

**IMPORTANT NOTE:**

**THIS EXAM PERTAINS TO COMMON LAW AND STATUTORY PROVISIONS EFFECTIVE OR CONSIDERED IN MY INSURANCE COURSE DURING THE ACADEMIC YEAR IN WHICH THIS EXAM WAS GIVEN. COMMON LAW AND STATUTORY PROVISIONS MAY HAVE CHANGED SINCE THIS EXAM WAS ADMINISTERED. Thank You, B. Billingsley**

**QUESTION 1:      SHORT ANSWER:      TOTAL VALUE: 15 MARKS**

**QUESTION 1(a): 3 Marks**

Peter P. bets Glen S. that the Oilers will make the playoffs this year. Peter promises to pay Glen \$2000 if the Oilers make the playoffs. After making this arrangement, Peter wishes to purchase an insurance policy for \$2000 to cover the bet. Does Peter have the required insurable interest to support such an insurance contract? Explain.

**QUESTION 1(b): 3 Marks**

Identify three circumstances in which an insurer might be obligated to pay more than the limits of an insurance policy.

**QUESTION 1(c): 3 Marks**

In what circumstances, if any, might you expect punitive damages to be awarded in a lawsuit dealing with a claim for insurance coverage?

**QUESTION 1(d): 3 Marks**

Under what circumstances, if any, would the insured's commission of a criminal act permit an insurer to successfully deny coverage for an insurance claim?

**QUESTION 1(e): 3 Marks**

Assume that:

- Innocent Victim suffers personal injuries in a car accident caused by Tony Tortfeasor
- Innocent Victim sues Tony Tortfeasor and recovers a judgment of \$1,500,000
- Tony Tortfeasor is covered by a Standard Automobile Insurance Policy issued by ABC Insurance Company with Section A limits of \$1,000,000, no section C

coverage, and an SEF 44 Family Protection Endorsement of \$1,000,000

- Innocent Victim is covered by a Standard Automobile Insurance Policy issued by XYZ Insurance Company with Section A limits of \$500,000, Section C limits of \$50,000 and an SEF 44 Family Protection Endorsement with limits of \$500,000

Assuming no problems exist with either policy, how much of Innocent Victim's judgment will be paid for by each insurer and why?

**THE REMAINING QUESTIONS IN THIS EXAM ARE BASED ON THE FOLLOWING HYPOTHETICAL FACT SITUATION. (ADDITIONAL FACTS SPECIFIC TO EACH QUESTION WILL FOLLOW).**

Michael Misfit worked and lived in Calgary, Alberta. He was the manager of a popular restaurant called "DM" and he owned a two storey house located just around the corner of the restaurant. He also owned a 2005 Toyota Sequoia SUV (the "SUV").

In 2007, Michael got divorced from his wife Mary. He took the divorce hard and decided that he needed a change of pace. He decided to take a year-long European vacation from January 1, 2008 to December 31, 2008. Michael made arrangements to take a leave of absence from work. He also arranged for Dwight Doogood, Michael's friend and the Assistant Manager of DM, to look after his property while he was away.

On December 31, 2007, the day before Michael left on his holiday, Dwight moved into Michael's house. On the same date, Michael prepared a Bill of Sale transferring ownership of the SUV to Dwight. Although the Bill of Sale indicated that the car had been sold to Dwight for \$15,000, in actuality no money was exchanged. Michael and Dwight agreed that no money would be exchanged for the vehicle because Michael was giving Dwight the car for a year in exchange for the "great favour" Dwight was performing in looking after Michael's house, vehicle and cat ("Oscar"). Michael and Dwight also agreed that Dwight would transfer ownership of the SUV back to Michael as soon as he returned from Europe.

With Michael out of town, Dwight assumed the role of manager of DM. This new role gave Dwight the opportunity to do a bit of redecorating in the restaurant. He invited his long-time girlfriend, Pam Painter, to hang some of her art in the restaurant. Pam excitedly took Dwight up on this offer and hung several of her paintings on the walls of DM. The displayed paintings included her very best work, an abstract oil painting titled "Humpty Dumpty."

After Michael's departure, and without asking Michael's permission, Dwight invited Pam to live with him in Michael's house. Dwight also told Pam that she could use the living room of Michael's house as an art studio when the lease on her present art studio expired on April 1, 2008. To that end, at the beginning of March, Pam started to slowly move some of her art equipment into Michael's house, though she was still doing all of her work out of

her own studio at that time.

In the wee morning hours of March 15, 2008, Dwight was just getting ready to close up the restaurant after having a night cap with his employees when he got a panicked phone call from Pam saying that Michael's house was on fire. Dwight rushed out of the restaurant, slamming the door shut behind him. The vibration from the slamming door caused many of the paintings hung on the restaurant walls to shift and sway. Humpty Dumpty fell off the wall and crashed to the floor.

Dwight ran to Michael's house. He arrived before any emergency crews were on scene. He saw smoke streaming from one of the upstairs windows and saw Pam standing at another upstairs window. She was getting ready to jump out of the window to safety. Fearing that Pam would hurt herself by jumping onto the concrete driveway from the second storey of the house, Dwight yelled to Pam not to jump. He got into the SUV (which was parked at the curb in front of the house) and backed the SUV onto the driveway, positioning it right below Pam. He then told Pam to jump onto the roof of the vehicle. She made the leap and landed on her feet on the roof of the SUV.

The second that Dwight heard Pam land on the SUV roof, he started to drive quickly away from the burning house. Pam, however, was still struggling to gain her balance from the landing. She toppled off the roof of the vehicle and landed on her head on the driveway.

In his side mirror, Dwight saw Pam fall off the roof of the SUV. He leaned out the driver's side window to see if Pam was okay and, while doing so, he inadvertently pressed down with his right foot, putting more pressure on the gas pedal. The SUV shot across the street, hit a light pole and a fence post, and rolled. The SUV was totalled.

Emergency crews arrived moments later. Unfortunately, fire fighters were unable to contain the blaze and Michael's house was completely destroyed by the fire. Paramedics rushed Pam to the hospital where she fell into a coma. Paramedics also looked after Dwight. Amazingly, apart from some scrapes and bruises, Dwight was uninjured in the accident. However, the paramedics noticed that Dwight appeared to be a bit drunk. He was given a breathalyzer test which confirmed that he was over the legal blood alcohol limit for operating a motor vehicle.

Later investigations revealed that Dwight's driver's license was suspended at the time of this incident and that the fire started when turpentine, leaking from a box of art equipment that Pam had moved into the living room, came into contact with a lit candle which had been left unsupervised and which had been knocked over by Oscar.

Pam awoke from the coma approximately four months later. She was released from hospital on August 1, 2008, but she continued to suffer many long term health problems as a result of her head injury. She never painted again.

Michael, in the meantime, was having a miserable time in Europe. Instead of having his

zest for life renewed by the sights and sounds of the world, Michael found himself becoming spectacularly lonely and depressed. He took to drinking heavily. On August 1, 2008, after a particularly booze-filled evening, he was taken to a European hospital where he died of alcohol poisoning. Looking at Michael's toxicology report, a doctor at the hospital commented: "No one could expect to drink that much and live."

**QUESTION 2: Total Value: 15 Marks**

**For the purposes of this question assume that:**

Prior to hanging her artwork at DM, Pam insured the paintings under a property insurance policy issued by the Artisan Insurance Company ("Artisan"). Pam advised Artisan that she wanted an insurance policy which would cover her paintings while they were on display at DM. The insurance company insisted on conducting its own appraisal of each painting. After the appraisals were complete, Artisan issued a property insurance policy on the paintings, with coverage from March 1, 2008 until August 31, 2008. The policy specifically identified each of the insured paintings by name and referenced the appraised value of each painting. The contract stated that "upon loss or damage to any of the insured items, the insurer shall pay no more than the appraised value of the insured item." The appraised value of Humpty Dumpty was listed as \$10,000.

Since Pam was a minor celebrity in the Calgary arts community, her accident was prominently reported in the Calgary newspapers on March 16, 2008. The newspaper reports stated that Pam was in a coma and noted that, on the same night that she was injured, her "Humpty Dumpty" painting had been damaged.

Artisan became concerned about continuing to hold coverage on Pam's art while Pam was incapacitated. On March 20, 2008, Artisan sent a registered letter to Pam's home address indicating that her insurance policy with Artisan would be terminated effective March 30, 2008. On October 8, 2008, Artisan mailed Pam a cheque for the unearned portion of the insurance premiums from March 30, 2008 to August 31, 2008.

On October 15, 2008, Pam's lawyer contacted Artisan to make a claim for the damage to Humpty Dumpty. In support of this claim, Pam's lawyer provided Artisan with appraisals from some of Calgary's leading art experts regarding the damage to Humpty Dumpty. The appraisals stated that:

- Humpty Dumpty could not be repaired;
- immediately prior to the damage occurring to the painting on March 15, 2008, Humpty Dumpty was worth \$20,000;
- because of Pam's inability to paint again, Humpty Dumpty, if undamaged, would now be worth \$40,000;

- the damage to the painting reduced its value by 50%.

Relying on these appraisals, Pam's lawyer suggested that Artisan should pay Pam \$10,000 for the damage to Humpty Dumpty. Artisan denied the claim on the basis of the three arguments listed below. Advise Artisan as to the likely success of each argument:

- (a) the insurance contract was not in effect when the claim was made; **[5 Marks]**
- (b) Pam had failed to promptly notify the insurer of the loss as required by the terms of the insurance contract; **[5 Marks]**
- (c) if Artisan is legally required to pay for the damage to Humpty Dumpty, the required payment is only \$5000. **[5 Marks]**

**QUESTION 3: Total Value: 15 Marks**

**For the purposes of this question assume that:**

At the time of the fire:

- Michael's house was valued at \$850,000, though it was heavily financed with the Better Business Bank ("BBB") holding a first mortgage of \$500,000 and the Cash for Credit Mortgage Company ("CFC") holding a second mortgage of \$200,000;
- The house was insured for its full value under a homeowner's policy issued by Wallace Insurers Inc. ("Wallace") to Michael. The policy listed Michael as the named insured and the property owner, described the property as "residential use", and provided coverage for loss arising from a wide variety of perils, including fire.
- The Wallace policy contained a standard mortgage clause in favour of BBB but made no mention of CFC.
- CFC had its own policy of insurance issued by the Happy Times Insurance Company ("HT") for the value of its mortgage interest in Michael's house.
- Michael did not advise BBB, CFC or Wallace that he was taking a year long trip to Europe or that Dwight would be living in the house while he was away.

BBB, CFC and the administrator of Michael's estate have brought claims against Wallace for the value of their respective interests in the house. Happy Times seeks contribution from Wallace.

Advise Wallace of its obligations and rights with respect to these claims.



**QUESTION 4: Total Value: 15 Marks**

**For the purposes of this question assume that:**

Michael and Mary were married on May 1, 2000. During their first year of marriage (when they were still happy together), they decided to purchase life insurance on one another's lives. They each applied for a policy of life insurance from the Good Life Insurance Company ("Good Life"). Mary was the applicant for and the beneficiary of the policy on Michael's life and Michael was the applicant for and the beneficiary of the policy on Mary's life. Good Life told Mary and Michael that they each had to sign both applications verifying that the information contained in the applications was true.

The application forms asked questions about the medical history, personal health habits and hobbies of the applicants. One question asked whether the life insured had ever suffered a seizure or loss of consciousness in the past five years. Michael answered "no" to this question. In fact, Michael had fainted during his wedding ceremony, but Michael was very embarrassed about this incident and could not bring himself to mention it. He also thought that the fainting spell at the altar was a "one time" event which was never going to happen again and certainly would never cause his death. Mary, of course, realized that Michael had not disclosed his fainting spell on the application form, but she signed the form anyway. She was also embarrassed by his ill-timed fainting spell and she preferred to keep the incident quiet. Mary did not think that Michael's fainting was indicative of any health problem other than having "cold feet" about the wedding.

On June 1, 2000, Good Life issued a policy of life insurance on Michael's life. The policy provided for payment of \$500,000 to Mary in the event of Michael's death. The policy provided for double indemnity in the event of Michael's death by "accidental means." The policy also contained a clause which excluded coverage for death caused by suicide within two years of the policy being issued. Michael arranged for annual premium payments on the policy to be made via direct withdrawals from his bank account. The first premium payment was made by this system on June 1, 2000 and payments continued to be made in this fashion until Michael's death.

Following Michael's death, and despite the fact that she was now remarried, Mary brought a claim against Good Life for payment of benefits under Michael's life insurance policy. Advise Good Life as to its obligation to pay Mary.

**QUESTION 5: Total Value: 40 Marks**

**For the purposes of this question assume that:**

On the afternoon of December 31, 2007, with the bill of sale in hand, Dwight attended at the Driver's Dream Insurance Company ("DD") to obtain insurance coverage on the SUV. Dwight met with Andy Agent, an employee of DD, and asked for "complete coverage" on the SUV. Andy pulled out an application form for a standard owner's policy of insurance. Andy read the questions aloud to Dwight and recorded Dwight's answers on the form.

One of the questions asked on the application form was whether the applicant had been involved in a motor vehicle accident in the last five years. Dwight told Andy that he'd been involved in one accident during that time when he'd rear-ended another vehicle while driving his mother's car. Andy asked if anyone had been injured in the accident and Dwight honestly replied that he didn't know. He had given the driver of the other vehicle his mother's insurance information, but he'd never heard of any claim being made against his mother's insurance. Dwight offered to ask his mother for this information, but Andy told him not to bother. Andy said, "Don't worry about it. If there had been an injury claim, you'd know about it." Dwight did not tell Andy about another accident he'd been in when he'd driven his mother's car into a telephone poll. Dwight was not trying to hide this information, he just didn't remember the incident when Andy asked him this question.

When the application was completed, Andy passed the form to Dwight who signed it without reading it. After Dwight passed Andy the signed form, Andy realized that he'd forgotten to ask Dwight the questions which were listed on the reverse side of the application form. He apologized to Dwight and asked if Dwight wouldn't mind answering just a few more questions. Dwight agreed so Andy read the remaining questions to Dwight, once again filling in Dwight's answers on the form. One of these questions asked whether Dwight had ever been convicted of a criminal offence. Embarrassed to have to make this admission, Dwight replied with a quiet "uh-huh" (yes). Andy thought Dwight said "uh-uh" (no), so he recorded Dwight's reply as "no." After filling in the reverse side of the application form, Andy did not ask Dwight to resign the form or provide the form for Dwight to re-read.

Based on the information contained in the application form, DD issued an owner's policy of insurance to Dwight for the SUV. The term of the contract was from January 1, 2008 to December 31, 2008. The contract provided the statutorily required minimum limits for Section A coverage. Due to an oversight on Andy's part, and unnoticed by either Andy or Dwight, the contract did not include Section C coverage.

After the insurance contract was issued, DD learned about Dwight's two previous car accidents, but the insurer made no move to cancel the policy or to inform Dwight of its discovery.

On March 16, 2008, Dwight advised DD of all of the events which had occurred involving the SUV on March 15, 2008 and made a claim from DD for the loss of the SUV. DD rejected Dwight's claim immediately and sent a letter to Dwight saying that the policy was void ab initio. Along with the letter, the insurer included a cheque for the unearned portion of the premiums dating back to March 15, 2008.

On March 17, 2009, two lawsuits were commenced. First, Dwight sued DD for the value of the SUV. Second, Pam sued Dwight in negligence claiming damages of \$1,000,000 for the personal injuries she suffered when she fell off the roof of the SUV.

Advise DD as to:

- (a) whether it is obligated to pay DD for the loss of the SUV **[20 Marks]**
- (b) its obligations to respond to Pam's claim against Dwight, any steps it should take to best protect its interests with respect to this claim, and any legal rights it may have to recover money it pays out with respect to Pam's claim **[20 Marks]**

**END OF EXAMINATION**