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INSURANCE EXAMINATION

August, 1971

Professor Fischer

1. Va. Code § 38.1-381 provides, inter alia, as follows:

- (a) "No policy...of bodily injury liability insurance,...covering liability arising from the...use of any motor vehicle...,shall be issued or delivered in this State to the owner of such vehicle,... or shall be issued or delivered by any insurer licensed in this State upon any motor vehicle,...then principally garaged...or principally used in this State, unless it contains a provision insuring the named insured...against liability for...injury... within the coverage of the policy...."
- (b) "Nor shall any such contract or policy relating to...use of a motor vehicle be so issued or delivered unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle...."
- (c) "...the term "insured" as used in subsections (b),..., means the named insured and,...a guest in such motor vehicle...."

The named insured (Lover, herein) was a resident of D.C. His application for a liability policy was completed and signed in D.C. In the application he stated that the car would be principally garaged at his home in D.C. and that it would be used for transportation to and from work in D.C. and for pleasure. The agent who took the application was an employee (agent) of an Arlington, Va. insurance agency, with offices in Arlington, but not in D.C. The agent, upon completion of the application, took it to the Travelers Insurance Co. office in D.C., where it was processed and a policy issued in due course of time. The policy was mailed to the insurance agency for unconditional delivery to Lover. The insurance agency mailed it to Lover. It did not contain an uninsured motorist endorsement.

While driving his girl friend (P herein) home in Virginia, a hit and run driver hit Lover's car, injuring P. Lover is not charged with any negligence. P now sues Travelers on a judgment she recovered in a prior action, in which Travelers did not defend anyone because it denied liability. Travelers is licensed in Va.

Among other things the evidence in the prior action showed that the car was, after the purchase of the policy, used more in Virginia than in D.C.

- 1) Whom did P sue in the prior action? 2 points
- 2) Where was the policy delivered? 3 points
- 3) In order for P to claim the benefit of the statute making its provisions a part of the policy, what must she show under the cited portion (paragraph (a)) of the statute? 8 points
- 4) On what grounds does Travelers, therefore, deny liability? 2 points

2. Sequence of events:

- a) For several months prior to 5/19/69 Happily Married (H.M.) and Honest Construction Co. (C.C.) conferred together and reached certain understandings regarding a home to be built by C.C. for H.M.
- b) On 5/19/69 formal contract between the two was signed (Turnkey contract)

- c) On 5/13/69, in anticipation of such contract, C.C. obtained a builder's risk policy (including loss by fire) from the Welsh Insurance Co. (Welsh) to give coverage during the period of construction.
- d) On 5/21/69 H.M. obtained a monetarily sufficient fire policy from the Instantpayoff Insurance Co. (Instant) to cover the dwelling then under construction and thereafter for three years, naming the Available Wampum Savings & Loan Association (Wampum) as payee (to the extent of its interest) in the standard mortgage clause. Wampum lent H.M. \$10,000 for the construction and took a mortgage on the property.
- e) H.M. made progress payments to C.C., prior to 7/15/69, of \$9,000 leaving at that time a balance of \$3,000 to become due upon completion of the job (i.e. on 7/15/69 the construction was 9/12th complete).
- f) On 7/15/69 a fire damaged the dwelling to the tune of \$6,000.
- g) C.C. repaired the damage and completed the dwelling and H.M. paid him the balance (No dispute as to the bona fide cost of repair of \$6,000).

Additional facts:

- a) The contract (b above) contained inter alia, the following:
 - "H.M. agrees to procure and maintain in full force and effect a fire insurance policy in an amount sufficient to fully protect these improvements at all times during construction".
 - b) Neither H.M. nor C.C. knew of each other's insurance.
 - c) C.C. filed timely notice of loss against Welsh. Welsh denied liability. C.C. then did not bother filing proof of loss within 60 days after fire, as required by policy and sues for recovery.
- A. You represent Welsh. Argue its case. Then refute these arguments. 15 points
 - B. H.M. did not file claim against Instant. Could he have successfully? Argue pro and con. 10 points
 - C. Does Wampum have any claim? Explain. 5 points
3. Honest John visited his family doctor for a checkup. Family doctor gave him a good examination, found him OK, but advised him to go to Johns Hopkins for a thorough testing. Honest John did so; it was there discovered that he had a rare disease, terminal within 2 years. Hospital policy is not to divulge such information to patient, but only to next of kin, in this case John's wife, Jane. Jane was so informed. Honest John left the hospital thinking he was OK. A few weeks later he applied for a life policy from the Goodhands Life Insurance Co. The agent of said Company was filling out the application form and when John answered the question "have you been examined by a doctor or been in a hospital within the past year?" in the affirmative, agent advised him to say "no", since it would only delay issuance of policy and since both doctor and hospital found him OK what harm in a "white lie". Honest John assented and agent put down "no". (Jane was present but said nothing). Jane was named beneficiary of policy. Then John was examined by Insurance Co. doctor, who found him OK and submitted part II of application. Policy was issued.

Eight months later John was accidentally electrocuted in the bathtub. After proof of loss was submitted by Jane, Goodhand investigates and discovers visit to, and discovery by, Johns Hopkins, and denies liability on grounds of misrepresentation and tenders back the premiums paid.

Is Goodhands liable under each of the following statutes?

- a) Misrepresentations...shall not prevent a recovery under a life policy unless:
1. Fraudulent.
 2. Material either to acceptance of the risk, or to the hazard assumed by the insurer.
 3. The insurer in good faith would...not have issued the policy... if the true facts had been made known to the insurer...

4 points

- b) No misrepresentation...shall defeat or void the policy...unless such misrepresentation is made with actual intent to deceive, or unless the matter misrepresented increased the risk of loss.
4 points
- c) No misrepresentation shall avoid the policy unless such misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract. A misrepresentation that an applicant for life...insurance has not had previous...consultation or observation...shall be deemed, for the purpose of determining its materiality, a misrepresentation that the applicant has not had the disease...which was discovered...as a result of such consultation or observation. 6 points
- d) No misrepresentation made in obtaining...a life insurance policy ...shall be deemed material or render the policy void unless the matter misrepresented shall have actually contributed to the... event on which the policy is to become due and payable. 1 point

NOTE: Statute a) does not define the word "material".
Statute b) does not elaborate on the phrase "matter misrepresented"

4. Mrs. Nouveauriche had her mink fur stored at the Wefleecethem Cleaners & Dyers. The receipt they gave her stated that they are not responsible for damage due to fire. Wefleecethem had a fire policy which covered "goods the property of the insured...also on insured's interest in and legal liability for property held by insured...on storage or for repairs". A fire destroyed the building and contents (what else did you expect?). The fire was caused by a short circuit in an old electric motor which had been used for years in the dyeing process. The evidence in the trial court established as a fact that this old type motor accumulates dirt and dust very quickly within the motor that caused the short circuit. Newer motors have safety devices preventing such accumulation. The defendants are (jointly and severally) Wefleecethem (W) and the Insurance Co. (I).

- a) What defenses does W set up? 4 points
- b) What defenses does I set up? 5 points
- c) How would you rebut these defenses? 7 points
- d) If you are successful against both, as between the two defendants who actually bears the loss? Why? 4 points

5. The Magnanimous Bank & Trust Co. (M) has a blanket bond policy on its employees with the Don'tcovercriminals Assurance Co. (D). The policy covers M against defalcations by employees. One of the conditions (warranty) of the policy is that M shall thoroughly investigate each prospective employee and never hire one that has been charged with or convicted of any crime (whether felony or misdemeanor). The State of Forgiveandforget, in which M is located, put on a campaign for rehabilitation of penitentiary parolees and requested M to hire Ifoolthemall (I), a recent dischargee from the "Free State Hotel." M complied. Among others, Honestogoodness (H) is also an employee of M. H never committed a crime in his life.

In due course of time it was discovered that I embezzled \$5,000.00 and H embezzled \$50,000.00, both figures being within coverage limits. M applies for reimbursement from D. D denies liability. What result? (Discuss the results in light of the several (jurisdiction) philosophies in re warranties). 10 points

6. a) What is the difference between an "approval" type binder and a "satisfaction" type binder. Illustrate. 4 points
- b) What is a "work and materials" clause. What is its significance? 3 points
- c) What is meant by the expression "the duty to defend is not coextensive with the duty to pay"? 3 points