

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

B. COM (HON) DEGREE RISK MANAGEMENT AND INSURANCE

FINANCIAL SERVICES REGULATION AND INSURANCE LAW (CIN 2204)

APRIL/MAY 2006 SECOND SEMESTER EXAMINATION

DURATION: 3 HOURS

Instructions to Candidates

1. Answer four questions, two questions from Section A and two from Section B.
 2. All questions carry equal marks.
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SECTION A

QUESTION 1

The law of warranties in Insurance Law serves only to deprive insured persons who may be having legitimate insurance claims. It does not strike the necessary balance between the interests of insurer and those of the insured.

With the aid of case law authority, critically evaluate the above statement?

[25 marks]

QUESTION 2

Discuss and evaluate the law relating to insurable interest in both life and property insurance. Make suggestions for its reform

[25 marks]

QUESTION 3

Discuss the law relating to subrogation in insurance law, its shortcomings and suggestions for its reform.

[25 marks]

QUESTION 4

Discuss the historical development of the Zimbabwean contract of insurance. In your discussion, highlight factors which shaped and influenced its development.

SECTION B

QUESTION 5

On the 11th December 2005, your client Grace, completed a proposal form for a comprehensive household contents insurance policy with Faircover Insurance Company. The policy was issued to Grace on the 20th January 2006. Two weeks later, thieves forcibly entered Grace's home and stole several of her household items. This form of loss was a risk covered in terms of the policy. Your client claimed. Faircover Insurance Company did not dispute the genuineness of the burglary but have disputed liability for loss on the basis that Grace failed to disclose the fact that fifteen years ago, when she was 21 years old, some insurance company had refused to grant her life insurance on the basis that she suffered from a suspected kidney ailment.

With the aid of relevant case law authority, advise Grace on her prospects of success as she intends to sue Faircover Insurance Company under the policy.

[25 marks]

QUESTION 6

Robert completes an application form for a comprehensive motor policy. One of the questions contained in the form is; "Have you ever been arrested for a road traffic offence". To this Robert answers "No. I can not remember any of significance." In fact 18 months back, Robert was arrested for driving without efficient breaks and was fined \$50 000.

Robert's proposal is accepted at an agreed premium. Robert later receives the policy. Robert is subsequently involved in a near fatal accident which totally wrecks his vehicle. The insurance company refuses to pay, claiming non-disclosure.

Clearly outlining the concept of non-disclosure in Zimbabwean Insurance Law and with the aid of case law authority;

a) Discuss Robert's chances of success if he brings this matter to court?

[15 marks]

b) Would the position be any different had Robert's answer been warranted to be true? Discuss.

[10 marks]

QUESTION 7

On the 1st January 2003, Joseph signed a proposal form for life insurance with New Joyce Insurance Company. At the time Joseph was suffering from a persistent cough and slight chest pains. Joseph did not disclose this to New Joyce Insurance Company's doctor who examined him. Neither did he mention this on the proposal form. A clause in the proposal form stated that:

“The insured hereby agrees that he/she is in good health and that this proposal shall form the basis of the contract between New Joyce and himself/herself. The insured further agrees that, in the event of any statement made by himself/herself proving to be untrue in any particular, or in the event of any information being withheld, the policy subsequently issued shall be void, and premiums paid shall be forfeited.”

Twelve months after Joseph was issued a life policy by New Joyce, he died of lung cancer. At the time he signed the proposal form, Joseph *bona fide* believed that he was in good health and had not been diagnosed as having lung cancer.

New Joyce Insurance Company has repudiated liability to Joseph's beneficiaries of the life policy, the bases being the failure to disclose the material fact of Joseph's persistent cough and chest pains, alternatively breach of a promissory warranty of good health.

Advise Joseph's beneficiaries of their chances of success when challenging the repudiation of liability.

[25 marks]

QUESTION 8

While she was on holiday in the Far East Grace bought a gold necklace. On her return to Zimbabwe, she visited Toy, her insurance broker on June 5, 2005 to obtain an all-risk cover for it. In answer to a question in the proposal form that she completed, she stated that the necklace was worth \$100 million. This was double the price she paid for it but Grace honestly believed that to be the value as her friend who is a jeweller had told her that the necklace would cost \$100 million in this country.

The proposal form stated at the bottom:

“The proposer warrants that the above information is true according to her/his knowledge and belief.”

Grace signed the form and wrote a cheque payable to Probity Insurance Company for the premium which Toy told her was the standard rate.

On June 20 Grace was issued with a policy by Probity. Clause 9 stated:

“Whenever the insured is not putting on the necklace at no time shall it be left unattended at a public place.”

On June 25 Grace’s necklace went missing from her bag at a shopping complex while she was shopping. She telephoned Toy the following day and reported the loss. She also made a claim.

Probity refused to pay the claim because of a breach of warranty. They also refused to repay the premium pointing to a clause in their standard form policy which states that no premium or any part of it is repayable in the event of breach of warranty.

Advise Grace on all her rights.

[25 marks]