1968

Insurance: Final Examination (August 21, 1968)

William & Mary Law School

INSURANCE

FINAL EXAMINATION

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1. In its sales contracts, described as "warranty and adjustment agreements", the Tire Company, a manufacturer of automobile tires, agreed that the Company's tires would give satisfactory service under ordinary conditions of wear and tear. The contract also bound the Company to repair or replace, if necessary, any tire sold by it, but punctures, blow-outs, injury from collision, cuts by chains or rims, and theft were expressly excepted. Proceedings by way of quo warranto were instituted against the Tire Company on the ground that the Company was doing an insurance business and hadn't complied with an applicable state statute which imposed certain requirements upon the doing of "an insurance business", but did not define what constitutes "an insurance business." How should the court rule?

2. Richards insured his life for $10,000, making the policy payable to Parke, an old friend. With the consent of Richards, Miss Arnold, to whom Richards was engaged to be married, also insured his life, for $15,000. Richards owed Bennett, $1,000. Richards agreed to the writing of an insurance policy on his life in the sume of $6000, with Bennett as beneficiary. Richards paid the premiums on all three policies. Later, Richards broke off his engagement to Miss Arnold. Richards paid Bennett $500 on account of the debt. The premiums on all the policies had been paid in full on the death of Richards. May (1) Park, (2) Miss Arnold, and (3) Bennett recover on their policies?

3. On March 14, 1965, Beaumont applied for a policy in the sum of $500 on his life, naming his wife as beneficiary. The application contained the following provisions: "The insurance hereby applied for shall not take effect until (1) a written or printed policy shall have been actually delivered to and accepted by me, while I am in good health, and (2) the first premium thereon paid in full during my lifetime.

Beaumont was in good health at the time of making the application. No medical examination was required. The full semi-annual premium was $16.00. Beaumont paid Adams, agent for the insurance company, $12 (the net premium less Adam's commission) and promised to pay Adams the balance in monthly installments. Beaumont's application was mailed by Adams to the home office of the insurance company, where it was received March 16, 1956. A fully executed policy was written up, the application was incorporated in it, and both were mailed to Adams, with a letter from the Company, instructing him "not to deliver the policy unless the applicant is in good health, and to make a personal investigation, returning the policy at once if the applicant is found to be ill, or has been ill since the date of the application." This letter and the policy were received by Adams on March 20, 1956.

Adams did not go to Beaumont's home until April 4, 1956, when he learned that Beaumont died on April 1, 1956, as the result of an accidental discharge of a shot gun on that day. Adams kept the policy and returned it to the home office. The beneficiary, Mrs. Beaumont, tendered the balance of the premium. The Insurance Company denied liability. Mrs. Beaumont sued the Insurance Company to recover the sum named in the policy. How should the court rule?

4. In taking out insurance on his life, in the sume of $5000, payable to his wife as beneficiary, Kerr signed an application containing the following provision: "It is hereby warranted that the following are fair and true answers to the questions in this application, and form the basis of a policy if one be issued later. Any suppression or concealment will render the policy null and void.
Question 1. Has any application of yours for insurance ever been rejected?
Answer. No.
Question 2. What medical or surgical attention for illness have you had in the last five years?
Answer None.
Question 3. Give the name and address of each physician consulted by you during the past ten years, and the cause for consultation.
Answer Dr. Smith, 345 Main Street, Elmville. Nervousness."

The policy issued on this application contained the following provision:
"This policy is issued on the express agreement of the Company to pay the sum specified in consideration of the representations made in the application, hereto attached and made part of this policy."

Kerr was examined by the physician for the Insurance Company, who passed him for life insurance. Four months after the policy was issued and delivered to Kerr, and after he had paid the first semi-annual premium, he was killed in an automobile accident. The Insurance Company refused to pay, contending that the answers to Questions 1, 2 and 3 in the application were false. The answer to question 1 was false, said the Company, because Kerr failed to state that five years before he had applied for accident insurance, and had been rejected. In the answer to Question 2, he failed to state that, two years before, he made several visits to a doctor for treatment of a skin infection. This, however, had not been serious and had cleared up in a few weeks. In the answer to Question 3, he failed to state that, in addition to consulting Dr. Smith he had consultated Dr. Jones four years before, who sent him to a hospital for two weeks for paratyphoid. Shortly after Doctor Jones had sent Kerr to the hospital he was discharged, because the examination showed that he was not suffering from paratyphoid. In answering all the questions, Kerr acted in good faith. In answering Question 1, he did not mention he application for accident insurance, because, he thought it was a different form of insurance from life insurance. In answering Question 2, he thought that "medical attention" meant treatment in the patient's home by a doctor where the patient was too ill to go to the doctor's office. In answering Question 3, he did not mention Dr. Jones or paratyphoid since he had been found not to be suffering from the disease. In a suit filed by the beneficiary against the Insurance Company on the policy, how should the court rule?

5. On leaving her home for a short while, Mrs. Bliss hid $150 in currency and her diamond ring in the sitting room stove. She did this because she thought that burglars would not look in the stove for valuables. That evening, forgetting what she had done, Mrs. Bliss lighted a fire in the stove. The currency was burned up, the diamond in the ring destroyed, and the ring damaged. May Mrs. Bliss recover for these losses under her fire insurance policy in the usual form.

6. Ostrander's policy, which he took out on his own life, on August 4, 1954, payable to his wife as beneficiary, contained the following provision:

"The death of the Insured, whether sane or insane, by his own hand or act, within two years from the date of this policy, is a risk not assumed by this Company."

In another part of the policy the following provision appeared:

"This Policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for failure to pay premiums."

Ostrander paid the premiums for three years at the time he took out the insurance. On June 1, 1956, he killed himself with a revolver. On August 6, 1956, the Insurance Company commenced an appropriate action against the widow-beneficiary seeking to have the policy declared void on the ground that Ostrander had committed suicide and that this discharged the Company by the express provision of the policy. The widow beneficiary moved to dismiss the action. How should the court rule?

7. Wood was often unable to sleep at night. At such times he was accustomed to get from his family doctor a prescription for a remedy. Unable to sleep on the night in question, Wood went to his family doctor and asked for" the usual prescription." The doctor said: "I will prepare something for your here." He compounded a dose of luminal, regualarly prescribed for nervousness and sleeplessness. By mistake, the doctor prepared an overdose. Wood drank the mixture, and died two or three hours later. He had an accident policy, payable to his wife, as beneficiary. The pertinent provisions read as follows:

"The Charter Oak Insurance Company hereby agrees to pay the beneficiary named herein ten thousand dollars in the event of the insured's death from accident. Death from accident means death resulting solely from injuries caused directly, exclusively and independently of all other causes, by external, violent and accidental . . means, accompanied by an external and visible mark, *** but does not include death resulting from or caused, directly or indirectly, from the taking of any poison. * * * In case of injury, fatal or disabling, immediately notify the secretary of the Charter Oak Insurance Company of New York, N.Y. By failure to notify, except because of unconsciousness or physical inability, the insured or his beneficiary in case of death, shall forfeit all rights to insurance."

It was not possible to complete an autopsy to determine the cause of Wood's death for about ten days afterwards. When completed the autopsy and laboratory tests showed that his death was caused by an overdose of luminal. Two weeks after Wood died, Mrs. Wood, the beneficiary, gave the insurance company notice, in writing, of his death. The Company refused to pay. Mrs. Wood sues the insurance company to recover $10,000 on the policy. How should the court rule?

8. Evans owned and operated a dairy farm. He insured the dwelling house on the farm with the State Insurance Company, against fire loss or damage, in the sum of $1000. The policy contained the following provisions:

"If the insured shall mortgage or otherwise encumber the property insured, without notice to and consent of the company endorsed hereon, this policy shall become null and void."

"This entire policy shall be void * * * if any change, other than by the death of the insured, shall take place in the interest, title or possession of the subject of the insurance (except change of occupants without increase of hazard); * * *"

Evans paid the premiums in advance for two years. Six months after taking out the insurance, he placed a mortgage on the farm with Bliss as mortgagee, without notifying the insurance company and without its knowledge. In September of the same year, he sold the land to McGillivray, and, a few days later, transferred the fire insurance policy to him, without any additional consideration. McGillivray took the policy to Adams, agent for the State Insurance Company. He endorsed on the policy the consent of the insurance company "to the assignment, subject to all the provisions of the policy." At that time the insurance company had no notice or knowledge of the mortgage to Bliss. McGillivray was fully informed of the mortgage when he bought the farm and assumed the debt. Two months later the dwelling house burned down. After the fire, the insurance company learned, for the first time, of the mortgage. The company refused to pay, contending that, by placing a mortgage on the property, Evans had violated the provision which expressly made the policy void, and therefore could not recover, and that McGillivray, as assignee, could take no greater rights than Evans had under the policy.

McGillivray sued the insurance company to recover $1000. How should the court rule?

9. As he was accustomed to do, Cameron left his car, about 7:30 o'clock p. m., in a parking lot operated by Davis, intending to go to the theatre. Davis gave him a claim check, acknowledging delivery of the car. When Cameron called for his car about 10 o'clock the same evening, it could not be found. It transpired that Davis had taken the car for a joy ride, with several friends, intending to bring the car back the same evening, by the time Cameron called for it after the theatre. On the joy ride, Davis carelessly collided with a telegraph pole, while travelling at a high rate of speed, and the car was badly damaged. Cameron held a theft policy on the car, in the sum of $1000, the insuring clause of which read as follows:

"Theft (Broad form). Loss or damage to the automobile caused by Larceny, Robbery or Pilferage."

The car was worth approximaterly $1200. To put it back in the same condition as before the accident, would cost about $500. Davis induced Cameron to accept $300 in cash, in full settlement, and Cameron gave him a release under seal. Then Cameron sued the insurance company to recover $200, the balance of $500, the measure of damage to the car. The Company refused to pay, contending (1) that the damage to the car was not due to theft, because Davis was not guilty of theft at common law, since he did not intend to deprive Cameron permanently of his property in the car, and (2) even if the Company was prima facie liable, Cameron had deprived the company of its right to subrogation by settling with Davis, albeit for a sum less than the actual loss. Therefore, he could not call on the insurance company to pay him anything. How should the court rule?