

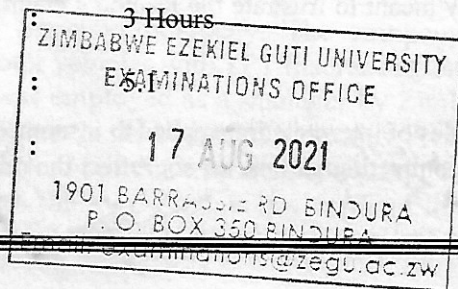


ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 010
COURSE TITLE : Insurance Law
DURATION : 3 Hours
LEVEL :
DATE :



INSTRUCTIONS TO CANDIDATES:

1. This question paper comprises of six questions, answer any **four** questions only.
2. Each question carries 20 marks.
3. Cellphones are not allowed into the examination room.
4. No other materials are allowed into the examination room.
5. Begin each answer to a full question on a fresh page.
6. Credits shall be given for referring to case law authorities wherever applicable.

Question 1

- a) Explain the concept of subrogation in insurance law. Under what circumstances is the insurer entitled to exercise this right of subrogation. (10 marks)
- (b) With reference to relevant authorities explain the circumstances under which the insured is entitled to the return of his premium. Discuss the legal implications of forfeiture of premium clauses. (10 marks)

[Total: 20 marks]

Question 2

The Insurance Council of Zimbabwe is planning a workshop for its members and has asked if you can present a paper on the law relating to insurable interest in Zimbabwean insurance law. You have been asked to specifically deal with the view that the requirement of insurable interest has no merit at all and it is a technical objection only meant to frustrate the insured's claim, the insurer having received the premium all along. [20 marks]

Question 3

"Discuss the view that principles of interpretation applied to insurance contracts, while consistent with the idea of equality between contracting parties, do not reflect the relative bargaining positions of the insurer and the insured. [20 marks]

Question 4

After burglars broke into her house twice within a month, Diana decided to insure her household contents. She obtained cover against loss or damage caused by burglary and loss or damage directly or indirectly caused by fire. Burglary is defined in the policy as "theft resulting from forcible and violent entry in the insured's premises". A month ago, Diana's neighbor, Chris came back from work and found Laura his live-in girlfriend with another man in his house. A fight broke out. Chris threatened to kick Laura out of the house and in a fit of rage he threw Laura's clothes out, poured kerosene on them and set them on fire. The fire spread onto the next property. The Harare Fire Brigade was called to put out the fire. A crowd attracted by the fight and the fire gathered on the street. Diana left her house to join the crowd on the street without locking the front door. When she went back to her house 30 minutes later, her flat screen colour television set valued at \$2.500 was missing. She has submitted a claim to the insurance company. Is the insurance company liable? [20 marks]

Question 5

You have been visited by Chris who informs you that on 30 August 2006, his wife Rejoice died in a car accident involving the car she was driving and one driven by John. On questioning him, it emerges that the marriage between Chris and Rejoice had not been solemnised either under the Marriage Act (Chapter 5:11) or the Customary Marriages Act (Chapter 5:07). However all customary rites relating to marriage were performed. At the time of Rejoice's death they had been living together for 10 years and had 4 children.

At the time of the accident, John, who has since been convicted of negligent driving was driving his Mercedes Benz motor vehicle, which was insured with First Insurance Company against full third party, fire and theft liability. Clause 10 of the policy stated:

“The insured warrants that he shall keep the insured motor vehicle in a good state of repair.”

Clause 12 of the policy required the insured to report the accident forthwith. It has now been established that the accident was caused by faulty breaks on John’s Mercedes Benz as a result of worn out brake pads. After the accident, John was shocked and distressed and decided to take a week’s vacation in Nyanga. When he returned from Kariba, he found out that his MBA assignment was due in a week. The University of Zimbabwe advised that he would be suspended from the MBA programme if the assignment was not submitted on time. John got busy with his assignment and only managed to report the accident a week after he came back from Kariba.

Chris has also advised you that the small catering business that he and Rejoice were running has gone under since the car that they were using was written off in the accident. The motor vehicle was registered in Chris’ name and insured with Stay-Safe Insurance Company.

Advise Chris on his rights. Would your advice be different if there was a knock for knock agreement between First Insurance Company and Stay-Safe Insurance Company. [20 marks]

Question 6

Zimbos Transport is a local transport company. The company has been maintaining comprehensive policies for its motor vehicles with TPT Insurance Company. The policies were renewable annually. Noah who was employed as a Manager by Zimbos Transport committed various acts of fraud from time to time in the course of his duties. At the time of renewal of the policies Noah did not disclose his fraud to the insurance company. Zimbos Transport did not have knowledge of the fraud until the loss. Zimbos has suffered loss due to a collision that occurred just outside Masvingo. Zimbos Transport now wants to recover on the policy.

Advise TPT Insurance Company whether they should pay the claim. Would the position be different if the policies had contained a clause stipulating : “The insured warrants the truth of all statements and further warrants that he has disclosed every fact material to the risk insured.” [20 marks]

****END OF PAPER****