

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1982

INSURANCE LAW, CREDIT AND SECURITY

Instructions to Students

- a) Time: 3½ hours
- b) This paper is in two parts and students are required to satisfy the examiners in both parts of the paper.
- c) Answer FIVE questions, TWO of which must be from Part A and TWO from Part B.
- d) In answering any question a student may reply by reference to the Law of any Commonwealth Caribbean territory, but must state at the beginning of the answer the name of the relevant territory.
- e) It is unnecessary to transcribe the questions you attempt.

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P A R T A

INSURANCE LAW

QUESTION 1

In 1970 John effected a policy of life assurance on his own life with Fairdeal Insurance Company for a sum assured of \$100,000. The beneficiary under the policy was described as 'My wife Mary'. At the time when John made the application for the policy, he failed to tell the Insurance Company that as a child he had had mumps, although he was asked no question in that regard.

After the policy was in force for five (5) years, John developed cancer. This fact was not disclosed to the Insurance Company. In 1978, he divorced his wife and she died the following year in a motor car accident. John died from the cancer a few months ago.

Advise Fairdeal as to its liability under the policy and to whom (if anyone) the policy proceeds should be paid.

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QUESTION 2

On 1st April, 1982, Albert effected a fire policy with Hardcore Insurance Company on his stock in trade and on his grocery shop. Among other things the policy bears the following endorsements:

- " (1) Warranted that no kerosene or other inflammable liquid shall be brought or kept on the insured premises"
- " (2) The Insured shall give written notice to the company within fourteen (14) days of the occurrence of any event likely to give rise to a claim under the policy."

Because of repeated power cuts during June, Albert on one occasion took into the insured premises a kerosene lamp and a quart of kerosene oil. They remained on the premises for only forty-eight (48) hours.

On 3rd July, a fire caused by an electrical fault occurred in the building on the insured premises. Water used in putting out the fire damaged a large portion of the stock in trade. The next day Albert telephoned the Claims Manager of Hardcore Insurance Company and told him about the fire. The Claims Manager told Albert that as he (the Claims Manager) was going on leave he could not see Albert before the 28th July. He therefore made an appointment for Albert to attend his office on the 28th July to complete the claim form.

Hardcore is now contending that the loss is not recoverable under the policy.

Advise Albert.

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QUESTION 3

In October 1980 Steve purchased a house from Jack and insured it for \$100,000 under a fire policy with Homesure Insurance Company. At the time of effecting the policy Steve failed to tell Homesure that water was often locked off in the area.

Jack's brother Allan was a tenant in the house at the time of the sale and after a bitter court battle Steve finally got him evicted in March 1981. Allan vows vengeance and telephones Steve regularly threatening to set the house on fire.

In October 1981 Steve renewed the policy for a further period of insurance. Shortly afterward Allan set the house on fire. The fire brigade arrived but because there was a water lock off at the time the fire could not be put out and the house was completely destroyed.

Steve made a claim under his insurance policy, at which stage Homesure became aware of the threats which Allan had been making. Subsequently Steve signed a release under seal releasing Allan from all liability in connection with the fire.

- (a) Advise Homesure of its rights and liabilities in those circumstances.
- (b) If Allan had a personal liability policy covering him against liability incurred to third parties, could a claim for indemnity be sustained under such a policy?

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QUESTION 4

Susan bought a set of antique mahogany chairs from Joe in Mandeville and arranged for them to be taken by van to her house in Kingston. She insured them under a Goods in Transit Policy with Island Insurers Ltd. covering a range of risks including theft. The policy expressly provides that the coverage shall continue up to 48 hours after the goods are delivered to their final destination.

She had an existing Fire Policy on her house and all its contents with Homesafe Insurance Co. This policy excluded the risk of theft.

Susan took delivery of the chairs from the delivery van at 9.00 a.m., 7th May, 1982. On the afternoon of 8th May a serious fire occurred at the house. It was caused by Susan's carelessness.

In an effort to save one of the chairs from the fire it was thrown from upstairs with the result that it was broken. A second chair and a valuable painting insured for \$3,000 were removed to a storeroom outside for safety, but were stolen by onlookers.

- (a) Advise the insurance companies of their liabilities (if any) under their respective policies.
  - (b) Assuming that the claim in respect of the painting was settled on the basis of the insured value and that it was later recovered, by which time its value had increased to \$4,000, what would be the rights of the parties in those circumstances?
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P A R T B

CREDIT AND SECURITY

QUESTION 5

James asked his friend David to buy a pair of shoes for him and he signed and gave David the following instrument:

(stamp)	MERCURY BANK LTD. 1, Queen St., Kingston	1st August, 1982
On Demand Pay		or Order
the sum of		
	James Brown	
Note: the receipt on the back must be signed.		

James specifically instructed David not to fill in the instrument for more than \$100.

David completed the instrument as a cheque payable to himself for \$4000, and negotiated it to Harry in payment for a motor bike which he bought from Harry. Harry was unaware of what David had done with respect to the instrument. Harry later gave the instrument to his daughter Carol as a gift.

In due course James became suspicious and instructed his Bank not to honour the instrument on presentation.

Advise the parties as to their respective rights and liabilities and Mercury Bank Ltd. as to whether it must comply with James' instructions.

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QUESTION 6

Victor, a clerk in the law firm of Ace & Co., by false pretences convinced John Ace, the managing partner that the firm owes one Eric Brooks the sum of \$2,000 on a particular transaction. John had never heard of Eric Brooks, but nonetheless drew a time bill on his friend Donald Smith, for the said amount payable to Eric Brooks.

John gave the bill to Victor to be sent to Eric Brooks. Victor endorsed the bill as Eric Brooks and negotiated it to Peter White who took it without knowledge of the forgery.

Peter took the bill to Donald Smith's house and was met by Donald's 17 year old son, Donald Smith, Jnr. Peter, believing that Donald, Jnr. was the person to whom the bill was addressed, presented it to him and asked him to sign his acceptance. Donald, Jnr. did so without hesitation. Peter discovered the whole truth when he later presented the bill for payment.

Advise Peter.

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QUESTION 7

Martin stole two instruments from the desk drawer of his co-worker Dave. One instrument is a cheque drawn payable to "cash" in the amount of \$100 and signed by Dave. It is dated January 10, 1982. The other instrument is a "blank cheque" bearing only Dave's signature.

The subsequent history of both instruments was as follows:

(a) Cheque for \$100

After signing his name on the back of the cheque Martin lost it. In May 1982 it was found by Anne. Anne delivered it to Tom in exchange for groceries.

(b) "Blank Cheque"

Martin completed this instrument as a cheque payable to "Mark Gayle or order" and gave it to Mark in settlement of a debt. Mark was unaware of the circumstances under which Martin had acquired the instrument. Mark handed the instrument to his sister Mary as a gift.

Advise both Tom and Mary regarding their respective entitlement to the instruments and as to the liabilities of all prior parties thereon.

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QUESTION 8

(Stamp)	May 1, 1982
On Demand I, promise to pay John Wise & Co. the sum of \$200 for value received.	
P. Brown A. Smith	

The above instrument was delivered to John Wise & Co., a firm of Accountants. The managing partner of the firm being duly authorised to negotiate the instrument endorsed it by signing "John Wise" and discounted it with Carl Black. Carl fraudulently alters \$200 to \$2,000. The alteration was not apparent.

Thereafter Carl took the instrument to his bankers, Credit Bank Ltd., which discount the instrument and credit Carl's account with \$1,900 being the discounted sum. Credit Bank presented the instrument to P. Brown who refused to pay. In the meantime Carl has withdrawn all the funds from his account with Credit Bank Ltd.

Advise Credit Bank Ltd.

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