

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 1985

INSURANCE LAW, CREDIT AND SECURITY  
(Wednesday, May 29, 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 (5) questions, TWO (2) of which must be from Part A and TWO (2) 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

On January 21, 1985, Albert completed a proposal for life assurance with Co-Operative Life Assurance Company. The proposal form incorporated the usual 'basis of the contract' clause. With a view to obtaining a lower rate of premium, Albert deliberately mis-stated his age as 40 when in fact he was 47 years old. On receipt of the proposal form, Co-Operative Life's manager wrote to Albert saying, inter alia:

"Your proposal is accepted; but no insurance will come into force until the first premium of J\$300 is paid."

On receipt of that letter, Albert, on January 28, 1985, paid in cash to Co-Operative Life the first premium of J\$300.

On further review of the proposal form, Co-Operative decided to refuse the risk and on February 3, 1985, wrote a letter addressed to Albert refusing the insurance and enclosing a cheque for J\$300, being the first premium paid by Albert. Before receiving this cheque, Albert was murdered by gunmen who broke into his house.

Advise Albert's estate.

---

QUESTION 2

In September, 1984, Rick approached a firm of Insurance brokers, Professional Insurance Brokers Ltd. (PIB), for the purpose of obtaining third party insurance on his new sports car. PIB placed the insurance with Commercial Insurance Company Ltd. (CIC). It was a well-known fact in insurance circles that CIC was in financial difficulties but, as the Managing Director of PIB held shares in CIC, he arranged for PIB to place most of its business with CIC.

In November, 1984, CIC went into liquidation. PIB advised most of its major clients to make alternative insurance arrangements, but Rick was not so advised or notified. In December, 1984, Rick was driving the car from an office party. He was intoxicated and the car got out of control and collided with another motor car owned and driven by Mary.

Police attended the scene of the accident and Rick was charged and later convicted of:

- (a) driving without insurance coverage - fined \$500
- (b) drunken driving - fined \$600

Mary's car was repaired at a cost of J\$5,000 and she is pursuing a claim against Rick.

Rick consults you with regard to his legal position and instructs you that he had inadvertently omitted to inform PIB that he was a part-time musician in a well-known band. From past experience you are aware that CIC does not insure musicians whether full-time or part-time.

Advise Rick.

---

QUESTION 3

For several years Martin has operated a successful hardware business. His business premises at 18 Equity Lane and his stock-in-trade therein were fully insured with Hardline Insurance Company for \$200,000 and \$400,000 respectively under a Fire Insurance Policy which was renewed from year to year. In December last year, Martin's accountants advised him to form a company to take over the business.

Accordingly, on January 1, 1985, Martin incorporated a company and entered into an agreement to sell to the company in return for shares therein the following:

- (a) his business premises at the above address for J\$300,000;
- (b) his stock-in-trade for J\$350,000.

Under the agreement for sale, completion date was March 1, 1985.

On April 8, 1985, fire destroyed the business premises and most of his stock-in-trade. Up to that time the agreement for sale had not been completed.

Following the fire, the Hardware Merchants Association (HMA) made a gift to Martin of hardware stock valued at J\$50,000 to help him on his feet again.

Martin's policy is endorsed with the following provision:

" WARRANTED THAT A WATCHMAN WILL BE ON THE PREMISES  
AT ALL TIMES BETWEEN 6.00 P.M. AND 6.00 A.M. "

It is revealed that in 1982, Martin had no watchman on the premises for over three (3) months.

Advise Martin as to his rights and liabilities vis-à-vis Hardline.

---

QUESTION 4

Ron has a Householder Comprehensive Policy with Reliable Insurance Company Limited. The subject matter of the policy includes the following:

- (a) the private dwelling house itself;
- (b) household goods and personal effects;
- (c) goods held in trust by the insured.

Among the perils insured are fire and flood damage and the current period of insurance runs from April 1, 1984 to March 31, 1985.

The following events occurred:

- (a) In June, 1984, Ron's helper was dusting an expensive painting which was hung in Ron's living room. The helper absentmindedly left the painting beside the kitchen stove with the result that the heat from the stove severely damaged the painting. The cost of restoration will be J\$2,000.
- (b) In September, 1984, the neighbour's house caught fire. Fearing that the fire might spread to Ron's house, firemen sprayed several thousand gallons of water on the wall of his house facing the fire. A crack developed in the wall due to the excessive heat from the fire and the rapid cooling effect of the water.
- (c) Water from the fire hoses seeped through the crack and covered his basement up to a height of five (5) inches causing serious water damage to a stock of goods stored therein and belonging to the company of which Ron was principal shareholder. At the time of the incident, the company was paying Ron J\$5 per square foot per month to keep the goods in storage until the Christmas season.
- (d) On March 28, 1985, Ron telephoned the Insurance Company and requested them to renew the policy. The Insurance Company agreed and promised to notify Ron of the renewal premium within seven (7) days. The letter sent by the Insurance Company was never received by Ron. On May 8, 1985, the house was severely damaged by fire. Up to that time Ron had not paid the premium.

Reliable is denying liability in respect of all the above incidents.

Advise Ron.

---

P A R T B  
CREDIT AND SECURITY

QUESTION 5

On April 1, 1984, A drew a bill of exchange on B for J\$10,000 payable 20 days after sight to C. On delivery to C he immediately negotiated the bill by way of a special indorsement to D for value. On April 5, 1984, D presented the bill to B for acceptance. B accepted "as to J\$5,000 only".

Shortly afterward the bill was stolen from D by E who forged D's signature thereto and delivered it to F in part settlement of an existing debt owed to F. Before accepting the negotiation of the bill, F took it to D to find out whether the signature purporting to be D's was actually his. On being shown the instrument by F, D took a cursory look at it, and believing it to be another instrument which he had previously negotiated in blank, confirmed to F that the signature was his. Relying on D's confirmation, F accepted negotiation of the instrument.

On April 21, F discovered that B was away on holidays and would not be back until two months time.

Advise <sup>F</sup>B as to:

- (a) whether he can retain the bill;
- (b) the rights and liabilities (if any) of the various parties to the bill; and
- (c) the best course of action which the person (whether it be <sup>F</sup>B or otherwise) should take to secure payment of the bill.

---

QUESTION 6

Dave drew a cheque for J\$200 payable to bearer. He also signed a "blank cheque" intending to make it out as a cheque to cover his motor insurance premiums as soon as he receives notice of the amount due. Both instruments were stolen from his desk by Eric.

The cheque for J\$200 was encashed by Frank at Eric's request. Frank, who acted in good faith, later discovered that the cheque was stolen by Eric and not wishing to be "involved" gave the cheque as a gift to George.

The "blank cheque" was completed by Eric as an instrument for J\$10,000 payable to "John Sparrow", a name he had invented "out of the blue".

Eric then indorsed the instrument as John Sparrow to Igol in part payment for a motor car.

On discovering the theft, Dave closed his account with the Bank and opened a new one with the same Bank. On presentment, both cheques were dishonoured and marked "account closed".

Advise both George and Igol as to their respective rights.

---

QUESTION 7

(stamp)	1st June, 1985
For value received, I promise to pay Miller & Co. Ltd. the sum of J\$100.	
<i>John Brown</i> <i>Tom Smith</i>	

The above instrument was duly signed by John and Tom and left with Tom on the understanding that he would deliver it to Miller & Co. Ltd. in payment for goods supplied. When John went to Miller & Co. Ltd., he met Donald Miller, the Chairman of the company. Donald persuaded John to alter the sum payable to J\$1,000 whereupon Donald gave John J\$400. The alteration was not apparent on the face of the instrument.

Donald Miller discounted the instrument with Mercantile Bank, endorsing it as follows:

" Miller & Company  
per Donald Miller  
authorised signature "

Miller & Co. Ltd. has now gone into liquidation.

Advise the Bank.

---

