baer and Rendall, “Cases on the Canadian Law of Insurance”:
- a. Identify three levels of insurance regulation.
b. Identify the level of regulation favoured by both the insurance industry and superintendents of insurance in recent years.
c. Briefly describe three reasons why the level of regulation identified in b. is the favoured choice. (10-7C-12-.75/.25/.75)
20. a. Describe two similarities between social insurance and private insurance.
b. Describe two differences between social insurance and private insurance. (10-7C-13-1ea.)
21. a. Briefly describe four ways that Canadian regulation promotes solvency.
b. Describe two reasons the insurance industry was singled out for public oversight of solvency.
c. Compare and contrast the oversight responsibilities of the Canadian federal and provincial insurance regulators. (14-6C-1-3:1/1/1)
22. Describe the advantages and disadvantages of foreign participation in the Canadian insurance industry. (14S-6C-10-1)
23. a. Briefly discuss whether a life insurance policy is considered an indemnity policy.
b. Identify two conditions that an insured must establish to be entitled to recovery under an indemnity insurance contract.
c. Briefly describe how a “valued policy” differs from a typical insurance policy. (15S-6C- 7-1:0.25/0.5/0.25)

SOLUTIONS TO PAST CAS EXAMINATION QUESTIONS

1.
 - 1) Regulations designed to guarantee the financial solvency of insurers
 - 2) Attempts to promote Canadian ownership of insurers and investment by insurers in Canada
 - 3) Creation of tax revenues
 - 4) Regulations designed to promote marketing integrity and improve the insurance contract
 - 5) Regulations designed to promote the honesty and competence of insurance intermediaries, p. 73.

2. F, p. 68 – Substitute “individually” for “jointly.”

3. T, p. 75.

4. Differences include the following:
 - 1) Private insurance involves risk selection, whereas social insurance usually accepts all risks.
 - 2) Private insurance is concerned with protecting the public against gaming, whereas social insurance is not.
 - 3) Solvency is a major issue for private insurance, whereas it is not for social insurance, which is underwritten by the state.
 - 4) Different administration or judicial supervision applies since private employees administer private insurance, whereas civil servants administer social insurance.

Similarities include the following:

 - 1) Both involve concepts and rules that seek to protect the insurance fund and to prevent overcompensation.
 - 2) Both involve problems of defining covered events and determining covered losses.
 - 3) Both need to establish a fair and efficient claims process and to adopt a system for loss valuation, pp. 83–84.

5.
 - a.
 - 1) “[T]here was the historical fact that in the 1860s and 1870s public confidence had become badly shaken by the bankruptcy of several insurance companies.”
 - 2) “[L]egislators perceived that aggressive short-term price competition was not in the public interest since this discouraged insurers from providing sufficiently for future losses.”
 - 3) “[M]ost life insurance was ‘permanent,’ that is involved a significant savings component as well as pure insurance, and even property and casualty insurance involved the management of large pools of prepaid premiums,” p. 74.

 - b.
 - 1) Legislation “controlling the creation of domestic insurers and licensing foreign insurers”
 - 2) Legislation “limiting the types of investments insurers could make”
 - 3) Legislation “providing for the periodic filing of financial information”
 - 4) Legislation “giving a government department authority to ensure compliance”
 - 5) Legislation involving “the creation or recognition of rating bureaus”
 - 6) Legislation involving the creation of administrative boards to encourage minimum or adequate rates,” p. 73.

6.
 - a. See 5a.
 - b. See 5b.

7.
 1. T, p. 81
 2. F, pp. 81–82 – This is not mentioned.
 3. T, p. 82 **Answer: C**

8. a. 1) Legislation
2) Regulations made by the lieutenant governor in council
3) Guidelines or directives issued by the superintendents, p. 78.
b. Guidelines, p. 78.
c. “[T]hey are seen as more flexible, less obtrusive and less likely to be ‘misinterpreted’ by the courts. . . . They also “can be adopted without being vetted by other government departments, or scrutinized by cabinet or its committees,” pp. 78–79.
9. a. No. The amount of the insured's recovery is not measured by the extent of his loss, p. 86.
b. No. The insured does not have to prove it has suffered any loss, p. 89.
10. 1. F, p. 84 – This is common to both marine and nonmarine insurance.
2. T, p. 84
3. T, p. 84
Answer: D
11. a. Statutory condition 15 of the Insurance Act takes precedence over the contract provision. That condition sets no time limit on the submission of proof of loss but only requires that it “be delivered as soon as practicable after the loss,” p. 94.
b. It might contend that since the documents were collected by May 31 but not submitted until June 15, they were not submitted as soon as practicable.
c. The provisions of such policies involving nonincidental fire risks are governed by Part IV of the Insurance Act, pp. 94–95.
d. It should change its proof-of-loss requirement to conform to statutory condition 15.
12. a. 1) Discuss general insurance
2) Collect and analyze statistical information
3) Study legislation
4) Engage in research
5) Promote better public understanding, p. 71.
b. Such objectives involve “concerted practices which in other industries might be considered anti-competitive practices inimical to a healthy market economy.” Government sanctioning of the collection of statistics and promulgation of rates by rating bureaus and industry organizations may have encouraged them to engage in such concerted practices, p. 71.
13. “The explanation for this special status lies in the view that uncontrolled price competition in the short term is not in the public's long term interest. Too vigorous price competition in the short term results in insurers collecting less in premiums than is necessary to meet their future liabilities. The resulting bankruptcy of an insurer could have a catastrophic effect on its customers. Since insurance companies are like banks in that they administer large sums of what is, in effect, their customers' money, special rules are necessary to guarantee their continued solvency,” p. 69.
14. a. Contracts of indemnity are contracts where the “amount recoverable is measured by the extent of the assured's pecuniary loss.” The principle of indemnity is the principle “that the assured, in case of a loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified,” pp. 86, 88.
b. i) It is respected. Although the insured does not have to prove the amount of a loss, he still must prove that a financial loss has occurred.
ii) It is not respected as the insured does not have to prove that a financial loss has occurred.
iii) It is respected as the limit is the maximum amount payable, not the actual payment amount in all cases.
iv) It is not respected as rebuilt house may be worth more than the house before the total loss, pp. 89–90.

15. See 1.
16. a. 1) Individual underwriters
2) Joint stock companies
3) Mutual insurance carriers
4) Reciprocal or interinsurance exchanges
b. Individual underwriters and members of a reciprocal should have insurance expertise. Mutual companies do not have investors or stockholders. Investment in a joint stock company is thus the most suitable option, pp. 67–68.
17. a. “Following a fire a claim was made under the policy which was resisted on the ground that the plaintiff had not furnished proof of loss within the sixty days stipulated in the policy,” p, 94.
b. 1) Whether the policy of insurance comes under Part IV of the Insurance Act, which governs “insurance (not being insurance incidental to some other class of insurance, defined by or under this Act) against loss of or damage to property through fire, lightning or explosion due to ignition”
2) Whether the “condition of the policy in respect of the proofs of loss relied upon by the defendant is inconsistent with and varies or modifies statutory condition no. 15. Statutory condition no. 15 does not put any express time-limit on the insured within which he must submit proofs of loss,” pp. 94–95.
c. 1) That the policy did come under Part IV of the Insurance Act
2) That the policy conditions were contrary to statutory condition no. 15, pp. 94–95.
18. a. See 4.
b. Valued policies involve payment of an agreed value if an insured proves the occurrence of a loss and are contracts of indemnity. Nonindemnity insurance, on the other hand, “provides, that upon the happening of some contingent event, a sum fixed or calculable becomes payable to the insured, regardless of whether the insured suffers any pecuniary loss, p. 89.
19. a. See 8a.
b. See 8b.
c. See 8c.
20. See 4.
21. a. (1) Restrict the licensing and creation of foreign and domestic insurers; (2) Mandate periodic filings of financial information by insurers; (3) Create a government office for compliance; (4) Restrict the type of investments insurers can make
b. Insurer bankruptcies led to concerns that policyholders’ obligations would not be paid, and Short term price competition was not in public’s long-term interest, because rates that are too low do not guarantee that obligations are paid for
c. Federal regulators are mainly responsible for solvency issues of insurers. They do this by making sure insurers meet conditions for engaging in insurance business, thereby protecting policyholder interest. Provincial regulators are generally responsible for market conduct, approving premium rates, reviewing sales practices and claims settlement practices and licensing of agents/brokers

22. Advantages

- More competition resulting in more availability of insurance
- More competition allows premiums to be competitive, making them more affordable to customers
- Multinational companies have more international opportunity to diversify their portfolio. Well diversified company is less likely to be insolvent
- Creates tax revenue for Canada

Disadvantages

- Runs counter to goal of federal government to promote Canadian ownership
- Harder to verify financial resources of parent so greater potential for insolvency
- Domestic funds and profit are being transferred to foreign countries

23. a. A life insurance policy is not considered an indemnity policy because it does not compensate for an economic loss. It benefits survivors but cannot alter death.
- b. (1) The happening of some event by reason of which the insurer's liability arises, and
(2) The loss occasioned to the insured by the happening of the event.
- c. A valued policy differs from a normal insurance contract in that the insured does not need to prove the amount of his loss. In this case, a contract has a predetermined indemnity amount to which both the insured and the insurer have agreed.

**Marvin G. Baer and James A. Rendall,
“Subrogation and Collateral Benefits;” “Agents;” “The Claims Process,”
in *Cases on the Canadian Law of Insurance* (Sixth Edition),
pp. 302–304, 518–529, 821–827, 829–831.**

OUTLINE

I. SUBROGATION AND COLLATERAL BENEFITS

A. Broader View of Subrogation

1. Number of alternatives for compensating a victim
 - a. Universal public hospital and medical insurance
 - b. Private accident insurance
 - c. Liability of the negligent party or his insurer
2. System produces gaps and overlaps
3. Subrogation reflects the belief that a victim should not be overcompensated

B. Alternative Approaches to Problem of Duplicate Recoveries

1. **Election** – victim can choose his compensation source
2. **Cumulation** – victim can collect from more than one source
3. **Reimbursement** - tortfeasor must pay all damages and any excess is returned to the collateral source
4. **Relieving the tortfeasor** – tortfeasor's liability is reduced by the amount of the collateral benefit

C. Comments on the Approaches

1. All but cumulation prevents double recovery
2. Relieving the tortfeasor and possibly election reduces the tortfeasor's liability
3. Reimbursement and relieving the tortfeasor represent policy choices as to which compensation source should be primary
4. Subrogation
 - a. Current emphasis is on compensation rather than admonishment; because of insurance, subrogation does not put the ultimate burden on the wrongdoer
 - b. Very expensive mechanism as applied on an individual case basis
 - c. For NF auto benefits, recent shift (by courts or legislation) not to allow subrogation but to reduce the tort claim by the amount of accident benefits

II. AGENTS: *FLETCHER V. MANITOBA PUBLIC INSURANCE CORP.*

A. The Facts

1. Insureds suffer severe injuries from an automobile accident with an at-fault driver whose insurance was inadequate to cover their damages
2. Coverage provided by a government company (MPIC) is of two types:
 - a. Compulsory minimum collision and public liability coverage
 - b. Optional coverages
 - 1) Underinsured motorist coverage (UMC)

- 2) Public liability and property damage (PL/PD)
3. Insured contends that renewal notice had words “not applic” typed in for UMC which he believed meant it did not apply to him since he had requested the maximum available coverage

B. The Courts Below

1. Trial judge finds that insured was entitled to rely on the advice of the company's agent; otherwise, he should have been referred to a private agent
2. Company breached its duty to the insured when it failed to advise him of the full range of coverage
3. Appeal Court, however, reverses the trial judge in a split decision as one judge finds no duty and another finds duty but no breach
4. Appeal made to the Supreme Court

C. The Issues and Analysis

1. Did the Appeal Court err in departing from the trial judge's finding of fact? – yes, as findings that insured relied on the company's employees and would have purchased UMC if it had been offered were reasonable
2. Did the insurer have a duty provide advice on underinsured motorist coverage?
 - a. Important issue as if duty exists, will affect company training of employees
 - b. Tort
 - 1) Is there a duty of care?
 - a) In certain cases, provider of information does has a duty of care to the person receiving the information
 - b) Example: a banker providing references of solvency
 - c) Requirements for duty of care to exist
 - i) Was there reliance? – yes, as insurance compulsory and government was the only insurer
 - ii) Was the reliance reasonable? – yes
 - iii) Was the reliance expected? – yes, company was aware of customers' reliance
 - 2) What is the scope of duty?
 - a) Scope seen between that of a private agent and that of an ordinary seller
 - b) Duty of private agents and brokers
 - i) To provide information on available coverages
 - ii) Also to provide individualized advice regarding the coverages required to meet customer needs
 - iii) Need to review coverage and point out gaps
 - iv) Seen as more than mere salespeople
 - c) Duty of public insurers
 - i) Duty to provide information on the available range of coverages
 - ii) Employees, however, not seen as risk specialists and thus do not need to provide individualized advice
 - iii) Contention that government insurer should be granted immunity in cases where fail to provide information seen as without merit

- d. Contract – since duty grounded in tort, this argument of contractual duty was not pursued
3. If duty existed, did the insurer fulfill it? – court concludes no
 - a. Contrasts MPIC failure to institute a public education campaign whereas the Insurance Corporation of British Columbia had
 - b. Failure to inform the insured of UMC availability seen as below the standard of care
 - c. Concludes that insured was never in the position to make an informed choice
4. If the insurer did not fulfill its duty, is it liable for the appellants' loss?
 - a. Yes, as failure to purchase UMC was the result of several acts and omissions of the insurer
 - b. Case indicates that public auto insurers are obligated to act reasonably and in their insureds' interests

III. THE CLAIMS PROCESS

A. *Broadhurst & Ball v. American Home Assurance Co.*

1. Factual background
 - a. Defendants sued for conspiracy, breach of fiduciary duty, and negligence
 - b. Policies of both the primary and excess professional liability insurers agree to provide defence against covered suits and to pay associated expenses
 - c. Excess insurer contended that the insureds were aware of the claims when they obtained insurance and thus no coverage was provided
 - d. Findings of the trial judge
 - 1) Claims are covered by the excess policy, subject only to exclusionary provisions
 - 2) Excess insurer has a duty to defend the insured against the claims
 - 3) Excess insurer need not share the costs and expenses of defending the action
 - e. Excess insurer appeals the first two findings
2. Issues
 - a. Whether trial judge should have waited until after the trial to decide that coverage of the claims existed
 - b. Whether excess insurer must defend when the primary insurer also has this obligation
 - c. If concurrent obligation to defend exists, how costs of the action should be allocated
3. Coverage issue
 - a. Initial allegation that claims reflected fraudulent conduct and not negligence (and thus not covered by the policy) was withdrawn
 - b. Allegation that insureds knew or should have known when they applied for coverage (and thus claims were not covered by the policy) was dismissed for lack of evidence
 - c. Resolution of the coverage issue prior to the outcome of the trial not deemed improper as remote possibility anything in the trial will affect coverage

4. Allocation of defence costs issue
 - a. Since insurers provide coverage under separate contracts, no legal basis for contribution
 - b. American decisions show contradictory positions that primary insurer has no right of action against the excess insurer and primary insurer subrogated to the rights of the insured against the excess insurer when defending claims that have exhausted its limits
 - c. Appleman's view
 - 1) Primary insurer's duty to defend is absolute and indivisible and only the insured can enforce
 - 2) Only the insured can call on the excess insurer for defence; third parties have no standing
 - d. But in the current case, a potential judgment puts the excess carrier at risk
 - 1) Excess carrier should thus not excuse itself based on the primary carrier's obligation to provide a defence
 - 2) Not having it share costs provides it with a windfall
 - 3) Lack of involvement, moreover, constitutes an obstacle to settlement
 - 4) Equitable distribution of costs justified not by a contractual basis but by the principles of equity and good conscience
 - 5) But allocation based not on the pro rata distribution of coverage but rather equally between the parties
- B. *Dillon v. Guardian Insurance Co.*
1. Insurer fails to agree to a settlement for less than the policy limits and trial produces a judgment in excess of the policy limits, causing the insured to sue the insurer for the excess amount
 2. No Canadian standard to be applied to the insurer's conduct but three standards found in U.S. law
 - a. Absolute liability
 - b. Liability for failing to act reasonably
 - c. Liability for bad faith – seen as merging with the second standard
 3. Arguments in favor of absolute liability
 - a. Avoids the problem of determining whether settlement offer was reasonable
 - b. Avoids possibility insurer will gamble with the insured's money if offer near the policy limits
 - c. As interests of the insurer and insured conflict, insurer should have both the benefits and detriments of its decision
 4. Application to the current case
 - a. No need to select a standard as insurer liable under each of them
 - b. Court finds in favor of the insured and absolves the insured's lawyer of any liability as company employee should know it is liable for an excess award
 5. BC cases
 - a. Relationship between the insurer and insured is not a fiduciary one as have different interests
 - b. Rejection of the standard of absolute liability

PAST CAS EXAMINATION QUESTIONS

1. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, in *Dillon v. Guardian Insurance Company*, Guardian Insurance Company was found responsible for damages in excess of policy limits. Discuss the reason for the judge's decision. (00-7C-62-.5)
2. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, in *Broadhurst & Ball v. American Home Assurance Co.*, the judge found that where there is more than one insurer, the costs of defending an action should be shared pro rata in proportion to the coverage afforded by each insurer. (01-7C-13-.5)
3. Baer and Rendall, in *Cases on the Canadian Law of Insurance*, describe the various approaches regarding the relationship between tort recovery and collateral sources of compensation. Identify and describe Professor Fleming's approaches to loss sharing between collateral sources and tort recovery. (01-7C-55-2)
4. According to Baer and Rendall, in *Cases on the Canadian Law of Insurance*, *Fletcher v. Manitoba Public Insurance Corporation (MPIC)*, MPIC had a duty to advise its customers of the existence, nature, and extent of underinsured motorist coverage. It was concluded that MPIC owed a duty of care to its customers if certain criteria were met.
 - a. Identify three of these criteria.
 - b. It was also found that MPIC's duty is less onerous than that of the private agent or broker. Provide two such reasons. (02-7C-48-.75/.5)
5. Baer and Rendall, in *Cases on the Canadian Law of Insurance*, discuss *Broadhurst & Ball v. American Home Assurance Co.*
 - a. What was American Home's position with regards to the allocation of defense costs?
 - b. What did the court decide the basis should be for the allocation of costs? (02-7C-49-.5/.5)
6. In the case of *Fletcher v. Manitoba Public Insurance Corporation*, what was the issue raised with regards to government insurers?
 - A. The lack of competition
 - B. The minimum amount of compulsory insurance
 - C. The responsibility to inform customers about the type of coverage available
 - D. The type of insurance coverage that should be offered
 - E. Whether private insurers should be allowed to offer coverage over the minimum compulsory coverage. (03-7C-5-1)
7. With regards to the case of *Dillon v. Guardian Insurance Co.*, answer the following:
 - a. How was the standard of absolute liability for claim settlement defined?
 - b. Identify and briefly describe three reasons why the standard of absolute liability was the appropriate standard. (03-7C-31-1/1)

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8. With regard to the case of *Broadhurst & Ball v. American Home*, answer the following:
- What was the court's decision regarding the allocation of defence costs between insurance companies American Home and Guardian?
 - Discuss the court's reasoning for making the decision in a.
 - Discuss the implications to the insurance industry from the decision in a. (04-7C-29-.5/1.5/1)
9. a. Based on Baer and Rendall, in *Cases on the Canadian Law of Insurance*, describe the two central issues of the court case *Fletcher v. Manitoba Public Insurance Corporation*.
b. Provide two facts supporting the decision ordered in *Fletcher v. Manitoba Public Insurance Corporation*. (05-7C-29-.5/1)
10. Answer the following based on the landmark case *Broadhurst & Ball v. American Home Assurance Co.*
- Describe the nature of the insurance arrangements in the case.
 - Identify the other two issues presented to the Ontario Court of Appeal, aside from the question of coverage.
 - Briefly explain the court's ruling on each of these issues and briefly describe the court's rationale. (07-7C-10-1/1/2)
11. It is often the case that a tortiously injured party is entitled to have their losses partially or wholly remedied from an outside source other than tort recovery (in other words, a collateral source).
- Identify and briefly describe the four possible methods that have been variously adopted by which a tortiously injured party can recover from either or both the tortfeasor and the collateral source.
 - Identify which method in a. violates the principle of indemnity. Briefly describe why the principle of indemnity is violated. (09-7C-14-2/.5)
12. A large shopping mall has a general liability policy with a limit of \$5 million. A customer slipped in the mall, severely damaged his spine and then sued the mall for negligence. Before the trial, the customer's lawyer offered to settle for \$4 million, an offer the insurance company declined. At trial, the jury awarded the customer \$7 million.
- The shopping mall then sued the insurance company to recover the \$2 million by which the jury's award exceeded the policy limit. Based on Canadian case law, describe the expected ruling and the reasons for this conclusion. Cite any relevant cases to support your position. (12-6C-10-1)

13. In each of the following scenarios, explain a likely outcome for the insurance company and cite any relevant precedents used to support the conclusion drawn.
- a. In British Columbia, one personal property policyholder complains to the Privacy Commissioner that their credit score has been collected and used for underwriting by their consent. The insurance company claims that it had obtained their consent with a standard form created by the Centre for the Study of Insurance Operations.
 - b. In Ontario, one personal automobile policyholder struck an infant boy in a motor vehicle accident, causing the boy to suffer severe brain damage. The policyholder's Bodily Injury limit is \$500,000. The boy's counsel advised the policyholder's insurance company that the claim could be settled for \$450,000 without going to trial; however the claims manager of the insurance company believed the claim could be settled for less. The case eventually went to trial, and the boy was awarded damages of \$800,000. The policyholder sued their insurance company for the additional amount.
 - c. In British Columbia, a firm has a multi-peril property insurance policy. The insured recently made a claim for a loss caused by fire that occurred more than a year ago. However, the claim was made within one year of filing proof of the loss. The firm sued the insurance company for denying coverage.
 - d. A banker has been accused of fraud, a peril excluded under the banker's professional liability insurance policy. The insurance company is denying the duty to defend the banker for fraud. The banker in turn files a suit against the insurance company, arguing the insurance company has a duty to defend. (15F-6C-4-4:1/1/1/1)