

INSTRUCTIONS

Prepare a well-organized essay concerning the rights and liabilities of ALL PARTIES, including the insurers. Discuss all possible claims and defenses. Include all relevant issues as they relate to each party, and be certain to discuss the relevant minority and majority rules. Be certain to discuss all the relevant legal theories that might provide a basis for denial by each insurer.

Be certain to return the exam question with your response, and note your student identification number on the question as well. ***I will not grade exam responses that do not contain the exam question.*** Also, be certain to note your student identification number, and course name on the front of each blue book. If your response requires more than one blue book, be certain to number each book, (i.e. 1 of 3, 2 of 3, etc.)

Finally, ***do not discuss the exam, its contents, or your response with anyone! Students who violate this policy will receive a failing grade, and will be subject to discipline in accordance to MSL code of student conduct.***

Have a great holiday season, and Happy New Year!

Insurance Law Final Exam – Fall 2013

QUESTION #1

Ashish Patel and his fiancé, Poonam, owned and operated a successful Indian jewelry store in downtown Boston, Massachusetts for three (3) years called “Bombay Jewelers.” Ashish and Poonam specialize in the importation and sale of intricate Indian jewelry laden with gold artifacts. Brides-to-be, who desire to be ensconced in gold during their nuptials, prize many of the pieces they offer for sale. When they started the business, Ashish thought it would be prudent to protect their investment with an intricate Fail-Safe, Inc. alarm system, complete with surveillance cameras and lasers to deter any would-be thieves. The visual images recorded by the surveillance cameras were downloaded to Ashish’s server so that the images could be easily reviewed in the event of a theft. Moreover, if the alarm were triggered, the system would automatically dial Ashish’s cell phone, allowing him to investigate personally. It was a state of the art system and was virtually foolproof.

Nothing could be left to chance however. Poonam knew that an insurance policy protecting the store and its valuable inventory against loss would be essential. Accordingly, she insisted that Ashish contact his cousin, Jahil, an agent for *Metropolitan Insurance Company*. Poonam knew that Ashish and Jahil were very close, and that Jahil would obtain the best premium possible and, indeed, he did! There was one catch however; the binder provided to Ashish contained the following language:

“In consideration of the reduced rate of premium at which the policy will be written, it is made a condition of the policy that, so far as within the control of the Insured, an approved watchman’s service with approved recording system or watch clock shall be maintained at such times as the premises are not in actual operation.”

Upon receipt of the binder, Ashish provided Jahil with a check equal to the first month’s premium. Jahil, for his part, accepted the check and signed the binder on Metropolitan’s behalf, which names “Ashish Patel” as the “insured.” The two shook hands, and parted ways, but not before Jahil assured his cousin that he was indeed “covered.” Ashish was clearly comforted by his cousin’s words, but he was also concerned about the watchman requirement. So concerned in fact, that he confided to Jahil that he (Ashish) could not possibly afford the services of a watchman, and was more than satisfied that his state of the art alarm system would be more than enough to deter any would-be thieves. Jahil assured Ashish that his secret would be safe with him, and that once the policy issued, he could do as he pleased as long as the premium was current. Jahil explained further that the watchman provision was simply legal “boilerplate,” and that he had never seen the company deny a claim on a failure to provide a watchman.

Ashish proudly provided Poonam with a copy of the binder, and although she felt better about things, she secretly worried about how she would get by if Ashish were to die. It was Ashish’s Indian connections after all that provided the low cost inventory and allowed the couple to turn a handsome profit. Accordingly, Poonam contacted Jahil, and instructed him to obtain a life insurance policy naming her as the beneficiary upon the Ashish’s death. Once again, Ashish

succumbed to the wishes of his betrothed, and agreed to the arrangement. On the following day, Jahil provided Ashish, (who would be the policy's owner/insured) with a conditional receipt for a One Million Dollar, double indemnity life insurance policy with What-a-Life Insurance Company, which reads as follows:

The What-a-Life insurance company will provide no insurance, and the policy will not be effective prior to the delivery of a policy. The policy should be delivered no later than thirty (30) days following the insurer's receipt of the insured's application. Except, What-a-Life may provide coverage prior to the policy delivery if and when each and every condition contained in this receipt is met. No agent or broker of What-a-Life is authorized to alter, amend, or waive any of the following conditions:

- 1. The Proposed Insured must be, on the Effective Date, a risk acceptable to What-a-Life under its rules, standards, and practices for the exact policy and premium applied for, without any modification, and*
- 2. The amount of the payment taken with the application must be equal to the amount of the full first premium payment selected.*

Jahil certainly understood Poonam's concerns. He knew that his cousin had a slew of health issues, not the least of which was his failing liver. Jahil was so concerned, in fact, that he advised Ashish to deny anything about his failing health on the application. Ashish nodded in agreement, since he didn't want to disappoint Poonam. Ashish then wrote a check payable to What-a-Life Insurance Company in an amount representing the first month's premium. Jahil then took the check, together with the application, and assured Ashish that he would deliver both to What-a-Life the following day. Truthfully, however, Jahil had no intention of delivering it the following day, since he was planning on boarding a flight to India for a three (3) month vacation.

Approximately two (2) weeks following the above-referenced transactions, Ashish received an automatic phone call from the store's alarm system, advising him that that system had been breached, thereby rousing him out of bed and compelling him to rush to the store. Apparently, while he had been sleeping, a cadre of professional thieves had circumvented the alarm system and managed to abscond with \$250,000.00 worth of valuable inventory. Unfortunately, for our friend Ashish, the thieves were taking no prisoners and shot and killed Ashish when he confronted the escaping felons on their way out the door!

After the shock of learning about the death of her life's love, Poonam remembered (approximately three (3) months after the incident) that there were two insurance policies available to cover her property and personal loss. Accordingly, she filed loss claims with Metropolitan Insurance Company for the theft loss, and What-a-Life for the death claim. In both instances, the respective insurance companies DENIED the claims alleging, *inter alia*, that the policies were not in effect. Alternatively, each Insurance company claimed that the respective applications contained false and/or misleading applications. For its part, What-a-Life specifically referenced Ashish's failure to disclose his liver condition.

Insurance Law Final Exam – Fall 2008

QUESTION #1

Ken Saxton and George Franzi are equal, 50% shareholders of a small, sub-chapter S corporation known as *Acceptable Computer Technology, Inc.* (“ACT”). They are best friends, and have lived next door to each other for years. George and Ken started the company in George’s garage approximately 5 years ago and, by the sweat of their collective brows and a little good luck, the company has flourished. And why shouldn’t it have? The boys are the perfect combination. George is the “fly by the seat of his pants” type who likes high risk gambling, good cigars, and strong whisky. Ken, on the other hand, is an MBA who has a keen eye for the killer deal. The company now boasts \$10 million dollars a year in gross revenue, and employs ten people. The boys are clearly the impetus behind the success of the company, and the loss of either could wreak financial havoc with the company’s outlook. Accordingly, their insurance agent, Arthur Fleecim, has recommended the purchase of two, “key-man” term life insurance policies, each valued at \$10 million dollars.

Fleecim explained that he would obtain the policies through *Whatalife Insurance Company*, (“*Whatalife*”), and that George and Ken would each own one policy. The named beneficiary in each respective policy would be the company, ACT. Upon the death of either, the boys have an agreement, executed by both (and their respective spouses) that will authorize the surviving shareholder to disburse \$5 million dollars to the decedent’s spouse, and deposit the remaining \$5 million dollars in the company’s account. The idea behind this arrangement is to allow the surviving shareholder to purchase the decedent’s shares from the decedent’s surviving spouse. George insisted on this arrangement since Ken’s wife, Myra, loathed George, and his decadent life style. George made it clear to Ken that he did not want to end up with “Broom Hilda” as his partner in the event that Ken “bailed out early.”

The boys each completed and signed applications for the “key-man” life insurance policies. Fleecim filled out the applications for them using information obtained from the boys. If you can believe it, Fleecim actually believed George when he told him that he really didn’t drink or smoke. George even managed to convince the unsuspecting agent that they should memorialize the momentous occasion with a Macanudo cigar and a single-malt Glenlivet scotch! In fact, Fleecim was so convinced of the truth of George’s proclamation, that he listed George as a non-drinker/non-smoker on the application. (Ken couldn’t believe that George had pulled it off!) After reviewing the application, George stated that everything looked fine. Both George and Ken signed their respective applications, and delivered them to Fleecim.

George and Ken then delivered a company check in the amount of \$3,500.00, representing one month’s coverage, and were given a “*Receipt for Application*,” which stated that the money was received “*as payment on application for insurance on Kenneth Saxton and George Franzi.*” The receipt also provided that: “*This receipt is issued for deposit on application for insurance. The policy will be considered in force from the date of the receipt and the Whatalife Insurance Company will assume all liability under the terms of the policy contract.*”

The receipt was dated December 29, 2004. Before leaving, Fleecim assured George and Ken that “everything will be taken care of.”

On December 31, 2004, just two days after the submission of the applications, (and prior to the issuance of the policies), George decided to launch the mother of all New Year’s Celebrations. As you might have guessed, George didn’t make it to midnight. He’d passed out in his room by 11:00 p.m., but the party raged on without anyone noticing his absence. Myra and Ken, on the other hand, were trying to enjoy an intimate New Year’s celebration of their own. They had hoped to sit out in the yard, and reflect on their good fortune by the light of their chimminea, but the raucous crowd next door put an early end to that idea. Enraged, Myra took a log from the pile, and slammed it into the smoldering fire.

Unbeknownst to Myra and Ken, however, the embers from the fire became airborne, and ignited an inferno at George’s house. Tragically, no one realized that George was in the house, and he succumbed in the fire. Moreover, the house and all its contents were completely destroyed. Fortunately, George, who was the sole title holder to the property, had an active policy of homeowner’s insurance through *Patron’s Mutual Insurance Company* (“*Patrons*”). George’s wife (Kathy) was so distraught, however, that she couldn’t even think to respond to the numerous inquiries posed by Patron’s property damage adjuster.

As you correctly guessed, Ken filed a claim for benefits on behalf of ACT against Whatalife, and Kathy, (George’s Wife), filed a claim for benefits pursuant to the Patron’s homeowner’s policy.

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Have a great holiday season, and Happy New Year from George!

INSURANCE LAW – FALL 2005 FINAL EXAM

QUESTION #1

Medco Medical Devices, Inc., (“Medco”), is in the business of designing and manufacturing subdural medical implants, including pacemakers. Specifically, Medco designed and manufactured a pacemaker referred to as the *Cardio 1*. Apparently, the *Cardio 1*, as designed and manufactured, harbored an inherent defect that resulted in the unit failing to trigger when required. This defect, however, only caused the *Cardio 1* to fail sporadically. Accordingly, Medco executives, despite full knowledge of the sporadic failure, chose to allow distribution of the product since the profit margin far outweighed any potential liability.

On May 20, 2000, Wes Lawson was the recipient of a *Cardio 1* pacemaker after suffering his first heart attack at the age of 52. Apparently, Wes had been complaining of chest pain for at least 2 years before the May 20, 2000 attack, but chose to ignore the signs and symptoms. Tragically, on July 6, 2004, some four years after the insertion of the *Cardio 1*, the unit’s inherent defect caused it to fail, resulting in Wes’ untimely demise. In actuality, you learn that Wes became “overheated” during a romantic interlude with his longtime paramour, Angelina.

Thereafter, Wes’ widow, Hilda Cashinin Lawson (“Hilda”), retains your services to help sort through this mess. After questioning her, Hilda discloses that she found a copy of a Term Life insurance policy, issued by *Whata Life Insurance Company*, (“Life Policy”) on April 30, 1999. Her grief, however, prevented her from even opening the envelope. After reviewing the Life Policy, you learn that the named beneficiary of the \$1,000,000 policy isn’t Hilda at all: Its Angelina! Apparently, Angelina was the owner of the policy that clearly insured the life of her sweetheart, Wes! Unbeknownst to Angelina, however, her “little macho man,” Wes, disclosed on Life Policy application that he was the picture of health. In fact, he was so convincing, Whata Life didn’t even bother with the physical.

Your keen, analytical mind leads you to the inescapable conclusion that there are a plethora of avenues to pursue. You advise Hilda that you will advance a products liability claim against Medco seeking “all types of damages”, as well as a claim against the Life Policy. Unfortunately, your subsequent claim against the Life Policy elicits a denial from *Whata Life Insurance Company*. Moreover, you receive a denial from *Aetna Casualty and Surety Insurance Company*, (“Aetna”) on behalf of Medco.

In its correspondence to you, Aetna acknowledges that while Medco was insured at the time the implant was installed, it was uninsured at the time of Wes’ untimely demise. Further, Aetna refers to paragraph 10 of its policy, which provides that it will indemnify Medco “for all sums which the insured shall become legally obligated to pay as damages because of injury or damage to which this policy applies.” They noted further that the policy applies to “injury or damage arising out of: bodily injury or property damage caused by an ‘occurrence.’ An ‘occurrence’ is defined as an accident, event or happening, including injurious exposure to conditions, which results, **during the policy period**, in bodily injury or property damage neither expected nor intended from the standpoint of the insured. Aetna also notes that in addition to its refusal to indemnify, it advises that it will not defend any action brought against Medco.

Accordingly, it directs you to forward all future correspondence/pleadings directly to Medco or its legal representative.

Prepare a well-organized essay concerning the rights and liabilities of all parties to this sordid affair. Include all relevant issues as they relate to each party, and be certain to discuss the relevant minority and majority rules. Also, be certain to address all the relevant legal theories that might provide a basis for denial by each insurer.

IMPORTANT: Return your exam question with your essay!

Have a great holiday season, and Happy New Year!