

Table of contents

List of Tables and Diagrams	xxv
Acronyms and Abbreviations	xxvii
Introduction	xxix
Chapitre 1	
Legislative Framework Governing Damage Insurance and Claims Adjustment in Québec	1
Introduction	3
1.1 The <i>Civil Code of Québec</i>	4
1.1.1 Natural persons, partnerships and legal persons	5
1.1.1.1 Natural persons	5
1.1.1.2 Partnerships.....	5
1.1.1.3 Legal persons	6
1.1.2 Married, <i>de facto</i> (common-law) or civil union spouses and dependent children	7
1.1.2.1 Married spouses	7
1.1.2.2 <i>De facto</i> spouses (or common-law spouses)	7
1.1.2.3 Civil union	7
1.1.2.4 Dependent children.....	8
1.1.3 Successions with or without a will and liquidator of the succession	8
1.1.3.1 Legal successions: devolution of property.....	8
1.1.3.2 Liquidator of a succession	8
1.1.4 Property.....	9
1.1.4.1 Movable property	9
1.1.4.2 Immovable property	9
1.1.4.3 Divided and undivided co-ownership.....	10
1.1.4.4 Lessors and lessees	11
1.1.5 Obligations	11
1.1.5.1 General	11
1.1.5.2 Contracts	12
1.1.5.3 Civil liability	14
1.1.6 Mandates	15
1.1.6.1 Types of mandates	16
1.1.6.2 Obligations of the parties	16
1.1.6.3 Mandate in anticipation of incapacity (called a “protection mandate” since January 1, 2016)	17
1.1.7 Insurance contracts.....	17
1.1.8 Prescription	18
1.1.8.1 Extinctive prescription.....	18
1.2 Other important Québec legislation	19
1.2.1 The Charter of Human Rights and Freedoms.....	19
1.2.2 <i>Insurers Act</i>	20

1.2.2.1	Scope	20
1.2.2.2	<i>Regulation under the Act respecting insurance</i>	20
1.2.3	<i>An Act respecting the protection of personal information in the private sector</i>	20
1.2.3.1	Rules relating to the protection of privacy	20
1.2.3.2	Scope	21
1.2.3.3	Collection of personal information	21
1.2.3.4	Holding and use of personal information	22
1.2.3.5	Communication of personal information	22
1.2.3.6	Rights of access and rectification	23
1.2.4	<i>Act respecting the regulation of the financial sector</i>	23
1.2.5	<i>An Act respecting the distribution of financial products and services</i>	25
1.2.5.1	Regulations relating to the distribution of financial products and services.....	25
1.2.6	<i>Automobile Insurance Act</i>	26
1.2.6.1	Scope.....	26
1.2.6.2	Public compensation plan for bodily injury	26
1.2.6.3	Property damage compensation scheme.....	27
1.2.6.4	The Groupement des assureurs automobiles	31
1.2.6.5	The Direct Compensation Agreement for the Settlement of Automobile Claims.....	31
1.2.6.6	Powers of the <i>Autorité des marchés financiers</i> in matters of automobile insurance.....	32
1.2.6.7	Regulations.....	32
1.2.7	<i>An Act to establish a legal framework for information technology</i>	33
1.2.8	Other relevant legislation	33
1.2.8.1	Environmental laws.....	33
1.2.8.2	Construction laws	33
1.2.8.3	Municipal laws	34
1.2.8.4	Professional liability laws	34
1.3	Relevant Canadian (federal) legislation	34
1.3.1	The <i>Criminal Code</i>	34
1.3.2	The <i>Personal Information Protection and Electronic Documents Act</i>	35
1.3.3	The <i>Telecommunications Act</i>	35
1.3.4	<i>Canada's Anti-Spam Legislation</i>	35
1.4	Other sources of law	36
1.4.1	Case law	36
1.4.2	Doctrine.....	36
1.4.3	Customs and usage	36
	Recap	37
	Self-Evaluation Exercise.....	39
	Answer Sheet for the Self-Evaluation Exercise	43
	Review Activity.....	49

Chapitre 2	
General Principles of Damage Insurance Contracts	51
Introduction	53
2.1 Insurance contracts	53
2.1.1 General rules	53
2.1.2 Definition of “contract”	53
2.1.3 Definition of “insurance contract”	53
2.1.4 Definition of damage insurance contract	53
2.2 Stakeholders in insurance contracts	54
2.2.1 The insurer	54
2.2.2 The policyholder	54
2.2.3 The insured	54
2.2.4 The representative	55
2.2.5 The other persons concerned	55
2.3 Constituting elements of insurance contracts	56
2.3.1 The risk	56
2.3.1.1 Uncertainty of risk	56
2.3.1.2 Independence of risk	56
2.3.2 The premium	57
2.3.3 The benefit	57
2.4 Characteristics of insurance contracts	58
2.4.1 Insurable interest	58
2.4.2 A contract of the utmost good faith	58
2.4.3 The compensatory nature of damage insurance	59
2.4.4 Other characteristics	59
2.5 Conditions for the formation of insurance contracts	60
2.5.1 General conditions	60
2.5.2 Consent	60
2.5.3 Capacity	61
2.5.3.1 Incapacity and mandates given in anticipation of incapacity	61
2.5.3.2 Incapacity and minors	61
2.5.4 Object	62
2.5.5 Cause	63
2.6 Effects of insurance contracts	65
2.6.1 General	65
2.6.2 Binding force and content of contracts	65
2.6.3 Contracts of adhesion	65
2.6.3.1 External clauses	66
2.6.3.2 Illegible or incomprehensible clauses	66
2.6.3.3 Abusive clauses	66

2.7	Rules of interpretation	67
2.7.1	General.....	67
2.7.2	The rule of the common intention of the parties	67
2.7.3	The rule of the useful effect	68
2.7.4	The rule of the overall effect	68
2.7.5	The <i>contra proferentem</i> rule	68
2.7.6	The theory of the reasonable expectation of the insured.....	68
2.7.7	The interpretation given by the insurance representative	68
2.8	Principles relevant to civil liability	69
2.8.1	General principles	69
2.8.1.1	Contractual liability.....	69
2.8.1.2	Extracontractual liability	69
2.8.1.3	No option to choose between the two recourses	69
2.8.1.4	Elements of liability	69
2.8.2	The notion of harm	70
2.8.2.1	Bodily harm	71
2.8.2.2	Moral harm.....	71
2.8.2.3	Material harm.....	72
2.8.2.4	Punitive damages	72
2.8.2.5	Moratory damages.....	72
2.8.3	Liability for the act or fault of another person.....	72
2.8.3.1	The holder of parental authority.....	73
2.8.3.2	The person in charge of the custody or supervision of a child	73
2.8.3.3	The person with custody of a person of full age who is not endowed with reason	74
2.8.3.4	The principal (employer)	74
2.8.4	Liability for the act of a thing	75
2.8.4.1	The autonomous act of a thing	75
2.8.4.2	The ruin of an immovable	76
2.8.4.3	Injury caused by an animal.....	76
2.8.5	Product liability and the notion of legal warranty	78
2.8.5.1	Contractual liability or the warranty of quality	78
2.8.5.2	Extracontractual liability based on safety defects affecting things	79
2.8.6	Burden of proof	80
2.8.6.1	General rule: Balance of probabilities.....	80
2.8.6.2	Simple fault and gross or intentional fault.....	81
2.8.6.3	Presumption of fault or liability.....	81
2.8.7	Grounds of defence and grounds for exoneration of the wrongdoer	83
2.8.7.1	Superior force	83
2.8.7.2	The good Samaritan defence	83
2.8.7.3	Disclosure of a trade secret.....	84
2.8.7.4	Limitation and disclaimer of liability clause and notice	84
2.8.7.5	Assumption of risk	86
2.8.8	Apportionment of liability	87

2.8.8.1	Contributory fault of the victim	87
2.8.8.2	Obligation to mitigate the harm.....	88
2.8.8.3	Liability for joint participation in a wrongful act	88
2.8.8.4	Solidarity	89
2.8.9	Provisions pertaining to prescription	89
2.8.9.1	General rules	89
2.8.9.2	Prescription periods	91
2.8.9.3	Prior notice for bodily injury	92
Recap	.....	93
Self-Evaluation Exercise	.....	96
Answer Sheet for the Self-Evaluation Exercise	.....	98
Review Activity	.....	100
Chapitre 3		
Specific Provisions of Damage Insurance		101
Introduction	.....	103
3.1	Provisions relating to damage insurance contracts	103
3.1.1	Formation of the contract	103
3.1.1.1	The insurance application and its acceptance	103
3.1.1.2	The insurance policy.....	104
3.1.2	Effective date: General rule	104
3.1.2.1	Provisional insurance contract.....	104
3.1.3	Content of the policy: General rules.....	105
3.1.3.1	Inconsistencies	105
3.1.3.2	Changes to the contract and endorsements (riders)	106
3.1.4	Representations and warranties of the client.....	107
3.1.4.1	The initial representation of risk.....	107
3.1.4.2	Warranty	111
3.1.5	Specific provisions relating to public order.....	112
3.1.6	Duration of an insurance contract	112
3.1.6.1	Expiry date.....	112
3.1.6.2	Annulment.....	113
3.1.6.3	Cancellation	113
3.1.7	Renewal of the contract	114
3.2	Provisions relating to damage insurance coverage	115
3.2.1	The compensatory nature of insurance: Principle	115
3.2.1.1	The wrongful conduct of the insured	115
3.2.1.2	Intentional fault committed by a person for whom the insured is responsible	118
3.2.1.3	Consequences of an intentional fault: Principle	118
3.2.2	Aggravation of risk in damage insurance	119
3.2.2.1	The obligation to declare any aggravation of risk: Principle	119

3.2.2.2	Consequences of an aggravation of risk	120
3.2.3	Payment of the premium.....	121
3.2.4	Assignment of insurance contracts	122
3.2.5	Property insurance	123
3.2.5.1	Content of the policy	123
3.2.5.2	Insurable interest: Principle	124
3.2.5.3	Insurance contracts “on behalf of whomever it may concern”	125
3.2.5.4	Extent of coverage.....	125
3.2.5.5	Exclusions	127
3.2.5.6	The insurance amount	129
3.2.6	Liability insurance: General rules.....	129
3.2.6.1	Content of the policy	130
3.2.6.2	The insurer’s obligations.....	130
3.2.6.3	The victim’s recourse.....	131
3.2.6.4	Transaction by the insured	132
3.3	Settlement of claims and appraisal of the damage.....	133
3.3.1	Notice of loss.....	133
3.3.1.1	Nature and scope of the obligation.....	133
3.3.1.2	Sanction	134
3.3.2	Proof of loss	135
3.3.2.1	Nature and scope of the obligation.....	135
3.3.2.2	Sanction	135
3.3.3	Insurer’s waiver	137
3.3.4	Payment of the indemnity.....	137
3.3.5	Valuation of damage in property insurance	138
3.3.5.1	Unvalued policy	138
3.3.5.2	Valued policy	138
3.3.6	Determination of the indemnity in property insurance	139
3.3.6.1	The deductible	139
3.3.6.2	Multiple insurers.....	140
3.3.6.3	Underinsurance	141
3.3.6.4	Overinsurance	142
3.3.7	Payment of the indemnity.....	143
3.3.7.1	Nature of the payment	143
3.3.7.2	Recipient of the indemnity	143
3.3.8	Subrogation: Principle	145
3.3.8.1	Scope.....	145
3.3.8.2	Rules of subrogation.....	145
3.3.8.3	Protection of the right of subrogation.....	147
3.3.8.4	Exercising the insurer’s recourse	147
Recap	.....	148
Self-Evaluation Exercise	.....	150
Answer Sheet for the Self-Evaluation Exercise	.....	152

Review Activity.....	156
Chapitre 4	
Consumer protection organizations and other relevant organizations	157
Introduction	159
4.1 The <i>Autorité des marchés financiers</i>	159
4.1.1 Mission	159
4.1.2 Functions.....	160
4.2 The <i>Chambre de l'assurance de dommages</i>	161
4.2.1 Mission	161
4.2.2 Functions.....	161
4.2.3 The syndic.....	161
4.2.3.1 The most common grounds for complaints	162
4.2.4 The discipline committee.....	162
4.3 The Property and Casualty Insurance Compensation Corporation	163
4.3.1 Mission	163
4.3.2 Role	163
4.4 The <i>Fonds d'indemnisation des services financiers</i>	163
4.5 The Insurance Bureau of Canada.....	164
4.6 The Office of the Superintendent of Financial Institutions	165
4.7 The Canadian Council of Insurance Regulators	165
4.8 The Canadian Insurance Services Regulatory Organizations (CISRO).....	166
4.9 The Joint Forum of Financial Market Regulators	166
4.10 The <i>Commission d'accès à l'information</i> (Québec).....	167
4.11 The <i>Groupement des assureurs automobiles</i>	167
4.12 The General Insurance OmbudService	168
4.13 The <i>Regroupement des cabinets de courtage d'assurance du Québec</i>	168
Recap	169
Self-Evaluation Exercise	171
Answer Sheet for the Self-Evaluation Exercise	172
Review Activity.....	173
Chapitre 5	
Representatives: registration, obligations and responsibilities, ethics	
and professional conduct	175
Introduction	177
5.1 Representatives	177
5.1.1 Damage insurance agent.....	177
5.1.2 Damage insurance broker.....	178

5.1.3	Claims adjuster	178
5.2	Certification	179
5.2.1	Eligibility requirements	179
5.2.2	Exemptions	179
5.2.3	Certificate renewal	180
5.2.4	Ways to carry on business	180
5.3	Registration	181
5.3.1	Registration conditions	181
5.3.1.1	Registration conditions for firms and independent partnerships	181
5.3.1.2	Registration conditions for independent representatives	182
5.3.1.3	Refusal of registration	182
5.3.1.4	Registration validity period	182
5.3.2	Registration of a firm	182
5.3.2.1	Constitution	182
5.3.2.2	Activities	183
5.3.2.3	Titles	183
5.3.2.4	Sharing of commissions	183
5.3.2.5	Franchising	184
5.3.3	Registration of an independent partnership	184
5.3.3.1	Constitution	184
5.3.3.2	Activities	184
5.3.3.3	Titles	184
5.3.3.4	Sharing of commissions	185
5.3.4	Registration of independent representatives	185
5.3.4.1	Constitution	185
5.3.4.2	Activities	185
5.3.4.3	Titles	185
5.3.4.4	Sharing of commissions	185
5.3.5	Obligations of registrants	185
5.3.5.1	General obligations of firms and independent partnerships	185
5.3.5.2	General obligations of independent representatives	186
5.4	The pursuit of activities as a representative	186
5.4.1	General provisions	186
5.4.2	Representation and solicitation	188
5.4.3	Advertising, representations and client solicitation	189
5.4.3.1	Mandatory information	189
5.4.3.2	Written representations	190
5.4.3.3	Statistics	190
5.4.3.4	Approval	190
5.4.4	Keeping of books, registers and records	190
5.4.4.1	General	190
5.4.4.2	Use of computers	191
5.4.4.3	Retention period for books and registers	191

5.4.4.4	Document destruction	192
5.4.4.5	Client records.....	192
5.4.4.6	Register for separate account	193
5.4.4.7	Commissions register	193
5.4.5	Complaint examination.....	194
5.4.5.1	Definition of “complaint”	194
5.4.5.2	Complaint procedure	195
5.4.5.3	Semi-annual complaints report.....	195
5.4.6	Protection of personal information	196
5.4.6.1	Rules respecting access to client records by representatives.....	196
5.4.6.2	Mandatory consent	196
5.4.7	Professional liability insurance.....	196
5.4.7.1	Mandatory coverage	196
5.4.7.2	Deductible.....	198
5.4.8	Distribution without a representative.....	198
5.4.8.1	Insurance products relating to goods	199
5.4.8.2	Summary	199
5.5	Liability of representatives in connection with their mandates.....	199
5.5.1	The mandate	199
5.5.1.1	Special or general nature of a mandate	200
5.5.1.2	Nature of mandates	200
5.5.1.3	Gratuitous or onerous mandate.....	200
5.5.1.4	Obligations of the mandatary towards the mandator.....	200
5.5.1.5	Obligations of the mandator towards the mandatary.....	201
5.5.1.6	Obligations towards third parties	201
5.5.1.7	Real mandate	201
5.5.1.8	Apparent mandate	201
5.5.1.9	Representation contract.....	202
5.5.1.10	The representative, mandatary of the insurer.....	204
5.5.1.11	The representative, mandatary of the insured.....	205
5.6	Representative’s liability	208
5.6.1	Civil and professional liability	208
5.6.1.1	Fault	208
5.6.1.2	Injury	208
5.6.1.3	Causal link	209
5.6.1.4	Recourses and the parties involved	209
5.6.2	Ethical and disciplinary liability.....	210
5.6.2.1	The syndic	210
5.6.2.2	Recourses and the parties involved	210
5.6.3	Penal liability	211
5.6.3.1	Definition of “penal law”	211
5.6.3.2	Basic elements of an offence	211
5.6.3.3	Penal provisions of the Distribution Act.....	212
5.6.3.4	Potential sanctions.....	212

5.6.3.5	Recourses and the parties involved	212
5.6.4	Criminal liability	213
5.6.4.1	Definition of “criminal law”	213
5.6.4.2	Basic elements of an offence	213
5.6.4.3	Recourses and the parties involved	213
5.6.4.4	The proceedings	214
5.7	Ethics and professional conduct	215
5.7.1	Professional ethics	215
5.7.1.1	Definition of “ethics”	215
5.7.1.2	Rules applicable to the activities of representatives	215
5.7.2	Professional conduct	215
5.7.2.1	Purpose of a code of ethics	215
	Recap	216
	Self-Evaluation Exercise	219
	Answer Sheet for the Self-Evaluation Exercise	221
	Review Activity	225
	Chapitre 6	
	Professional Conduct of Damage Insurance Representatives	227
	Introduction	229
6.1	Maintaining discipline	229
6.2	The <i>Code of ethics of damage insurance representatives</i>	230
	Recap	241
	Self-Evaluation Exercise	242
	Answer Sheet for the Self-Evaluation Exercise	245
	Review Activity	249
	Chapitre 7	
	Professional conduct of claims adjusters	251
	Introduction	253
7.1	Maintaining discipline	253
7.2	The <i>Code of ethics of claims adjusters</i>	254
	Recap	267
	Self-Evaluation Exercise	268
	Answer Sheet for the Self-Evaluation Exercise	273
	Review Activity	279
	Appendix A	280
	Appendix B	281

Bibliography 283
Index..... 290
Glossary..... 293