

FACULTY OF LAW

FINAL EXAMINATION — APRIL, 2003

LAW 519:B1 INSURANCE LAW (HOPP)

TIME ALLOTTED: Three (3) Hours

CODE NUMBER: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY and should be entered on the examination booklets in the space provided for your surname. This will provide for anonymity during marking.

- INSTRUCTIONS:**
1. This examination question paper contains **3** questions on **7** pages. Check to ensure that it is complete before starting.
 2. Answer **ALL** questions and all parts of each question. The questions are **NOT** of equal value. Please apportion your time intelligently.
 3. This is an **OPEN BOOK** examination.
 4. Unless otherwise stated, all events took place in the Province of Alberta.
 5. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of marks or to a refusal to accept your examination paper.
 6. This examination counts for **100%** of your final mark.
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VALUE
35 Marks

QUESTION

1. Frank and Jessie were brothers. They robbed banks. They were both killed on April 1, 2001, during an attempt to rob an Edmonton bank.

Each of them was insured at the time of his death. Frank had had his policy of life insurance for over 25 years. Frank had applied to insure Jessie just hours after they began planning to rob the bank in which they died. Neither Frank nor Jessie advised their insurers of their occupation. Each described himself as a businessman.

At the time Frank obtained his policy of insurance, he was a smoker and was required to pay the higher premium charged smokers. One year before his death and over three years after he quit smoking, Frank applied to pay the lower premium charged to non-smokers.

The insurer could have amended Frank's old policy but chose, instead, to issue a new policy containing the amount of the reduced premium. The insurer was aware that Frank could be harmed if it chose to issue a new policy to him but did not advise Frank of this fact.

In the written application for his old policy of insurance, Frank was asked the following question:

From what illnesses have you suffered in the last five years?

In his answer, Frank did not reveal that he had suffered from a mild clinical depression resulting from a temporary sexual dysfunction. He was simply too embarrassed to mention such a matter.

At the time of obtaining Jessie's policy of life insurance, Frank had agreed to pay the premiums in monthly instalments. At the time of his death, Frank was more than two months in arrears in making the monthly premium payments. After learning of Jesse's death, the insurance company demanded that the beneficiary named in Jesse's policy pay all of the unpaid premiums within a period of two weeks from the date of its letter. The beneficiary submitted his cheque for the appropriate amount within the time specified but the cheque was returned to him uncashed.

After Frank's death, his insurer was most helpful to the beneficiary named in the policy. While the insurer never specified a precise date on which it would pay the insurance proceeds to the named beneficiary, anyone reading the correspondence between the insurance company and Frank's beneficiary could not be faulted for thinking that the proceeds would be paid as soon as the police concluded their investigation into the robbery. When the police investigation was finally concluded, the beneficiary found it considerably more difficult to communicate with the company. He remained confident that he would soon be paid.

The statutory conditions were printed in Frank's old and new policies. They were **not** printed in or attached to Jesse's policy.

Both insurers have now denied liability.

IDENTIFY AND RESOLVE ALL OF THE ISSUES RAISED BY THESE FACTS.

VALUE	QUESTION
30 Marks	2.
Total	

Sean was a young man with a terrible driving record. When his automobile insurance was cancelled, he persuaded his mother to become the registered owner of his automobile. The mother then applied for and obtained an owner's policy with a limit of \$1,000,000.00 in respect of the automobile.

The application for the policy was prepared by the mother's insurance agent. The mother signed the application without first reading it. In the application there was a statement that the automobile was used only for pleasure.

The mother did not pay Sean for his automobile. After the events previously described, the automobile was kept in a garage on property owned by the mother. Sean had a key to this garage and continued to use the automobile for his own purposes without first asking his mother's permission to do so. The mother was unable to drive.

A year ago, when Sean was temporarily unemployed, he had the automobile equipped as a taxi and actually used it for the purpose until

he obtained other employment. Thereafter, the automobile was used only for pleasure.

In January 2003, Sean, his mother and a friend took the automobile to Peace River to attend a funeral. On their trip back to Edmonton, they stopped at a bar in every town along the way. Soon all three were affected by the alcohol they had consumed.

The friend had driven the automobile from Peace River to the last stop. He then asked Sean to drive. Sean soon began to drive erratically. He weaved from side to side and blew his horn at every approaching vehicle. He laughed when the friend and his mother ordered him to stop. When he saw a police car in his rear view mirror, he said, "I want to see how fast this baby will go," and pressed the gas pedal all the way to the floor. Ultimately, he drove headlong into an oncoming pickup truck.

The driver of the pickup truck was horribly injured and will never walk or work again. The friend escaped unharmed. Neither Sean nor his mother suffered serious injuries. There is a dispute about which of the vehicles was on the wrong side of the road at the time of the accident.

The lawyer representing the injured driver of the pickup truck wrote a letter to the mother's insurer in which he indicated that his client was prepared to settle his claim against Sean and his mother for the policy limits of \$1,000,000.00. It is likely that the pickup truck driver will be awarded much more if he is wholly successful at trial. The insurer did not know about the accident, which had occurred months before, until it received the lawyer's letter. It has refused to pay the \$1,000,000.00.

The insurance company wants to know what it should (or can) do in each of the following situations. Please refer to the appropriate sections in the *Insurance Act* in support of your answers.

4 Marks

(a) If the insurance company wishes to investigate and perhaps settle the pickup truck driver's claim before he commences an action against Sean and his mother.

4 Marks

(b) If the pickup truck driver commences an action against Sean and his mother and they refuse to cooperate with the insurance company.

- 7 Marks** (c) **If the pickup truck driver recovers a judgment against Sean and his mother and then commences an action against the insurance company to recover all or part of his judgment. Here the insurance company is interested in a general way in the defences on which an insurance company can rely in such an action.**
- 3 Marks** (d) **If the insurance company is forced to pay all or part of the judgment obtained by the pickup truck driver.**
- 12 Marks** (e) **If the pickup truck driver actually recovers more than \$1,000,000.00 from Sean and his mother and they commence an action for indemnity and damages against the insurance company. Here the insurance company is specifically interested in the defences that it can use to defeat the claims of Sean, Sean's mother or both of them.**

VALUE QUESTION
35 Marks 3.

Daniel was the registered owner of a large house which he had purchased with funds loaned to him by his friend Arthur. Daniel had granted Arthur a mortgage which was duly registered against the title to the house.

Both Daniel and Arthur had obtained policies of fire insurance for the house. Daniel's policy contained a co-insurance clause that required the premises to be insured for at least 90% of their value. It also contained a standard mortgage clause in favour of Arthur.

Daniel insured his house for 60% of its actual value. Arthur insured the house for its full value.

When Arthur obtained his policy of fire insurance, he quite innocently described himself as the owner of the house. He knew that he had more invested in the house than did Daniel, and Daniel had often jokingly referred to Arthur as the owner when making his monthly payments on the mortgage.

Both Daniel and Arthur insured Daniel's house as a private residence. Shortly after they obtained their policies of insurance, however, Daniel's sixteen-year-old son and an equally youthful friend began to

use the garage attached to the house as a shop in which to repair the automobiles of their friends. Both Daniel's son and his friend had learned to weld. They kept their welders and other equipment and an impressive stock of oils and transmission fluids in the garage.

Arthur was not aware of the existence of the fledgling business.

At the time that Arthur obtained his policy of fire insurance, he also applied to insure a wine collection that he had inherited from his father. Because Arthur was not a drinking man, the collection had remained intact for over 20 years.

Arthur and the insurance agent agreed to have the wine collection appraised by an expert recommended by the insurance company and it was subsequently appraised as having a value of \$50,000.00. A valued policy for that amount was issued to Arthur.

Arthur kept the wine collection in the basement of Daniel's house.

In early March of this year, 50% of Daniel's house was destroyed by fire. The fire started when his son's friend fell asleep while smoking in bed. The friend was staying with Daniel and his family while his parents were on vacation in Cuba. The friend was fortunate to escape from the house with his life.

Arthur's wine collection was damaged in the fire. All of the labels were burned from the bottles, but the contents of the bottles were not affected in any way by the fire. When the contents of a sample bottle were checked, however, it was discovered that the wine in that bottle had turned to vinegar many years before the fire. It is assumed that the contents of the other bottles had also turned to vinegar.

Another appraiser has fixed the value of the wine in an undamaged condition at \$5.00 per bottle. He has also determined that the value of each bottle after the fire was \$2.50. The insurer of the wine has offered to pay Arthur \$2.50 for each of the bottles in the collection.

Both of the insurers have denied liability. Each of them has said that if it is found liable it will demand that the other insurer pay for one-half of the loss.

Daniel's insurer has said that, in addition to its other defences, it will be relying on the following clauses in Daniel's policy of fire insurance:

The term **insured** in this policy includes the named insured, his or her spouse, and any other person under the age of 21 years in the care or custody of an insured.

This policy of insurance does not insure against loss or damage caused by an act or omission of an insured.

IDENTIFY AND RESOLVE ALL OF THE ISSUES RAISED BY THESE FACTS.

100 Marks

☺ ☺ ☺ **END OF EXAMINATION** ☺ ☺ ☺