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Insurance: Final Examination (Summer 1962)

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I

Storm Protection Company is in the business of manufacturing and installing lightening rods. It charges for its work up to \$500. It proposes to guarantee to its customers that in the event of any damage by lightening to buildings which it has protected by lightening rod installation within 5 years prior thereto, it will refund all amounts paid to it for the work not to exceed the cost of repair of the damage to the building. Lightening rods minimize but do not eliminate the possibility of damage. Must the Company qualify to do an insurance business under the State laws in order to make such guarantee without penalty?

II

Agent is in the real estate business and also a general agent for Home Insurance Company. When he was about to conclude a sale of Seller's house to Buyer, Buyer asked him about insurance protection for the premises. Agent suggested that as the entire purchase price was not to be paid at that time, Seller write on his present Home policy "In case of loss, pay proceeds to Buyer as interest may appear", and that upon the renewal date 3 months thence, when the purchase price would have been paid in full, Agent would issue the renewal policy in Buyer's name. Accepting this proposal, Seller handed his policy to Buyer with that endorsement subscribed by Seller and the parties then entered into the contract of sale. Following execution and delivery of the deed and full payment of the purchase price by Buyer, but before issuance of the renewal policy, the property was destroyed by fire. Buyer's subsequent asserted claim against Home Insurance Co was rejected. Discuss Buyer's rights against Home in the circumstances.

III

Oil Company owned numerous oil and gasoline service stations which it operated by leasing agreements with individual proprietors. Insurer insured Oil Co against liability for bodily injury suffered by any person as a result of any accident on the service stations premises. The policy stated that assault and battery constitutes an accident except when committed by or at the direction of the insured. Subsequently Oil leased a station to Tenant, the lease providing that, "Lessor shall pay for fire insurance and for liability insurance for bodily injury and property damage to others occurring on the premises." While operating the station, Tenant engaged in argument with one, X, whom he struck and seriously injured. X commenced action against Tenant and Oil Co, alleging assault and battery of Tenant and his agency for Oil Co. When notified, Insurer negotiated a settlement of the claim against Oil Co which compensated X for his damages and X's suit was discontinued. Insurer, as subrogee, now seeks indemnity from Tenant. Discuss Tenant's position with regard to Insurer's claim.

IV

Uncle, a man without either property or income, was occasionally employed to tend the furnace in a small apartment house belonging to Nephew, and he also did odd jobs around the place, sleeping in one of the rooms occupied by Nephew's family or in the basement. Occasionally Nephew loaned sums to Uncle by way of advances on Uncle's pay, the total amount outstanding at any one time never exceeding \$200. Four policies of insurance, each in the face amount of \$2,500, had been issued by defendant Insurer on the life of Uncle, each at a different time within a period of 3 years. The designated beneficiary of each was Uncle's estate, but in each case the policy had been assigned by Uncle to Nephew 3 to 6 months after issuance, and thereafter premiums had been paid by Nephew. Uncle died accidentally 9 months after the last of such policies was issued and Insurer refused to pay the proceeds either to Nephew or to Uncle's next of kin, contending lack of insurable interest in Nephew and no right in Uncle's estate. A statute provides for a 10% penalty to be imposed upon an insurer if it has vexatiously and without reasonable cause refused to pay a just claim. Should the penalty be imposed on these facts if a verdict against defendant is ultimately rendered?

V

Cetui's life insurance policy provided that "The Company will pay the beneficiary double the face amount of this policy if death is caused solely and exclusively by external, violent and accidental means, and disease or illness of any kind, physical or mental infirmity, does not directly or indirectly cause or contribute thereto." C's race of his car with a train to a railroad crossing resulted in a tie. C was taken to a hospital in an ambulance for an operation essential to save his life with fair chance of survival. In the course of the operation at the hospital, a spinal anesthesia was administered to him. Paralysis and death followed almost immediately due to an unsuspected hypersensitivity to the anesthetic. The injection of the anesthesia was administered with the technique and of the kind and amount in known and approved use in the medical profession. Discuss the liability of the insurer under the double indemnity provision.

VI

Husband's life insurance policy designated his wife, W1, as beneficiary, the policy providing that "The owner may change the beneficiary from time to time prior to the death of the insured, by written notice to the Company, but any such change shall be effective only if it is endorsed on this policy by the Company," and that "No assignment of this policy shall be binding upon the Company unless in writing and until filed at its home office." H and W1 subsequently divorced, the decree providing a property settlement between the parties and stating that upon transfer of the properties pursuant thereto, neither party shall have any claim on the other party of whatsoever kind, including that for alimony." However, no specific mention of the insurance policy was included in the properties disposed of the decree. Subsequently H remarried and wished assurance that his second wife, W2, would be the beneficiary of his life insurance. W1 had possession of the policy and refused to surrender it. H consulted his attorney as to what might be done in the circumstances and his attorney suggested the following alternatives, each of which you are asked to discuss in the light of whether the advice is well given:

- (a) Do nothing, as the divorce decree will preclude W1 from claiming the proceeds and W2, whom you may assume is H's statutory next of kin, will thereby receive them.
- (b) Provide in H's will, by codicil duly executed, bequeathing the proceeds to W2.
- (c) Execute a written gratuitous assignment of the policy to W2 and file it with the Company.
- (d) Submit a request for change of beneficiary to the Company in writing, with explanation that W1 has refused to surrender the policy, with the hope that the Company will not refuse to acknowledge the change.

VII and VIII

In December, 1961, Cestui, C, visited his doctor, D, complaining of a general run down condition. An office examination revealed the possibility of a serious condition, and D arranged that C go to a hospital for further examination and expert diagnosis. C remained in the hospital for 3 days, undergoing various tests of every nature. The hospital examining staff concluded that C had incurable leukemia, but that it would serve no purpose and might do some harm to so inform him. Consequently, he was released with the advice that nothing was seriously wrong, but that he should take things easy and return in 2 months for further check.

In January C applied for a \$10,000 life insurance policy with L Company. The L soliciting agent, A, helped him in the preparation of Part I of the application, a history of his medical treatment. C told A of his visit to D, of his 3 day admission to the hospital, and the information that he was given upon release. A said that as C had been told that nothing was wrong with him, he might just as well state only his visit to D for routine check up and let the Company follow it up if they chose to; that if he should state the hospital stay, it might cause considerable delay in the issue of the policy. C accepted this advice and in answer to the questions "Have you ever had an electrocardiogram? an x-ray examination? your blood examined? and if so, state why, date and by whom", C answered "yes" to all three, "for routine examination in December, 1961, conducted by family doctor, D." That same day Part II, the medical examination of C was completed by a L Co physician without detection of C's true condition, leukemia not being readily detectable. In February C returned to the hospital as scheduled and was again examined, but this time also given specific treatment for 2 days, the nature of which he was not told. He was then again informed that he seemed to be in reasonably good condition and to return again in 2 weeks. In early March C was issued the policy and in June he died of leukemia. Discuss the success potential of an action by beneficiary, B, to be paid the proceeds by L Co, who denied liability, asserting misrepresentation and concealment.

IX and X

On June 15 Grocer completed construction of a business premises to be operated as a grocery store and so advised Agent, asking Agent to give him \$20,000 fire coverage for one year to commence immediately. Agent took down the information necessary to identify the premises, the type of business and amount of insurance and told Grocer that he would shortly receive his policy. Agent was a general agent for 2 companies, X Co and Y Co, authorized by each to issue and countersign policies. He handed the memorandum that he had made to his secretary, telling her to fill in the necessary blanks on an X Co form policy dated June 15 at the usual annual premium rate for a grocery store.

On June 20 Grocer received a large stock of fireworks that he had ordered early in the month in readiness to sell for July 4 use, it not being illegal to do so in that locale.

On Saturday, June 30, Agent stopped to purchase groceries at Grocer's store, noted the fireworks on display, and included some in his purchases. Grocer reminded Agent that he had not yet received his form policy and Agent replied that he would take care of it first thing on Monday.

On Sunday, July 1, Grocer's store burned to the ground, the fire becoming uncontrollable when it reached the fireworks display.

On Monday when Agent arrived at his office and asked his secretary about Grocer's policy, she replied that she had inadvertently forgotten about it and also which of the two companies he had mentioned. He told her X Co. The policy was then typed to commence coverage on June 15 and signed by Agent on the standard form which contains the provision that "unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the insured." Although a typical endorsement which general agents are authorized to include at their discretion permits "such use of premises as is usual or incidental to the described occupancy," such was not attached to the form prepared for Grocer.

Before mailing the policy to Grocer, Agent learned of the fire and telephoned X Co home office for instructions. X Co, upon learning all of the facts, instructed Agent not to deliver the policy, contending (a) no policy was in effect binding X Co at the time of the loss, and in any event recovery is precluded by reason of (b) material misrepresentation, (c) concealment of a material fact, and (d) suspension of coverage by increase of hazard. Discuss the merits of each of these contentions in the circumstances.