

**VALUE
30 Marks**

QUESTION A: SHORT ANSWER

1. How, if at all, has the Alberta Insurance Act changed the common law principle of contribution as it applies to life insurance, fire insurance and automobile insurance? [6 marks]
2. Identify and explain 2 circumstances in which an insurer may be required to pay more than its policy limits? [6 marks]
3. Explain how an insurer would determine the amount to be paid for a partial loss under an open policy of insurance as compared to a pre-valued policy of insurance. Why is there a difference? [6 marks]
4. Explain why an automobile insurer might obtain a Non-Waiver Agreement from its insured or apply to be made a Third Party by Order? What are the similarities and differences between these mechanisms? [6 marks]
5. Assume that an insurer refuses to pay for an insured loss because the insured failed to pay any of the premiums required under the insurance contract. Can the insured successfully rely on the doctrine of Relief Against Forfeiture to obtain payment? Fully explain your answer. [6 marks]

**VALUE
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QUESTION B: LIFE INSURANCE FACT SITUATION

Larry Loopey had never done a crazy thing in his life. Then, just before his 50th birthday, Larry's lifelong love and wife of 15 years, Lola Loopey, filed for divorce. Upon receiving the Divorce Decree, a heart-broken Larry impulsively quit his job as an accountant and decided to live out his boyhood fantasy of becoming a lion tamer. Of course, in Edmonton lions are hard to come by. So, late one night Larry snuck into the Valley Zoo. His plan was to break into the lion enclosure, sneak up on a sleeping lion, tranquilize it, and take it home. Unfortunately, when Larry jumped into the lion enclosure, the lions were awake. Larry was badly mauled and died.

At the time of his death, Larry had a life insurance policy with the Helping Hand Assurance Company. The policy provided for the payment of \$1,000,000 to Lola Loopey upon Larry's accidental death. The policy had been in place for twenty years. Larry originally purchased the policy from Andy Agent, who was Larry's best friend and an employee of Helping Hands. Andy convinced Larry that having life insurance was a good idea. Not wanting to be bothered with details and not fully understanding the nuances of life insurance, Larry asked Andy to obtain a life insurance policy which

would “pay my love Lola a million bucks no matter how I die!”

In the course of its investigation following Larry’s death, Helping Hand learned that, in his application for life insurance, Larry had misstated his age, had failed to report the fact that he had his appendix removed when he was a child, and had expressly listed his occupation as “accountant.”

1. Advise Lola of her legal right to recover \$1,000,000 from Helping Hands. NOTE: Assume that Larry’s death is NOT a suicide. [14 marks]
2. Assume that Helping Hands can prove that Larry’s death WAS a suicide (i.e. that Larry jumped into the lion cage hoping to get mauled to death). How does this assumption change your answer to Question 1, if at all? [3 marks]
3. Assume that Helping Hands pays Lola \$1,000,000 pursuant to the insurance contract. Helping Hands believes that Larry would not have died if the Valley Zoo would have been more diligent about park security. Can Helping Hands sue the Valley Zoo to recover all or part of the \$1,000,000 paid to Lola? Fully explain your answer. [3 marks]

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QUESTION C: FIRE INSURANCE FACT SITUATION

Harry Hippy bought a \$100,000 home in Edmonton. He paid \$30,000 for the house and obtained a \$70,000 mortgage from the Homeowners Mortgage Company (“Homeowners”). Harry insured the house for its full value under a multi-peril policy issued by the We Care Insurance Company (“We Care”). The policy contained a standard mortgage clause in favour of Homeowners. On the application form, Harry stated that the house would be used for residential purposes only. He also stated that the house was free of rodents and infestations, not realizing that a large family of mice had been living in the attic for years.

From Harry’s point of view, the most attractive feature of his new home was its large, undeveloped basement. Just a few months after moving into the house, Harry transformed the basement into one of Edmonton’s largest marijuana grow operations. Soon grow-lamps, irrigations systems, and huge marijuana plants covered the basement floor and Harry’s doorbell was constantly ringing with yet another customer ready to pay for a joint.

One night, while Harry was out, a fire ignited in Harry’s kitchen. The house burned to the ground, leaving only a heap of ashes and a family of homeless but “happy” mice in the yard. When Harry returned home, he panicked at the thought of police investigators discovering details of his grow-op, so he

intentionally contaminated the fire site. Nevertheless, subsequent investigations revealed that the fire was caused by a wiring defect in Harry's toaster, which had been manufactured by Toasters R Us.

1. Advise We Care of its obligations and rights with regard to payment of the losses suffered by Harry and Homeowners. [15 marks]
2. Assume that We Care refuses to pay for Harry's loss and Harry commences a lawsuit against We Care more than one year after the fire occurred. Can We Care rely on s. 549 Statutory Condition #14 to successfully defend this claim? Fully explain your answer. [5 marks]

VALUE
30 Marks

QUESTION D: AUTO INSURANCE FACT SITUATION

Fred and Barney had been best friends since the Stone Ages. The only issue which ever divided them was the fact that Barney had once loaned Fred \$30,000 and, though Fred was always promising to pay back this loan, he never did.

With the loan outstanding, Barney became very angry one day when Fred arrived at Barney's house, showing off a brand new, \$30,000 Jeep. Barney was outraged that Fred would buy himself a new vehicle before paying his debt to Barney. Barney insisted that Fred repay the loan right away.

In response to Barney's demand for payment, Fred threw the Jeep keys at Barney, yelling "Fine! Take the Jeep and consider the loan payed! The Jeep is yours! And if you wreck it, you can have all of the insurance money too!"

Barney happily picked up the keys and, from that moment on, assumed sole possession and operation of the Jeep, effectively ending his friendship with Fred.

At the time that Fred threw the Jeep keys at Barney, the Jeep was registered and insured in Fred's name under a Standard Auto Policy issued by the ABC Insurance Company ("ABC"). The policy provided Section A limits of \$500,000 and Section C coverage of \$30,000. On the application form for this insurance policy, Fred had listed himself as the "sole and principal driver" of the Ford. Neither Fred nor Barney made any attempts to change the registration or insurance on the Jeep.

Shortly after his falling out with Fred, Barney fell on hard times and fell in with a bad crowd. With the encouragement of his new friends, he decided to make a little extra cash by selling stolen property from the back of the Jeep.

One day, Barney was showing his wares to his latest customer, Sam Sleezy.

Upon seeing a policeman approaching, Barney panicked and slammed down the Jeep's rear door, inadvertently embedding the lock mechanism on the door into the back of Sam's head. Sam suffered a serious head injury.

On the date he suffered his injury, Sam was the named insured under a Standard Auto Policy issued by Prehistoric Insurers ("PI") on a Ford Taurus owned by Sam. In addition to Section B and Section C coverage, the PI policy provided Section A limits of \$500,000 and included an SEF Family Protection Endorsement with limits of \$500,000.

Just one day before Barney slammed the trunk on Sam, an agent for ABC was reviewing the insurance coverage on the Jeep. The agent noted that the monthly premium was overdue. The agent phoned Fred and left a message on Fred's answering machine saying that the insurance policy would be terminated at the end of the day unless the premium payment was received before then. Fred was out of town and did not receive the message for several days.

1. Assume that Sam Sleezy successfully sues Barney for \$750,000 in damages arising from his head injury and that Sam subsequently sues ABC to recover this judgment pursuant to s. 635(1) of the Alberta Insurance Act. Advise ABC of all of its obligations and rights with respect to this judgement creditor action. [25 marks]
2. Assume that Sam obtains a judgment against Barney for \$750,000 and that ABC is NOT liable to pay this judgment. From what other sources, and in what amounts, can Sam obtain payment of this judgment? [3 marks]
3. Is the doctrine of Sue and Labour relevant to the facts described above? Why or why not? [2 marks]

END OF EXAMINATION