



**THIRD YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2022/2023
(SEPTEMBER-DECEMBER, 2022)**

LLBK 317: INSURANCE LAW

STREAM: LLBK Y3 S1

TIME: 2 HOURS

DAY: FRIDAY, 3:00 – 5:00 P.M.

DATE: 23/12/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

You are a well-known insurance law practitioner in the Republic of Kenya. You have been invited to give a lecture to students of the Kenya School of Law on the elements and nature of insurance contracts. Write down an outline of your lecture taking note of the main elements and peculiar nature of insurance contracts. (30 Marks)

QUESTION TWO

- a) Andrew owns a house at Karen in Nairobi valued at sh. 200 million. He insured it against fire with Linda Mali Insurance Co. Ltd and Pokea Insurance Co. Ltd for sh. 150 million and 100 million respectively. He also insured his household goods against burglary with Lipa insurance Co. Ltd for sh. 50 million. One night while he was away, burglars broke into the house and broke into the house, stole all household goods and set house on fire completely destroying it. Andrew claims the sum assured from the three insurance companies. Advise them. (12 Marks)
- b) Explain four categories of insurance covers. (8 marks)

QUESTION THREE

- (a) In *Prudential Assurance Ltd v Inland Revenue Commissioner* (1902) 2 KB 286, court observed that insurance contract involves some amount of uncertainty. Discuss **three** uncertain factors that make the contract be regarded as uncertainty or speculative. (6 marks)
- (b) Expound on the various duties and responsibilities of the insurer and insured in an insurance contract. (8 Marks)
- (c) At what time must the insurable interest exist at the contract of life, fire and marine insurance? (6 marks)

QUESTION FOUR

- a) "A contract of insurance is a contract of *uberrimae fidei* (utmost good faith)." Explain this statement. (8 Marks)
- b) "The fundamental rule of insurance law is that the contract of insurance contained in a marine or fire policy is a contract of indemnity, and of indemnity only, and this contract means that the assured, in the case of a loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified" per Brett LJ in *Castellain vs Preston* (1883) II QBD 380.

With aid of relevant case laws, discuss this statement in relation to the principle of indemnity. (12 Marks)

QUESTION FIVE

- (a) Distinguish between:
- (i) Insurance contract and wagering (4 marks)
 - (ii) Insurance and assurance (4 marks)
 - (iii) Reinsurance and double insurance (4 marks)
 - (iv) Subrogation and contribution (4 marks)
- (b) Felix is insuring her house. She completes the proposal form issued by the insurance company and insurance company issues the policy. Would the company successfully resist a claim made by her later on:
- (i) Because she had not disclosed to them that she had been jailed for theft three years ago? (2 marks)
 - (ii) Because she had not disclosed to them that a neighbour's house had recently been destroyed by fire in mysterious circumstances? (2 marks)