

QUESTION A: SHORT ANSWER: TOTAL VALUE: 25 MARKS

1. What is a cover note and how does it relate to an insurance contract and an insurance policy? **(5 marks)**
2. At present, what is the limitation period for commencing legal action for benefits under a multi-peril policy of insurance in Alberta? **(5 marks)**
3. Under what circumstances, if any, can an insurer subrogate against its own insured? **(5 marks)**
4. What elements must be present in order for an insurance contract to be properly formed? **(5 marks)**
5. Briefly explain or define the doctrines of waiver and estoppel. Give a specific example of how each doctrine applies to insurance law. **(5 marks)**

QUESTION B: HYPOTHETICAL FACT SITUATION: TOTAL VALUE: 75 MARKS

Lou Zer lived a tough life. By the age of eighteen, Lou had dropped out of school, fathered an illegitimate child ("Kidd Zer"), become a crack cocaine addict, and joined a notorious Edmonton street gang known as the Raging Rabbits. Lou's life circumstances were devastating to his parents, Tee Zer and Dan Zer. (Dan Zer would probably have been less concerned if he had known that Lou was not really his son, but rather the product of an unadvised dalliance between Tee and one of her co-workers). Unable to convince Lou to straighten out his life, Tee and Dan were left to raise Kidd Zer, who had essentially been abandoned by his own mother and by Lou.

In the spring of 2006, when Lou was twenty-one years old, the Raging Rabbits assigned Lou the task of "taking out" one of their longstanding enemies, Georgie Goon, by means of a drive-by shooting. Never having killed anyone before, Lou was nervous, so he fortified himself with a few drinks before getting in his car to perform this dastardly deed. By the time Lou got behind the wheel of his Ford Taurus, he was heavily intoxicated. As he drove past Georgie's house, Lou leaned out of the car window and fired several gunshots at a silhouette in Georgie's livingroom window. Then Lou sped off. A few blocks later, Lou lost control of the Taurus and crashed straight into the back of a parked car (a 2005 Lexus owned by Mr. Fender Bender). The crashed caused \$10,000 in damage to the Lexus. The Taurus was totalled.

Panicking, Lou jumped out of the Taurus and fled the accident scene on foot. He had only run a block or two when he heard approaching police sirens. Lou decided to break into a nearby house to hide. On the door of the house was a large warning sign which read: "BEWARE OF SAVAGE, KILLER DOG." Upon seeing the sign, Lou hesitated for a moment, but the sirens were getting louder, so Lou proceeded to force his way into the

house.

When he entered the house, Lou found himself standing in pitch darkness. So, Lou lit a match so he could see. As soon as he struck the match, Lou was viciously attacked by a large rottweiler wearing a dog tag which said "Hi, I'm Cuddles."

The attack caused the lit match to fly out of his hand. The match landed on a pile of old newspapers, which immediately caught fire. Luckily, a neighbour passed by the house a few minutes later, noticed the fire and alerted the fire department. Firefighters were able to contain the blaze to the front entrance and living room areas of the house. By the time emergency crews arrived, however, Cuddles had mauled Lou to death.

The house was owned by Wanda Widow, an elderly lady who had recently been suffering symptoms of Alzheimer's Disease. For years, Wanda had lived alone in the house, however, six months prior to the fire, Cuddles and Wanda's thirty-year old, divorced daughter Felicia had moved in, against Wanda's wishes. Aware of her mother's deteriorating mental health, Felicia had told Wanda that she had two choices: to allow Felicia to move in or to be "put away" in a nursing home.

At the time of the fire, Wanda had been asleep in her room. She was not injured in the fire. Felicia was on a three week working-holiday in Mexico. Using money she found under Wanda's mattress, Felicia had transformed Wanda's basement into a sewing workshop. Her plan was to bring fabric back from Mexico and to make and sell hand-made clothes from the basement of Wanda's house.

The fire caused \$25,000 in damage to Wanda's house and its contents, including the loss of a \$2000 stereo system belonging to Felicia. Also damaged in the fire was an antique tea set owned by Wanda.

Immediately following the fire, a kindly police officer advised Wanda that she should let her insurance company know about the damage to her home. Wanda promised to do so first thing in the morning. However, by the morning Wanda was extremely confused about the events of the previous night and she couldn't remember why her house was damaged. She also didn't remember her conversations with the police officer.

In the course of investigating Lou's death, the Edmonton City Police impounded the Taurus, the Lexus and Cuddles. At the conclusion of their investigations, the police called Fender Bender and advised him that he could pick up his car. However, the police told Fender that they could not release the Lexus until Fender paid \$600 in towing and storage charges. Fender was outraged at this proposition and he refused to make the payments. A short time later a fire occurred at the impound lot and the Lexus was completely destroyed.

At the time that all of the above events took place:

- Lou Zer was insured under a policy of life insurance issued by the Protect-Ya Life

Insurance Co. The policy had been applied for and purchased by Dan Zer when Kidd Zer was born. The policy provided for \$1,000,000 to be paid to Kidd Zer in the event of Lou's death by "accidental means." For the most part, Dan Zer was extremely diligent in completing the life insurance application form. However, in answer to a question regarding drug use, Dan Zer intentionally did not disclose Lou's drug addiction. At the time, Dan had been hopeful that Lou's drug use was just a passing phase and he didn't want to tarnish Lou's reputation unnecessarily.

- The Ford Taurus was insured under an owner's policy of insurance issued by Cars R Us Ltd. to Lou Zer. The policy provided statutory minimum limits for Section A coverage and \$20,000 in Section C coverage. Lou originally acquired the Taurus by stealing it when he was sixteen. After painting the car and altering the serial number, he had himself listed as the registered owner. Although Lou had never intended to insure the Taurus, Dan Zer was adamant that the car must be insured. So, Dan had taken on the responsibility of paying for the insurance premiums for as long as Lou owned the car. Dan had no idea that the car was stolen.
- The Lexus was insured by Speedy Cars Insurance Company under an owner's policy of insurance issued to Fender Bender. The policy had Section A coverage limits of \$1,000,000 and Section C coverage limits of \$60,000, with a deductible of \$1000. An S.E.F. 44 Family Protection Endorsement with limits of \$1,000,000 was also attached to the policy. One week before the Lexus was hit by Lou, Speedy Cars had decided to terminate the policy issued to Fender Bender because Fender Bender had been incurring an unusually high number of parking tickets. So, Speedy Cars had mailed a termination notice to Fender.
- Wanda Widow's house and its contents were insured under a fire insurance policy issued by Firewall Insurers Ltd. The policy named Wanda Widow as the owner of the house and included a standard mortgage clause in favour of the Royal Bank. When applying for this policy of insurance, Wanda had truthfully advised the insurer that she lived alone in the house, used it for residential purposes only, and had no pets. Wanda made no efforts to advise Firewall when Felicia and Cuddles moved in because (1) she did not think that this information was important to the insurer and (2) she thought that Felicia and Cuddles would soon move out of their own accord.
- Wanda's antique tea set, which was specifically excluded from coverage under her fire insurance policy, was insured under a separate policy issued by the Old Stuff Assurance Company. Prior to issuing this policy, Old Stuff had conducted an appraisal of the tea set. As a result of this appraisal, Old Stuff issued a policy providing for payment to Wanda of \$8000 in the event of loss or destruction of the tea set. After the fire, the tea set was worth \$5000. Further investigations showed that Old Stuff's initial appraisal was in error. The true value of the tea set had been \$10,000.

ALL OF THE QUESTIONS BELOW RELATE TO THE ABOVE FACT SITUATION. FULLY EXPLAIN ALL OF YOUR ANSWERS, CONSIDERING ALL RELEVANT ISSUES.

1. Advise Protect-Ya Life Insurance Co. as to whether it is obliged to pay \$1,000,000 to Kidd Zer? **(20 marks)**
2. Assume that Fender Bender advances a claim against Speedy Car for the full value of the Lexus (\$60,000). Is Speedy Cars obliged to pay this claim? **(10 marks)**
3. Assume that, immediately upon Felicia's return from Mexico, Wanda notifies Firewall Insurers of the fire. Does Firewall have to pay Wanda or the Royal Bank for the damage to the house and its contents? [Note: You can assume that the fire section of Alberta's Insurance Act applies]. **(15 marks)**
4. Assuming that Old Stuff has no reason to deny coverage, how much will Old Stuff have to pay Wanda for the damage to the tea set? Why? **(5 Marks)**
5. Does Cars R Us have an obligation to pay Lou's estate for the loss of the Taurus? [Note: you can assume that Lou's estate has the same rights and obligations under the insurance policy as Lou would have had]. **(10 Marks)**
6. Assume that Lou was unsuccessful in killing Georgie Goon, but that Georgie Goon suffered serious gunshot injuries. Georgie sues Lou's estate for \$350,000 in personal injuries arising from the shooting. (Note: you can assume that Lou's estate has the same rights and obligations as Lou would have had). Simultaneously with filing the Statement of Claim, Georgie's lawyers offer to settle the claim for \$200,000.

Advise Cars R Us as to how it should respond to this lawsuit. **(15 Marks)**

END OF EXAMINATION