

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
BACHELOR OF COMMERCE (HONOURS) DEGREE)

FINANCIAL SERVICES REGULATION AND INSURANCE LAW
(CIN 2204)

APRIL/MAY 2003 EXAMINATION

DURATION : 3 HOURS

Instructions to Candidates

1. All Questions carry equal marks
2. Answer at least (2) **Two** questions from Section B.

SECTION A

Question 1

Outline the principle of insurable interest giving examples of its application in both life and non-life insurance. **[20 marks]**

Question 2

Critically discuss the main aspects of the doctrine of non-disclosure in insurance law. Giving reasons in support of your answer, suggest specific areas of this doctrine, which may need to be reformed.

[20 marks]

Question 3

- (a) What are the main justifications for regulating financial services in general and insurance in particular?
- (b) Compare and contrast self regulation and statutory regulation, highlighting the advantages and disadvantages of each of these regulatory approaches.

[20 marks]

Question 4

Briefly explain the relevance and meaning of the following in insurance law:

- | | |
|-------------------------------|------------------|
| (i) Warranties | [5 marks] |
| (ii) The ejusdem generis rule | [5 marks] |
| (iii) Contra proferentem | [5 marks] |
| (iv) Noscitur a Sociis | [5 marks] |

SECTION B

Question 5

(a) Karen is an agent for the Revolutionary Insurance Company who has been given authority to grant cover on behalf of the Company for all home insurance risks other than houses of a sub-standard construction: these must be referred to Head Office for approval. Without reference to Head Office Karen grants cover on a thatched cottage owned by David. One week later the cottage burns down but Revolutionary refuses to pay, saying that the insurance is invalid because Karen had no authority to put them on cover. Advise David.

[10 marks]

(b) Trust is an agent for Concrete Insurance Company. He has authority to issue policies as well as collecting premiums from clients on behalf of the company. As part of the agreement between Trust and Concrete Insurance any premiums collected are supposed to be remitted to the insurer within sixty days of receipt of payment from the client. On 1 January 2002 Trust issued a comprehensive motor policy to Mrs White for her Peugeot 306 valued at \$7m. Trust is paid \$170 000 in premiums by Mrs White. By April 5 Trust had not remitted the premium to the insurers. On the 3rd of April 2002 Mrs White's car is stolen and she lodges an \$7m dollar claim with Concrete. Concrete refuse to meet the claim citing non-payment of the premium by Trust within 60 days in terms of their agreement. Advise Mrs White.

[10 marks]

Question 6

John takes a motor insurance policy with Titanic Insurance Company. He is given a proposal form on which the following question is asked:

“Has your application for motor insurance been turned down by another company?”

To this question John replies “NO”. As a matter of fact some two years back John had successfully applied for motor insurance with Granite Insurance but the policy was cancelled after six months.

Some nine months after taking his insurance with Titanic, John's car is involved in an accident and the damage to the vehicle is estimated to be \$290 000. John lodges a claim with his insurers who refuse to pay citing misrepresentation in the proposal form.

(i) Advise John.

[10 marks]

(ii) Would the position be different if the above question were not included in the proposal form? Justify your answer.

[5 marks]

(iii) In a case involving non-disclosure, who between the proposer and the insurer has the burden of proof and what must be proved to discharge this onus?

[5 marks]

Question 7

(a) Luvhengo Ltd a manufacturing firm has two public liability policies each of which carries a contribution condition to the effect that the insurer will be liable for a “rateable proportion” only of any loss which is insured by another policy. The first policy written by Deductible Insurance has a limit of liability of \$1 000 000 and the second written by Goliath Insurance has a limit of \$5 000 000. Luvhengo incurred a loss of \$660 000 which is covered by both policies.

Calculate the liability of each insurer using:

- (i) the rateable proportion method
- (ii) the independent liability method.

[5 marks]

(b) Nompumelelo agrees to buy Tendai’s car for \$3.2m. As part of the deal Tendai hands Nompumelelo his comprehensive motor insurance policy issued by Renaissance Insurance which covers the car. Tendai says the policy has ten months to run and that Nompumelelo can have the benefit of the cover. Two months later Nompumelelo has an accident in which the car is damaged. She lodges a claim with Renaissance. Are they obliged to settle the claim? Give reasons for your answer. Would the position be different if at the time of the accident the purchase price of the car had not been fixed? Giver reasons for your answer.

[6 marks]

(c) Sando’s house is badly damaged in a fire which spread from his neighbour, Elizebeth’s house. The fire was caused by her negligence. Sando claims \$100 000 for the fire damage from his household insurers, the Imperial Insurance Company. The policy is subject to a policy excess of \$5 000 and the claim is therefore settled at \$95 000. Sando then sues Elizabeth for negligence and Elizabeth opposes the claim arguing that Sando has already been paid enough compensation by insurers. Sando also received a cheque for \$50 000 from his rich aunt, Ethel “to cheer him up and help him get over the upset which the fire must have caused”.

Nathan, the claims manager at Imperial Insurance writes to Sando claiming \$150 000 by way of subrogation. Sando has already spent most of the money on a holiday in the USA.

Advise Sando on the correct legal position regarding his claim from Elizabeth and the letter from Nathan.

[9 marks]

Question 8

“The very foundation in my opinion, of every rule which has been applied to insurance law is this, namely that the contract of insurance... is a contract of indemnity and of indemnity only and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent the assured from obtaining a full indemnity or which given the assured a more than a full indemnity, that proposition must certainly be wrong”.
(Per Brett, L.J. in *Castellain v Preston* (1883))

- (a) Is this an accurate summary of the principle of indemnity? Give reasons and examples in support of your answer.

[12 marks]

- (b) What problems commonly arise in determining how much the insured is entitled to receive by way of indemnity in property insurance?

[8 marks]

END OF EXAMINATION PAPER