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Insurance: Final Examination (May 27, 1972)

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INSURANCE

FINAL EXAMINATION

Mr. Fischer

May 27, 1972

1. P, a lessee of vacant land under a year to year tenancy terminable upon thirty days notice by the lessor, erected a building on the leased land at his own expense. The lease gave P the right to remove the building within five days after notice of termination of the lease. In the event of failure to remove, the building was to become the property of the lessor. P took out fire insurance on the building from D insurance Co. in a certain amount, limited to "in no event for more than the interest of the insured". Subsequently, the lessor served notice on P to remove, and, after a summary proceeding to dispossess, a final order and warrant were served on P. By this time the five day period has long since expired. P decided to demolish the building. Shortly after this decision the building burned to the ground (mirabile dictu!). P now sues D to recover the actual cash value of the building.

Should the facts of the dispossess order and decision to demolish be admitted in evidence? If so, for what purpose? Answer in light of the two opposing views as to what an insurance claim relates to. (10 points)

2. Hartford Insurance Company issued an auto liability policy to Mrs. Careful which had, among others, the following provisions:

a. omnibus clause,
b. obligation of Insurance Co. to defend suits against any insured under the policy
c. non-owned auto coverage: if an insured (under this policy) drives a non-owned car with permission of its owner, this policy covers such insured.
d. limit of $20,000 for bodily injury for each person in an accident.
e. as to non-owned autos, the coverage was excess insurance over any other valid and collectible insurance.

Carolina Insurance Co. issued an auto liability policy to Softinthehead, which was identical to the Hartford policy, except that it had a limit of $10,000 for bodily injury for each person in an accident.

Careless, son of Mrs. Careful, was driving Softinthehead's car, with his permission, when, due to his (Careless') negligence he struck another car occupied by Mrs. and Miss Luckless (or should it be 'Lucky'?). Mr. Luckless brought suit against Careless for injury to his wife in amount of $5,000, and injury to his daughter in amount of $10,000. Carolina settled these claims. Miss Luckless brought her own suit against Careless in amount of $40,000. Both insurers at first assumed that her injuries were not severe. It developed, however, that they were very severe. Carolina concluded that the case was one for settlement and that a reasonable settlement would be in excess of its limits and hence would involve the Hartford coverage. Carolina notified Hartford of its position and agreed to contribute its limit of $10,000 to any settlement that could be effected by Hartford. Hartford, at first, refused to take over the defense of the case but insisted that Carolina continue to defend the action. Carolina then entered into a binding agreement with the attorney for Miss Luckless to pay $10,000, all costs and expenses of the litigation to that point, regardless of the outcome of the suit. Carolina
with leave of Court, and with consent of Careless, withdrew from the defense of the action, and Hartford took over the defense. Judgment for Miss Luckless in amount of $33,000. Carolina paid its $10,000, Hartford its $20,000. Now Hartford sues Carolina for its cost of the defense of the action following the withdrawal of Carolina therefrom.

A. On what two grounds would Hartford base its suit on? (10 points)

B. Should it win on either one? (10 points)

3. Mr. Hothead owned a nightclub on which he took out two policies: a fire policy and a public liability policy. The fire policy was a standard one, however, it had a special provision typed into it: "neither illumination nor heat shall be provided on the insured premises by any device using an open flame." The usual non-waiver clause, of course, was also in the policy. The liability policy, among others, had the following clause in it: "assault and battery shall be deemed an accident, unless committed by or at the direction of the insured." When the agent delivered the policies, Hothead looked at them and noticed the typed provision. He pointed out to the agent that he used candles for lighting the individual tables. The agent examined one of the candle holders and said that "it's all right, the glass globe around the candle encloses the flame, so it's not an open flame." The globe, of course, had an opening at the top.

One night Hothead was circulating on the floor and noticed that Mr. Ilikeliquor was more than slightly inebriated and asked him to leave. Ilikeliquor got up from the table, took a swing at Hothead, missed, fell across the table and knocked the candle onto the sawdust floor. Hothead grabbed him by the collar, dragged him to the door and threw him out, but by the time Hothead got back to the candle the sawdust caught on fire which spread so fast that it caused $3,000 damage before it was put out.

Subsequently, Ilikeliquor filed suit against Hothead alleging assault and battery in the pleadings.

Hothead notified the liability insurer, which declined to defend on grounds that there was no coverage for assault and battery committed by the insured. (The true facts were explained to insurer, but it stood its ground on the basis of the pleadings.)

Hothead filed claim with the fire insurer for the fire damage. It refused payment on the ground of the "open flame" violation.

A. What is the legal term or insurance—law term applicable to the typed provision in the fire policy? (2 points)

B. Give at least two arguments for insured on the fire claim. (5 points)

C. Give at least two arguments for insurance company's denial of the fire claim. (5 points)

D. Give liability insurer's argument for refusing to defend. (3 points)

E. Rebut this argument. (5 points)

4. Mover (M) contracted to move Owner's (O) house from one part of the city to another for $5,000. In preparation thereof, M expended $700. O has an existing fire policy on the structure in amount of $10,000, containing the standard New York phraseology, including a loss payable clause payable to anyone with an interest
therein. During the move the house collides with a gasoline tanker and burns to a total loss. M was not negligent in this accident.

A. What **specific** contract provisions will the insurance company rely on to avoid *any* liability under the policy? (10 points)

B. Assuming that it loses on those defenses, what general insurance law concept(s) will it argue to deny liability to M (as distinguished from O)? (10 points)

C. Assume that M took out a policy of his own. What kind of a policy should it have been? Under that policy, for how much would the insurance company be liable to M? Explain. (5 points)

D. If M did have a policy, what **specific** provision would O's insurer try to rely on to eliminate or reduce its liability to M? Why would this defense fail? (5 points)

5. M applies for theft insurance upon his merchandise. Thinking that it would help him to obtain the insurance, he tells the company that he has the largest business in town, though he knows that his competitor B has the larger trade. He also states that he is solvent. The fact was that he was insolvent, because of his liability as indorser on the matured note of C for $10,000. M's answer was made in good faith, however, as he had inquired of C, who told him falsely that the note was paid. The policy is issued. A loss occurs and you represent the insurance company. Under the following statutes, argue why either or both misrepresentations will sustain denial of claim.

A. Misrepresentations, unless material or fraudulent, shall not prevent a recovery on the policy. (2 1/2 points)

B. No misrepresentation shall defeat the policy unless it shall have been made with actual intent to deceive. (2 1/2 points)

C. No misrepresentation shall avoid the policy unless the matter misrepresented increased the risk of loss. (2 1/2 points)

D. No statement in such application shall bar recovery upon a policy of insurance unless such statement was material to the risk when assumed and was untrue. (2 1/2 points)