

NORMAN MANLEY LAW SCHOOL

Council of Legal Education

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COUNCIL OF LEGAL EDUCATION
MONA, KINGSTON 7, JAMAICA

LEGAL EDUCATION CERTIFICATE

SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 1985

INSURANCE LAW, CREDIT AND SECURITY

Wednesday, August 14, 1985

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.

PART A

INSURANCE LAW

QUESTION 1

Michael, an industrial life insurance agent employed to Betta Life Ins. Co. Ltd. approached Albert with a view to selling him an industrial life insurance policy. Albert finally settled on a policy which provided life insurance coverage for \$10,000 with double indemnity in the event of death by accidental means. It is the approved practice of Betta that their agents should assist the proposer to complete the proposal form.

Thus, although Albert is literate, Michael in fact completed the proposal form on Albert's behalf by filling in Albert's answers in response to the questions on the form.

In response to a question as to whether he was a smoker, Albert answered affirmatively but Michael incorrectly wrote "no". The proposal was signed by Albert who failed to observe the error.

One evening whilst Albert was in a bar discussing politics, a fight developed between himself and another man during which Albert received a severe wound to his head. Albert was rushed to the hospital but as the doctors were on strike, he was not attended to for over 24 hours. By the

time they finally got to him, he had bled to death. An autopsy subsequently revealed that he was suffering from an incurable brain disease which according to medical opinion, would have claimed his life in a matter of months.

Advise Betta Life as to its liability (if any) under the policy.

QUESTION 2

In June, 1975, Peter effected a fire insurance policy with Hardcore Insurance Co. on the stock in his supermarket. The policy was expressly subject to the pro rata condition of average and was renewed from year to year. In 1980, Peter was acquitted on a charge of receiving stolen goods. That fact was never disclosed to Hardcore.

At renewal in June, 1984, Peter increased the sum insured to J\$400,000. Over the Christmas season, a small fire occurred in the supermarket destroying goods valued at \$500. As the amount was within the policy excess of J\$1,000, Peter did not bother to report the matter to Hardcore.

In March 1985, a serious fire occurred causing damage to Peter's stock valued at J\$200,000. At the time of the fire the total value of stock within the supermarket was J\$800,000. On going through their files, Hardcore discovered that in answer to the following question on the proposal form -

"What fire fighting equipment (if any) will be installed on the premises?"

Peter had answered: "5 fire extinguishers". As a matter of fact five extinguishers were originally installed on the premises but in 1983, they were all taken out and new ones were not installed until two weeks before the fire.

Advise Hardcore as to its liability under the policy.

QUESTION 3

In January, 1984, Jack purchased a 1984 Honda Accord motor car from David for J\$80,000. David persuaded Jack to add a further J\$1,000 to the price in return for which David agreed to transfer to Jack, the existing road licence and insurance on the car. Accordingly, on the day that Jack took delivery of the car, David also handed to him his Certificate of Insurance together with his Comprehensive Motor Insurance Policy document. Among other things that policy:

- (a) extends to cover any person driving the vehicle with the consent or permission of the insured,

- (b) provides that the insured should give notice to the company of any accident likely to result in a claim within 14 days of its occurrence.

On his way home Jack drove the car recklessly and was involved in an accident which resulted in the death of a policeman. Jack was subsequently convicted of manslaughter. Jack had in force at the time, another motor insurance policy on his old Vauxhall motor car. That policy covered him whilst driving any other car "not belonging to him or hired to him under a hire policy contract".

Jack notified his own insurer immediately after the accident and in turn, his insurer wrote a letter to David's insurer within the 14 days notice period setting out details of the accident. David himself did not report the accident to them until after Jack's conviction. The policeman's estate has instituted a civil action against Jack.

Advise Jack as to his rights, if any, under both policies.

QUESTION 4

Able and Company, a firm of city Attorneys, effected in February, 1984, a professional indemnity insurance policy with Hardline Motor and General Ins. Co. (HM&G). HM&G was a Company primarily in the motor insurance business, but had recently gone into the business of under-writing indemnity policies. Questions 9 and 10 in the proposal form completed by Able & Company were in the following form with the respective response as shown:

- (a) No claims have been made against us in the past 10 years other than the following:
HERE LIST CLAIMS, DATES, AMOUNTS, etc.

N/A

- (b) The maximum number of attorneys working in the firm will not exceed
 ten (10)

The declaration in the proposal form contained the usual basis of the contract clause and was duly signed by Charles Able on behalf of the firm. By the policy document the proposal was expressly incorporated into the contract.

In 1983, whilst Charles Able was overseas on long leave, a client had made a claim against the company for professional negligence. This claim was compromised by the payment of \$30,000 by the firm but the matter was not brought to Charles Able's attention, and he was unaware of it when he signed the proposal. After the policy was effected the firm employed two temporary associates for a period of six (6) months to work

with Charles Able on a major commercial matter thus bringing the number of attorneys working with the firm during that period to eleven (11).

Real Estate Developers Ltd. (RED) have now made a claim for J\$400,000 against the firm arising out of the firm's alleged negligence in connection with a land transaction in June, 1984. Shortly after the claim was made, Charles Able died and the firm has now gone into bankruptcy.

Advise RED.

P A R T 3

CREDIT AND SECURITY

QUESTION 5

Aubrey issued a cheque for \$1,000 to Barry. The cheque is crossed "not negotiable" and is dated 1st March, 1985. Barry fraudulently altered the date of the cheque from 1st March, 1985 to 31st March, 1985. The alteration is not apparent on the face of the instrument.

With the intention of negotiating the cheque to Charles as a gift, Barry indorsed the cheque as follows:

"Pay Charles White

Signed: *Barry Black*"

Barry left the cheque on the top of his desk with the intention of delivering it to Charles the following day. However, Charles came to see Barry that same afternoon but Barry was out. Charles, seeing the cheque indorsed to him, took it with the intention of telling Barry the following day.

The next day Charles negotiated the cheque to David without telling Barry. David took the cheque in good faith and in part payment of the purchase price of a motor bike. David was quite unaware of the previous history of the instrument. David then gave the cheque to his son Eric, as a gift.

Advise Eric as to his rights, if any, against all parties concerned.

QUESTION 6

a) A has \$1,000 in his bank account at the St. Andrew Parish Bank Ltd. He drew a cheque for \$200 on April 22, 1984 and gave it to his daughter B.

B went back to school abroad forgetting the cheque in a drawer at home. B returned in August of that year in time for the Independence celebration, at which time she presented the cheque for payment. On presenting the cheque she discovered that the St. Andrew Parish Bank Ltd. is in liquidation. The bank is only able to pay 25¢ in the dollar.

Advise B.

b) C draws a cheque for \$300 and gives it to D.

At the foot of the cheque is stamped 'The receipt at the foot hereof must be signed'.

D signs the back and presents it for payment.

The bank withholds payment owing to a doubt as to C's signature. In the interim C dies.

Advise D.

c) E draws a cheque payable to bearer and crosses it 'not negotiable'. F steals the cheque and persuades Budget Supermarket to cash it. The supermarket lodges the cheque in due course and receives payment.

Advise E.

QUESTION 7

On the night of March 1, 1985, Fred, in a state of drunken stupor, was persuaded by George to sign and hand over to him (George) a "cash cheque" for J\$500. The following day George negotiated the cheque to Bi-Best Supermarket Ltd. in return for groceries. Bi-Best took the cheque in good faith but without notice of how George had acquired it.

In the meantime Fred who had by then regained his sobriety, sent a telegram to his bank (Mercantile Bank) stopping payment on the cheque. The telegram arrived in the afternoon of March 2, 1985. It was opened immediately and the Bank Manager made a note on it addressed to the current accounts' teller warning her to make the necessary notation on George's ledger card and other accounts' records.

That same night the Manager of Bi-Best heard that Fred was drunk when he issued the cheque to George and the following morning, he took it to Bi-Best's bank (Industrial Bank) and was paid cash across the counter. In due course it was presented by Industrial Bank to Mercantile Bank. The telegram with the Bank Manager's note was still in his "out tray" and never got to the current accounts' teller. As a result, Mercantile Bank honoured the cheque.

Advise the parties generally.

QUESTION 8

On February 26, 1985, Alfred drew a bill in his favour payable "30 days after sight" upon D & C Finance Ltd. The face value of the bill was \$1,000. Alfred negotiated the bill to Colin in exchange for the bills of lading in respect of a shipment of goods on board M.V. GOOD HOPE. On March 1, Colin presented the bill to D & C Finance for acceptance but D & C Finance accepted as to "\$700 only". Colin was very upset about this and a heated discussion ensued between them. As a result they both overlooked the fact that D & C Finance had not dated their acceptance.

Colin called Alfred the same day and told him what had occurred. Alfred advised him to take back the bill to D & C Finance the following day as he (Alfred) would be speaking to them to clear up the matter. The following day there was a gas demonstration and Colin was unable to get to the office of D & C Finance. A few days later he negotiated the bill to his Attorneys, Davis & Associates in settlement of a fee note. The senior partner in the firm, John Davis, asked Colin the date upon which D & C Finance had accepted the bill and Colin mistakingly said that it was on March 3, 1985. As a result John Davis wrote "March 3, 1985" beside D & C Finance's acceptance.

In Davis & Associates, the signature of two (2) partners were required to draw or negotiate any cheque or bill of exchange. John Davis affixed his signature and gave the bill to Errol, a clerk in the office to obtain the signature of another partner so that the bill could be negotiated to the firm's bank before maturity. Errol forged the signature of one of the partners and completed the indorsement to himself. Afterwards he negotiated the bill for value to Peter who took it in good faith and for value. Peter in turn negotiated the bill back to Alfred in exchange for the bills of lading. It now transpires that Colin never had title to the bills of lading.

Advise (a) Alfred, and (b) Peter as to their respective rights and liabilities, if any.