

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)

JULY 2006 SECOND SEMESTER SUPPLEMENTARY EXAMINATION

DURATION: 3 HOURS

Instructions To Candidates

1. Answer four questions, two questions from Section A and the other two questions from Section B.
Question 1 in Section A is compulsory.
 2. All questions carry equal marks.
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SECTION A

QUESTION 1 (Compulsory Question)

Explain fully circumstances in which the insured is entitled to a return of his premiums.
[15 marks]

John takes out several policies against the theft of his expensive diamond and gold watch. The watch gets stolen. He has made a successful claim under one of the policies. He wants to proceed and claim from other insurers. He suspects he might face a problem with his other claims. He approaches you for advice.

Advise him on the legal position.

[10 marks]

QUESTION 2

There has been very little legislation affecting Insurance Law in Zimbabwe. As it stands, the present Insurance Act is concerned mainly with procedural matters such as the registration and administration of insurance companies. There is need for the legislature to address the very nature and content of the insurance contract. Critically discuss this statement and make suggestions for reform.

[25 marks]

QUESTION 3

“The scheme of compulsory third party motor vehicle insurance is fraught with technicalities and shortcomings and does not adequately compensate victims of road traffic accidents.”

Discuss the above statement with reference to the relevant statutory provisions governing compulsory motor vehicle insurance in Zimbabwe. Make further reference to relevant decided cases.

[25 marks]

QUESTION 4

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

[25 marks]

SECTION B

QUESTION 5

Mutasa has always had all-risk cover for his farm house. His policy with Fixit Insurance Company expired on the 31st of March 1992. As a condition of renewal, Fixit increased its premium by 15% because of a large claim which had been made on the policy by Mutasa as a result of a fire which destroyed the farm house. Because of the proposed increase, Mutasa decided to transfer his insurance to Blowup Insurance Company.

On March 31, Mutasa visited Sly, the agent for Blowup at his offices where he completed a proposal form. The proposal form contained the following questions:

Have you been refused insurance cover in the last 5 years? If so, state the name of the insurer.

Has any insurer raised your premiums as a condition of renewal of your policy? If so, state the name of the insurer.

Mutasa answered both questions in the negative. He did not disclose that he had been refused cover 4 years previously by Syndicate Insurance Company when he applied for all-risk cover for his town house and household effects. In addition, he did not disclose the 15% increase in the premium proposed by Fixit.

Sly issued him with a cover note, which was valid from April 1 to April 30, 1992. On April 7 a hailstorm blew off part of the roof of the farm house. As a result, most of the property was destroyed. At the time of the storm Mutasa was away. He returned on the 2nd of May. On April 30, Blowup Insurance issued him with a policy valid from May 1.

On May 3 Mutasa submitted a claim to Blowup Insurance Company. A week later he received a letter from Blowup, which stated:

“While we are still considering your claim, we believe at this stage that you did not submit your claim within the prescribed 14 days as required by our usual terms and conditions. Moreover, we have been advised that you did not disclose some material-facts regarding refusal of cover by some other insurer and an increase in premium by another.”

Mutasa panics and approaches you for advice in the event of repudiation. Advise him on his chances of success.

[25 marks]

QUESTION 6

On the 1st of February 1995, your client, Gullible, was persuaded by Crafty, a commissioned broker of Despicable Insurance Company, to take out an accident insurance policy. Crafty volunteered to fill in the form, whilst Gullible dictated the answers to him. Gullible advised Crafty that he was sixty years of age, however, Crafty fraudulently inserted “forty”. Gullible expressly advised Crafty to disclose that he suffered from asthma, however, Crafty advised Gullible that this was too trivial to warrant disclosure, and accordingly did not mention this on the proposal form. Gullible, upon perusing the form advised Crafty that he was dissatisfied with the fact that the policy did not cover “accidents arising from any aviation-related mishaps”. Crafty, to allay Gullible’s dissatisfaction ruled through this clause with his pen and declared that this clause no longer applied. Crafty thereafter assured Gullible that the form was in order, that there was no need for him to waste his time reading through it, and persuaded him to sign it immediately.

Gullible subsequently during a flight from Harare to Bulawayo, suffered severe concussion when an oxygen mask fell onto his head from the roof of the aeroplane. Gullible claimed on his policy, however, his claim was rejected on the following bases:

That Gullible’s agent, Crafty had fraudulently misstated his age.

That Gullible’s agent had failed to disclose the material fact that Gullible suffered from asthma.

That the event resulting in the loss arose from an excepted peril.

Advise Gullible on his prospects of receiving compensation for his loss.

[25 marks]

QUESTION 7

Joseph has applied for an own life policy with the Better Life Assurance Company. He has filled in a proposal form. He has since received a letter from the insurance company to the effect that his “offer” has been accepted. However, the letter from the insurers also states that:

“The insurance cover will take effect when we have received the first premium.”

Prior to the tending of the first premium, Joseph falls from a tree and is seriously injured. He is hospitalised. While in hospital he sends a cheque to the insurance company as payment of the first premium. His health fails to improve. Subsequently, he dies. With the aid of case law authority advise his heir of the prospects of making a successful claim on the policy. Discuss all the issues arising from the facts.

[25 marks]

QUESTION 8

Rutendo approaches Regent Insurance seeking insurance on her house and its contents. Thoko the receptionist at Regent gives Rutendo a proposal form and informs her that they have the lowest rates in the market and urges her to insure the house with the company.

Rutendo completes the proposal form. One of the questions asked on the form states: “How many external doors does your house have?”

Rutendo answers “Three” when in actual fact the house has only two external doors. The insurance company loads premiums for external doors in excess of two.

At the bottom of the proposal form is a declaration to the effect that the proposal form and answers provided by the proposer “shall be the basis of the contract”. One week later Rutendo receives a letter from Regal Insurance advising her that her application for insurance has been accepted. The letter also contains the premiums due and payable.

Some three months after the policy Rutendo discovers that contrary to what Thoko had said, Regent do not offer the lowest rates in the market at all and she confronts the company alleging misrepresentation. Meanwhile the insurance company has discovered that Rutendo’s house has two external doors not three as stated in the proposal form and they seek to cancel the policy on that basis. Rutendo contends that, there was an honest mistake and as a matter of fact, her mistake did not prejudice the company at all, infact they benefited from it since they loaded the premiums on grounds that there were more than two external doors and in actual fact they were only two.

Advise Rutendo and Regent Insurance Company about their rights and liabilities.

[25 marks]

******* END OF EXAMINATION *******