



RIARA LAW SCHOOL
UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE
AND
PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM
AUGUST 2024

RLB 310: INSURANCE LAW

INSTRUCTOR: MR DANIEL ODHIAMBO

INSTRUCTIONS

1. This is the final examination in Insurance Law. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THE THREE QUESTIONS.**
3. The examination has 3 pages, including this one.
4. Time allocated for this examination is **TWO HRS** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTION ONE

One Saturday morning, an oil tanker had a head-on collision with a saloon car on Nairobi Nakuru highway and subsequently overturned in a blind corner. Bodaboda cyclists who witnessed the incidence quickly dashed to the tanker to siphon fuel since the high cost of fuel was already taking a toll on their business. Melon was driving his newly acquired Toyota V8, unaware that the road accident had happened. To avoid ramming into the crowd at the accident scene, he applied emergency breaks that saw his vehicle lose balance and slide into a trench by the roadside, about five meters from the tanker. Melon unsuccessfully tried to reverse from the ditch since his vehicle got stuck in the trench. He got out of the car and frantically tried to plead with some of the onlookers to assist in pushing the car from the accident scene. However, before he could secure a handful of people to assist him, police arrived and engaged in running battles with the bodabodas in attempts to avert any deaths should the tanker explode. Hardly had the police efforts bore fruits that, the tanker exploded and fireballs engulfed the entire accident scene. Melon who had also moved away from the accident scene at the direction of the police watched helplessly as his vehicle was consumed by the fire. By the time fire fighters arrived to put off the fire, his vehicle has remained a scrap valued at Kshs. 100,000/-.

Melon promptly contacted his insurance agent and filed a claim. Though his cover was comprehensive, it had an exemption clause for losses caused by fire. Melon contends that this loss was pure as a result of the road accident. The insurance has declined to pay, and Melon has visited your office seeking a legal opinion on his chances of success.

Advise Melon on the legal principles applicable in chances of success in a claim for compensation against his Insurance Company (12 marks)

Assuming that Melon's car was involved in a head on collision by an oncoming tractor that had changed its lane to avoid the crowd that was siphoning fuel, and his vehicle significantly destroyed before the explosion, advise him on the likely outcome. (6 Marks)

Assuming that the insurance company fully compensated Melon all the losses incurred, advise Melon on the rights that would ordinarily accrue to the insurance company. (12 marks)

QUESTION TWO [20 Marks]

Mzalendo recently bought a Land rover Defender at Kenya shillings 20 million. Having seen how insurance companies decline to pay claims, he considered it safe to have two comprehensive insurance policies over the exact motor vehicle. He, therefore, contact Hakika insurance company limited and Shaka Insurance Company Limited, covertly ensuring that no insurance company gets to know that he has obtained another cover. Three months after using his motor vehicle, he suffers an accident, and even though he survives, his car becomes a write-off. He promptly contacts his respective insurance agents in both companies and lodges claims. To activate the policy, both companies requested an excess payment of Kshs. 50,000/- in line with the respective policy covers before compensating him.

Also, The Hakika Insurance Company Ltd has written to him indicating that since he has already lodged a claim at Shaka Insurance Company Limited, they will only pay him Kshs. Shaka Insurance Co. Ltd will settle 10 million and the other amount.

Mzalendo has approached you agitated by this development and wondering why he has to go through all these requirements despite him having dutifully paid premiums. Write a memorandum advising him on the

rationale for paying the excess and its significance in an insurance policy, the application of the doctrine of indemnity, contribution, and apportionment in his case.

QUESTION THREE [20 Marks)

On 15th January 2023, Mane took a Burglary Policy (hereinafter “the Policy”) insuring his stock in Sugunanga warehouse against theft and break in for a sum of ten million Kenya shillings. While filling the Proposal, one of the question asked was as follows:

Do you keep proper Stock and Sale books which are entered regularly not less frequently than once a month?

Mane answers YES and handed over the proposal to an Insurance Agent of Grit Underwriters Ltd (the Company). The Company proceeded to issue a policy covering Mane’s stock against acts of burglary. One of the Paragraphs in the Policy read:

At all times during the operation of the policy, the Insured shall keep books showing all purchases of goods or stock as well as particulars of articles or goods manufactured or held in trust on commission, for which the insured is responsible.

In August 2023, Mane suffers a burglary incidence in which goods worth nine million Kenya shillings were stolen. Mane quickly lodges a claim to the Company seeking compensation since the insured risk had happened. The Company conducts an investigation and notes that Mane had not kept stock records for the last four months and declines to settle the claim on the ground that Mane failed to keep records of stock.

Mane believes that this are some of the ways the insurance company use to swindle people and therefore he visits your office Wakanda Advocates seeking advice on the best way to teach the Company a lesson. He states that even if the company fails to honour his claim, the company must refund his premiums.

With the aid of case law, advise Mane on whether or not he has a claim against the insurance company.