1973

Insurance: Final Examination (May 18, 1973)

William & Mary Law School

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I. Slipfoot, an employee of the Slick Water Softening Company, was delivering a water softener to the home of Bathtubring. While carrying the softener down the basement stairs, the stairs collapsed and Slipfoot was seriously injured. It is stipulated that the proximate cause of the accident was the negligent maintenance of the stairway. Mr. Bathtubring directed Slipfoot as to where he should take the materials.

Lumbermens Insurance Company insured Bathtubring with a Homeowners policy, and after being sued by Slipfoot paid him $17,000.00 for his injuries. Lumbermens then instituted a suit against Neverpayoff Insurance Co., which had a liability policy on the truck which Slipfoot drove to the premises. The appropriate section of that policy contained the same wording as the policy in your casebook, page 691. It also contained conditions which appear in all property and liability insurance policies.

(a) Under what general principle does Lumbermens have standing to sue? (A one word answer will suffice) 2 points

(b) Under what specific provisions of Neverpayoff does Lumbermens claim reimbursement? 5 points

(c) What decision? 3 points

II. P has a Homeowners policy which contains the following provisions:

**COVERAGE C -- UNSCHEDULED PERSONAL PROPERTY**

1. On premises: This policy covers unscheduled personal property usual or incidental to the occupancy of the premises as a dwelling, owned, worn or used by an insured, while on the premises, or at the option of the Named Insured, owned by others while on the portion of the premises occupied exclusively by the Insured.

This coverage does not include: animals, birds, automobiles, * * *

2. Away from the premises: This policy also covers unscheduled personal property as described and limited, while elsewhere than on the premises, * * *

P sues the insurance company to recover for a loss of an automobile stereo tape player, stereo tapes, and a stereo tape case stolen from his car when the car was parked in his driveway. Evidence during the trial disclosed the following:

1. The 8 track stereo tape player was primarily designed for use in an automobile and was installed in the vehicle by cutting holes in the glove compartment and rear seat panel shelf and bolting the speakers into place. The stereo tapes could be played only on an 8 track player; P only had a 4 track player in his home.

2. The agent who took the application for the policy told P that unscheduled personal property stolen from his car is covered by the policy.

What decision? 5 points

III. The payroll robbery policy in issue provides as follows:

"This policy is effective only while the payroll is in the care of a custodian who, when outside the premises of the insured, is accompanied by at least 2 guards (1 guard is armed)."
A payroll was being carried from the bank to insured's premises. The car occupied by the custodian with the payroll and a chauffeur, both unarmed, was intercepted by robbers at the street corner while the car was waiting for the traffic light to change to green. Halted in traffic, a couple of blocks behind, at that time, was an armed employee of insured driving another car, endeavoring to follow (and protect) the custodian's car. He learned of the robbery hours later. There was no attempt by the custodian to maintain contact with the armed employee.

You may assume that the chauffeur was one of the required guards.

The insurance company denies liability because of a breach by insured.

(a) What breach is the insurance company referring to—a general concept is what I am referring to (a one word answer will suffice). 2 points

(b) Discuss this general concept generally. 5 points

(c) American Courts (as distinguished from statutory changes) have interpreted this principle in at least four different ways. Under two of these interpretations the insured would win. Which are they, and why would insured win? 7 points

Under one, and perhaps two, of these interpretations insured would lose. Which are they, and why would insured lose? 6 points

IV. Bailee was a jeweler in business in Coral Gables. Bailor was a jeweler in business in Miami. Bailor sent a very valuable ring to bailee on consignment for sale. The ring was kept in the ring box (like a tiny safe) which was kept in the safe (thus we had a safe-within-a-safe protection). However as of 6/20 the ring box, as a matter of business convenience, was kept on a shelf within the safe, rather than in the locked compartment of the safe. The evidence proves that at noon on 6/23 (Saturday) the ring box was there. However, on Monday 6/25 it was not. The evidence also proves that on Saturday afternoon a man was browsing in the store for about 20-30 minutes and was seen within the vicinity of the safe. Witnesses later identified the man (from mugshots) as Harry the internationally known jewel thief. It was not proved that he in fact stole the ring. The safe door was ajar when Harry browsed thereabouts.

Bailee has a Jewelers Block Policy covering all risks on merchandise owned by him, and articles belonging to customers and other dealers, but as to the latter "only to the extent of the Assured's legal liability for loss or damage thereto". Furthermore, this policy has the following provisions:

Exclusions from coverage:

Unexplained loss, mysterious disappearance or loss or shortage disclosed on taking inventory.

Other insurance:

It is understood and agreed that any insurance granted herein shall not cover (excepting as to the legal liability of the assured), when there is any other insurance which would attach if this policy had not been issued, whether such insurance be in the name of the assured or of any third party. In such cases this policy shall be excess insurance.

Bailor had an insurance policy of his own which covered the loss of the ring.

Bailee's claim for the loss is rejected by his insurance company.

(a) Argue the issues (there are at least 3) of the insurance company. 15 points

(b) Rebut these arguments. 10 points
V. The insured owned a building on leased land. He had five days in which to remove the building after termination of the lease; failure to do so would cause the building to become the property of the lessor. On 3/6 the lessor gave proper notice of termination (effective 4/6), but insured did not move his building. On 5/2 summary proceedings to dispossess commenced; on 5/26 he was served with a final court order to move it; insured then made arrangements to have the building demolished. On 6/11 the building was burned to the ground. (What else?) Insured has a fire policy that insures him to the extent of the cash value of the property at the time of loss but in no event for more than the interest of the insured.

Discuss the rights of the insured in light of the three philosophies applicable to the main issue in this case. 20 points

VI. Sinev Athlete had a very mild heart attack in 1967 for which he was hospitalized for 10 days. But thereafter he returned to his vigorous athletic life (he was a professional football player) and gave no indication that he ever considered the mild attack seriously. In fact, medical evidence is that he is healthy as an ox. In 1971 he applied for life insurance and the application asked numerous questions about his medical history, including whether he was hospitalized during the past 5 years. He answered all the questions correctly, but on the hospitalization question he answered "no". It is not inconceivable that he forgot about it. The policy was issued in due course of time. Two months later, he was murdered.

Determine whether under the following statutes his beneficiary can recover or not (explain the reasoning in your determination):

(a) Virginia

§ 38.1-336. When answers or statements of applicant not to bar recovery on policy.--All statements, declarations and descriptions in any application for a policy of insurance or for the reinstatement thereof shall be deemed representations and not warranties, and no statement in such application or in any affidavit made before or after loss under the policy shall bar a recovery upon a policy of insurance, or be construed as a warranty, anything in the policy to the contrary notwithstanding, unless it be clearly proved that such answer or statement was material to the risk when assumed and was untrue. 3 points

(b) Massachusetts

Page 125 in your casebook. 3 points

(c) Ohio

Page 125 in your casebook. 3 points

(d) Florida

Page 126 in your casebook. 3 points

(e) Arizona

Statements as representation; effect of misrepresentation on policy. All statements and descriptions in any application for an insurance policy or in negotiations therefor, by or in behalf of the insured, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless:

1. Fraudulent.

2. Material either to the acceptance of the risk, or to the hazard assumed by the insurer.
3. The insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise. 3 points

VII. Explain the statement:

The duty to pay is not coextensive with the duty to defend. 5 points.