



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

THIRD YEAR EXAMINATION FOR THE AWARD OF THE

DEGREE OF BACHELOR OF LAWS

FIRST SEMESTER, 2023/2024

(AUGUST-DECEMBER, 2023)

LLBK 317: INSURANCE LAW

STREAM: Y3 S1

TIME: 2 HOURS

DAY: FRIDAY, 3:00 – 5:00 P.M.

DATE: 24/11/2023

INSTRUCTIONS

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

QUESTION ONE

Mr. Ponda Mali is an astute businessman in the City of Nairobi within the Republic of Kenya. As a matter of practice, Mr. Ponda Mali insures all his businesses, including a car-sale business against many perils including theft. On 19th August 2023, Mr. Ponda Mali got into a contract for the sale of Motor Vehicle KDF 777F Toyota Harrier with one Ms. Tapeli Supu. The contract stipulated that Ms. Tapeli would pay the total consideration of Kshs 3.7 million via a banker's cheque.

On the same day, Ms. Tapeli issued a banker's cheque for the entire purchase consideration and drove off in the said motor vehicle. When Mr. Ponda Mali presented the said banker's cheque to his bank, Wakora Commercial Bank, the bank informed him that the said banker's cheque was a forgery and illegitimate.

All attempts to recover the said Motor Vehicle by the police were futile as the vehicle was tracked all the way to the Republic of Rwanda after which the tracker was disabled. The Police informed Mr. Ponda Mali that there is a 99% chance the vehicle was stripped down for parts.

Having previously insured the said the Motor Vehicle with Hatulipi Insurance Ltd, Mr. Ponda Mali proceeded to lodge a formal claim for indemnification. Hatulipi Insurance Limited has declined to pay stating that Mr. Ponda Mali voluntarily handed over the log book and the car to Ms. Tapeli Supu. The insurance company further argues that the only loss that Mr. Ponda Mali suffered, was loss of the proceeds from the sale and not loss of Motor Vehicle.

Mr. Ponda Mali has come to you, a renown Insurance Law practitioner seeking a legal opinion on whether he has an arguable claim. Prepare the opinion, taking into consideration case law and statutory provisions. **(30 Marks)**

QUESTION TWO

- a) “ An insurer must disclose to the insured every material circumstance which is known to the insured, and if he fails to make such disclosure, the insurer may avoid the contract” **(Per UAP Insurance Co Ltd versus Lemmy Mutua Kavii (2018) eKLR)**

Using this statement as a point of departure, discuss the duty of an insured person to disclose, expounding on what needs to be disclosed, what doesn't need to be disclosed and what may be judicially presumed. **(15 Marks)**

- b) Discuss the law of large numbers and empirical probabilities, noting down how they apply to the scheme of insurance.

(5 Marks)

QUESTION THREE

- a) On 24th January 2023, Ms. Katoto Kazuri insured her motor vehicle against loss by fire. The cover note and policy document had an exclusion clause that stated that “ ***This policy shall not extend to loss caused by political upheaval or allied causes***” On 18th April 2023, the National Resistance Movement called on the entire country to protest the high costs of living. On 24th April 2023, Ms. Katoto Kazuri was driving her vehicle when, a petroleum truck that was driving ahead was pelted by stones, leading to the tanker

exploding. As a result of the explosion, Ms. Katoto Kazuri's car caught and extension of the tanker fire. Ms. Katoto Kazuri barely escaped with her life.

The insurance company has declined liability to pay arguing that the proximate cause for the loss was political upheaval. Advise Ms. Katoto Kazuri on whether she has an arguable claim to compensation. **(10 Marks)**

- b) Discuss the regulatory mechanism and oversight over the insurance industry in Kenya, being keen to discuss whether the provision of the law is sufficient to prevent insurance fraud. **(10 Marks)**

QUESTION FOUR

- a) With the aid of decided cases, expound on the various duties and responsibilities of the insurer and insured in an insurance contract. **(15 Marks)**
- b) Taking note of the law of general averages/large numbers, set out the distinction between insurance and wager contracts **(5 Marks)**

QUESTION FIVE

Discuss any **TWO** of the following concepts

- a) Subrogation **(10 Marks)**
- b) Proxima Causa **(10 Marks)**
- c) Classification and method of risk management **(10 Marks)**
- d) The distinction between treaty and facultative reinsurance **(10 Marks)**
- e) The distinction between CIF, FOB and C& F contracts **(10 Marks)**