1960

Insurance: Final Examination (Summer 1960)

William & Mary Law School

FINAL EXAMINATION

INSURANCE

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I.

Mfg Co orally agreed to purchase from Owner the land and building adjoining its factory premises for expansion purposes. The price was $75,000 and all other essential terms were agreed upon, although the agreement was unenforceable as within the Statute of Frauds. O's fire insurance policy insured "Owner for account of whom it may concern," O having taken the policy in that form originally as he had considered transferring joint interests in the property to other members of his family. After making the agreement M Co insured the building in its own name. The building was destroyed by fire before a written contract of sale had been prepared and executed. The acquisition of the adjoining property was essential to M Co despite the fire loss so that it nevertheless bought the Property, paying the full agreed price of $75,000. What are the rights and liabilities of M Co, O, O's insurer, and M's insurer with respect to insurance funds?

II.

The decedent's life insurance policy provided for double indemnity if death were caused "solely by accidental means and independently of disease or bodily infirmity." Decedent spent the night of his death in a round of social activities consuming prodigious quantities of alcoholic beverages to a point of acute intoxication. The facts are uncontroverted that when he came home he stumbled into the bathroom, mumbling something about taking pills to relieve his condition; returning, he fell into bed and "passed out", and was discovered to be dead the next morning. An autopsy disclosed that he had died of barbiturate poisoning from an overdoes of amytal; that the content of amytal in his system was three times the normal dosage, but not usually a lethal quantity except when taken under conditions of acute alcoholism. In suit to recover the double indemnity benefit, the court sustained a motion by the insurer to set aside a jury verdict in favor of the beneficiary. Is its action well taken?

III.

Insured, A, leaving for a week on a trip, was asked by B if he might have the use of A's car while A was away, to which A agreed. A returned after only 3 days and called B on the telephone, telling him to have the car back that evening as he needed it for work at 8:00 in the morning. Driving to A's home that evening, B stopped for a brief visit at C's home and found that a party was in progress. The brief visit became an all night session in the course of which B had too much to drink. At 7:00 in the morning he asked C, who was sober and whom A frequently let drive his car, to take the car immediately to A's home. C did so but enroute injured Plaintiff, P.

P brought action against C to recover damages for his injuries. A's liability policy contained the usual omnibus clause, insuring one driving with the permission of the named insured. Upon A's notice to it of the action against C, the insurer, D, assumed the defense of the suit on C's behalf without inquiring thoroughly into the circumstances of how C happened to be driving A's car. P recovered judgment against C and, as permitted by statute, then brought action against D to satisfy his judgment.

In defense, D denied C's negligence and also that C was driving with A's permission. (a) Is D precluded from asserting either or both of these defenses? (b) Discuss the merits of D's contention that C was not driving with A's permission.

IV.

Business partners A and B agreed that each would insure the life of the other for an amount reasonable in the light of the worth of the business, the proceeds to be used to purchase the interest of the first to die. Upon later dissolution of the partnership, A and B exchanged policies so that each would thereafter have the policy on his own life. The policy on A's life contained a provision that the insured might designate a new beneficiary by filing a written notice thereof with the Company accompanied by the policy for endorsement. The provision relating to assignment provided that any assignment must be in writing and that the Company shall not be deemed to have knowledge of an assignment unless a duplicate is filed at the Home Office of the Company. A wrote to the Insurer requesting forms with which to effect a change of beneficiary from B to A's wife, W, and stating that he would return the executed form and policy for endorsement. The Company sent a form for change of beneficiary but A died before he had opportunity to execute the form and return it with the policy to the Company. B and W each claim the proceeds as beneficiary. A's estate claims the proceeds by right of assignment of the policy to A, and also maintaining that the proceeds should be paid to A's estate in any event as the designated beneficiary, B, had no insurable interest either at inception or maturity of the policy. Upon the Company's interpleader and payment to a court, what disposition should the Court decree?

V.

Owner, negotiating a mortgage loan, agreed with Mortgagee to keep the mortgaged premises insured. He insured the premises, which he described in the policy as a "single family dwelling", with a standard mortgagee provision in favor of M whereby the insurance as to the interest of the mortgagee was not to be invalidated by any act or neglect of the owner. Part of the house was in fact rented to another as a separate apartment, but Owner gave no thought to this as the property had been originally designed and constructed as a one family residence. Subsequently fire damage was sustained in the amount of $2500. When insurer denied liability to Owner, asserting breach of warranty in the description of the property, Owner made the repairs at his own expense. Insurer refused M's demand for payment of the $2500 damage, asserting: (1) that the policy never was in effect by reason of O's initial breach of the warranty and that the standard mortgage clause was applicable only to a "live" policy and not one that was breached at its inception; (2) that in any event, M sustained no loss as O had made full repairs; and (3) that if Insurer should have to pay M $2500, Insurer is thereupon subrogated as creditor for that amount of O's indebtedness to M. Discuss the merits of these contentions.

VI.

Live coals were ejected from a neighbor's furnace upon the neighbor's cement basement floor by the explosion of a hot water heating device. Nothing else was on fire outside the furnace except the ejected coals. The resulting smoke, soot and ashes permeating the insured's home caused him to move from the premises with his family for the night. During the night vandals broke in, damaged and stole Insured's property. Insured can establish that explosion damage amounted to $200; smoke, soot and ash damage, $1,000; and vandal damage and theft, $500. How much, if anything, may Insured recover on his fire policy which expressly excludes explosion, theft and vandalism as insured risks?

VII.

A question asked in Decedent's application for life insurance was "Have you ever had a surgical operation?" to which D answered, "No", forgetting that as a small child he had had his appendix removed. D's completed application form was attached to and made part of the policy. By statute, statements in the application form are deemed representations and not warranties. D died within 2 years after issue of the policy from a heart condition. The Insurer disclaims liability by reason of D's false statement. If Insurer should stipulate that D's statement was not fraudulently made, would a directed verdict (where permitted procedurally) for either the Beneficiary or the Insurer be in order, and if so, for whom? Would your answer be any different if there were no such statute as that referred to?

VIII.

In his application for life insurance Decedent was asked, "Have you ever had, or been treated for, or sought advice concerning, or do you now have diabetes? He replied, "No", believing that to be true. He also answered "No" to a question as to whether he had consulted a physician within the last 5 years, which was true.

Subsequent to submission of his application but prior to issue of the policy, decedent was troubled with his breathing and consulted his doctor. He was told that he showed some symptoms of lung cancer and should undergo some tests which would take about 3 weeks to conclude. About 2 weeks later his policy was issued. Shortly thereafter the cancer tests proved negative and his breathing trouble was found to be bronchial condition which was soon cleared.

One year later Decedent died of diabetes which, although unknown to have existed, was found to be of long standing. Discuss the merits of the Insurer's defenses of misrepresentation and concealment to an action on the policy.

IX.

Realty & Insurance (R&I) Agency sold to Insured a home at a time when it was only half built and would not be ready for occupancy for at least 60 days. As agent for D Insurance Co. R&I then issued a standard fire insurance policy to Insured to cover the building and contents for one year. The policy contained the standard provision that the Co. should not be liable for loss occurring while the building is vacant or unoccupied beyond a period of 60 consecutive days. 60 days after sale of the property and issuance of the policy the building was in suitable condition for Insured to move in his furnishings and he did so. A few days later, but before Insured had himself moved in, the house was destroyed by fire. A state statute provides that a breach of warranty or condition shall not permit the insurance company to avoid liability unless the breach existed at the time of the loss. If the Company should deny liability, asserting the vacant or unoccupied clause, what is your analysis of the Insured's position with respect to recovery of the insurance proceeds?