

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1982

INSURANCE LAW, CREDIT & SECURITY

Wednesday, May 26, 1982

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.

P A R T A

INSURANCE LAW

QUESTION 1

On 1st November, 1981, Arthur completed a proposal form for Comprehensive motor insurance on his motor car with Gambit Insurance Co. Ltd. In the proposal form, Arthur is asked: "Will the motor car be driven by any person other than yourself?" Arthur's answer is "No". The proposal form contains the usual "basis of the contract" clause whereby Arthur warrants that the statements therein are true and shall be deemed to be the basis of the contract and incorporated therein.

The proposal is accepted and the policy is issued at an annual premium of \$500. Arthur pays \$150 and promises to pay the balance by April 1982. On Christmas Eve, Arthur gets drunk at a party; and being fearful that his driving ability was impaired, he allowed his friend Peter to drive him home. Peter did not have a driver's licence.

In March 1982, the motor car whilst being driven by Arthur, collided with a motorcyclist who is seriously injured. It is Arthur's fault and he notifies the insurance company immediately. A week later, Arthur sold the motor car to James and as part of the contract, agreed to transfer the insurance and road licence on the motor car to James. Pursuant to that agreement, he handed over the insurance certificate and the policy to James.

On 1st April, 1982, the car whilst being driven by James is completely written-off in an accident. Arthur has still not paid the balance of the premium.

Advise Gambit as to its liabilities in respect of the circumstances.

QUESTION 2

Apex Builders approach Jamaica Insurance Brokers (JIB) with a view to effecting public liability insurance. JIB advises Apex to effect the insurance with Fairdeal Insurance Company and completes a proposal form on behalf of Apex. Among other things the proposal form contained the following:

" If you have had an accident in your business operation within the last five (5) years, give details in the space below."

Apex Ltd. told JIB it had had two such accidents in one of which three people died. Through an oversight, JIB omitted to state the details so the space was left completely blank.

The Managing Director of Apex signed the proposal form without bothering to read it. The proposal was accepted and the policy issued. One condition of the policy was that all accidents likely to result in a claim be reported to Fairdeal Insurance Company within 14 days from the occurrence thereof.

During the currency of the policy, a crane on one of Apex's building sites, fell injuring Paul, a passerby. Apex gives notice to the brokers (JIB) within the 14 day period, but JIB fails to pass on the notice to Fairdeal Insurance Company within the stipulated time period.

In the meantime Paul obtains a judgment against Apex for \$75,000. Before satisfaction of the judgment Apex goes into compulsory liquidation.

Advise Paul.

QUESTION 3

Mark is the freehold proprietor of 1, Earl Street, Kingston, on which he operates a supermarket business. He has a policy of fire insurance with Mutual Fire Insurance Company on the business covering:

- (a) the building for a sum insured of \$100,000; and
- (b) the stock in trade for a sum insured of \$60,000.

The policy is subject to the condition of average.

On 6th February, 1982, Mark entered into an Agreement for Sale with Gary whereby Mark agreed to sell to Gary his freehold property at 1, Earl Street aforesaid. The contract price was \$150,000 and completion date was 1st April, 1982.

On 3rd March, 1982, the supermarket caught fire and the building was completely destroyed. Part of the stock was saved. The stock destroyed was valued at \$60,000 and at the time of the fire, the total value of stock in the supermarket was \$90,000.

Mutual Fire has paid Mark the full sum insured on the building, but the claim in respect of the stock is still outstanding.

Advise Mutual Fire as to its rights and liabilities.

QUESTION 4

After their marriage in 1975, Mrs. Abby Hempson insured for her benefit, the life of her millionaire husband for a sum assured of \$200,000 with Hardline Insurance Co. Ltd. The policy expressly provided that sane suicide of the life assured within a year of taking out the policy would avoid it. In 1976 Hardline discovered that Mrs. Hempson had been married on four previous occasions and that her four previous husbands had died under strange circumstances - indeed Mrs. Hempson had been charged with the death of her fourth husband but was acquitted. Hardline continued to accept premiums under the policy in the normal way.

In 1981 Mr. Hempson discovered that his wife, Abby, was putting arsenic poison in his meals over a period of time. The upshot of it was that Mr. Hempson divorced her. The Court made no order for maintenance in favour of the wife. After the divorce, Mr. Hempson became very depressed and six months later fatally shot himself. At the Coroner's inquest Mr. Hempson was found to have been sane at the time of his death.

The premiums under the policy were fully paid up at the time of Mr. Hempson's death. Abby now makes a claim under the policy.

Advise Hardline.

P A R T B

CREDIT AND SECURITY

QUESTION 5

Arthur having obtained a cheque by fraud, negotiated it to Barry in exchange for the following promissory note:

(stamp)	3rd April 1982
On Demand I promise to pay Arthur Allen the sum of \$300 for value received.	
(signed) Barry Blake	

Barry entered into the transaction in complete ignorance of the fraud and in good faith. Barry then indorsed and negotiated the cheque to his daughter, Cathy, as a gift.

Cathy knew of the fraud by Arthur and decided to "turn the tables". She stole the promissory note from Arthur and forged Arthur's signature thereto. She then negotiated the note to Don in settlement of a debt. Don took the note in good faith and without notice of the forgery.

Advise the parties generally regarding title to the two instruments and liabilities thereon.

QUESTION 6

Mark owed John Brook Limited the sum of \$1,000 for repairs to his motor car. With the intention of settling his indebtedness, he drew a cheque on his bankers, Provident Bank, for the amount payable to:

"JOHN BROOK or order"

The cheque was sent to John Brook Ltd., but when it reached their office, the Managing Director, John Brook took possession of it and indorsed it as if it were a personal cheque payable to himself. John took it to his bankers, Commercial Trust Bank and obtained cash over the counter for the cheque.

In the meantime Mark dies, and his Executors notify Provident Bank of his death. Subsequently, Commercial Trust Bank presented the cheque to Provident Bank and was paid the proceeds thereof.

Advise the Executors.

QUESTION 7

Eric Wilson, a partner in Wilson & Co. signed an "open cheque" made out in favour of "ROSE JONES or BEARER" and drawn on Inter-Commercial Bank of 1, Church Street, Kingston. Eric crossed the cheque "NOT NEGOTIABLE" and gave it to his clerk to buy flowers for the secretaries in the office on Secretaries' Day. The clerk was specifically instructed not to fill in the cheque for more than \$250, and to buy the flowers from ROSE JONES Flower Shop as Miss Jones was a client of the firm.

The clerk fraudulently completed the cheque for \$1,000 and indorsed it in the name of "Rose Jones". He then negotiated it to Mike as payment for a motorcycle. Mike was unaware of the fraud and took the cheque in good faith.

No flowers having turned up on Secretaries' Day, Eric immediately became suspicious and instructed his secretary to stop payment on the cheque. The secretary by mistake sent the countermand notice to the Duke Street Branch of Inter-Commercial Bank. In the meantime Mike had presented the cheque at the Church Street Branch of Inter-Commercial Bank and received payment.

Advise Wilson & Co.

QUESTION 8

(stamp)	1st April 1982
\$5000	
Thirty (30) days after date pay to my order four thousand five hundred dollars.	
To: Raven Merchant Bank 1 Queen St., Kingston	Joe Bloggs

Joe Bloggs borrowed \$4,500 from Marty Black and gave him the above instrument duly indorsed as follows:

" Pay Marti Black or order

Joe Bloggs "

Marty presented the instrument to Raven Merchant Bank on 5th April for acceptance, but the Bank accepted "only as to 50%". Marty immediately wrote a letter to Joe informing him of the Bank's acceptance.

Subsequently, Marty indorsed the instrument as follows:

" Pay Harry Fuller or order to the use of my wife Joan

Marty Black "

Harry Fuller indorsed the instrument in blank and negotiated it to Paul Chin.

Advise Paul as to -

- (a) the proper mode and time of presentation;
 - (b) the liabilities (if any) of Raven Merchant Bank;
 - (c) the liabilities (if any) of Joe Bloggs;
 - (d) whether he (Paul) can be sued on the instrument and, if so, by whom;
 - (e) whether he (Paul) acquired ownership of the instrument;
 - (f) whether Joan has any right of action on the instrument;
 - (g) who is legally entitled to the proceeds of the instrument?
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