QUESTION 1 – 25 MARKS

(1) Sections 53 and 59 of the Long-term and Short-term Insurance Acts of 1998 (like their predecessor, section 63(3) of the Insurance Act, 1943) were enacted to mitigate the harsh effects of insurance warranties under the common law. Referring to the decided cases, explain the following:

(a) the meaning of ‘warranty’ in this context;

(b) why, at common law, warranties brought about harsh results;

(c) the content and effect of sections 53 and 59 referred to above.

Having completed (a)–(c), consider the following question.

Thelma decides to insure her car against fire and theft with No-Fuss Insurance Co (NF). The proposal form which Thelma signs asks for her age. She writes ‘45’, although she is, in fact, 46. The form also asks whether, during the period of the insurance, she will be parking the car in a locked garage at night. This is her intention, and she gives an affirmative answer. A few months after issue of the policy, Thelma converts her garage into a ‘granny flat’ for use by a tenant and erects a carport in her garden for the parking of her car and that of the tenant. A few days after completion of these alterations, Thelma’s car is stolen in broad daylight from her place of employment. Thelma claims the value of the car from NF. When the insurance assessor visits Thelma at home, he notices that there is no lock-up garage and that Thelma’s identity document reflects her age as 46. Explain whether NF is entitled to repudiate Thelma’s claim.

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(2) Write a note explaining the nature, purpose and effect of ‘interim cover’.

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QUESTION 2 – 25 MARKS

(1) Selby, who wishes to sell his two-bedroom flat, telephones Gabby, an estate agent, and requests her to ‘find a purchaser’ for the flat at a price of ‘not less than R800 000’. Gabby agrees to do this on the basis that she will be entitled to his ‘usual commission of 7% of the purchase price’.

(a) Gabby advertises the flat extensively and eventually finds Parboo, a wealthy businessman, who is prepared to buy for R800 000 cash. However, Selby rejects Parboo’s written offer and sells the flat to someone else at a higher price. Gabby insists that she is entitled to her commission since she ‘succeeded in finding the buyer that Selby wanted and it was Selby, himself, who caused the deal to collapse’.

(b) Gabby contacts her friend, Bonnie, whom she knows has been looking for a two-bedroom flat to buy. Bonnie says that the flat is ‘exactly’ what she has been looking for and that she is ‘very interested’, but would like to ‘negotiate a little on price’. During a meeting arranged by Gabby, Bonnie says she is willing to offer R800 000 for the flat, but Selby is adamant that he will not accept anything less than R850 000. A few weeks go by, during which Gabby telephones Selby several times and tries to persuade him to change his mind. Another agent, Clyde, then contacts Selby and arranges a further meeting between the parties. At this meeting, Clyde says that he will sacrifice R25 000 of his commission, if Selby and Bonnie will settle on a price of R825 000. The parties agree to this proposal and sign a deed of sale. When Gabby learns that the property has been sold, she claims her commission from Selby.

(c) At Gabby’s request, Selby signs a document granting Gabby, for a period of two weeks, ‘sole irrevocable authority to effect the sale of the property’. During this period Selby receives a telephone call from another agent who tells him that one of his clients, Bertie, has expressed an interest in the property. Selby immediately goes to see Bertie and, on the same day, the parties sign a deed of sale. Gabby is adamant that she is entitled to her commission.

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(2) Write a note distinguishing between indemnity and non-indemnity insurance. In what respects does insurance in terms of a valued policy differ from non-indemnity insurance?

[5]

(3) Ruben is a businessman who owns two businesses, one operating in South Africa, and the other in Lesotho. On buying a new 4x4 motor vehicle, he approaches Agnew, who has recently started a brokerage firm, and instructs him to ‘arrange insurance cover’ for the vehicle. Ruben tells Agnew that he will be using the vehicle ‘for business purposes’ and that he wants protection against ‘any damage that may occur while it is out on the road.’ Ruben does not disclose to the Agnew that he has a business in Lesotho and that he frequently travels to Lesotho to attend to this business. Agnew has Ruben fill out a proposal form and he arranges a

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Question 2 (Continued)

comprehensive motor policy with RG Insurance Co (RG). While driving in Lesotho, Ruben collides with another vehicle and the 4x4 is extensively damaged. RG repudiates liability under the policy, pointing out that one of the terms of the policy provides that the company is liable for damage to the insured vehicle only if the damage occurs within the borders of South Africa. Ruben was not aware of this clause (which was not mentioned or referred to in the proposal form) and Agnew, who is relatively new to the brokerage business, was not familiar with the terms of RG’s motor policies and did not realise that the comprehensive policy contained a territorial limitation. Ruben approaches you and asks whether he has any right to legal relief in the circumstances. Set out the relevant legal principles, referring to the decided cases. Having done so, advise Ruben.

QUESTION 3 – 25 MARKS

(1) With reference to the decided cases, write a note explaining the doctrine of subrogation. Include in your answer (but do not limit you answer to) discussion of the specific requirements for subrogation and its consequences. Thereafter, consider the following problems.

(a) Myope is driving home from work when she is involved in a collision with another vehicle, driven by Reklas. Neither party is injured, but Myope’s car is badly damaged. The fault for the collision lies entirely with Reklas who veered on to the wrong side of the road while attempting to find a number on his cell phone. Myope’s insurance company compensates her for the amount of damage to her vehicle and then brings an action, in its own name, against Reklas for the amount paid out. Is the company entitled to succeed? Explain.

(b) The same facts as before except that, immediately after the collision, Myope says to Reklas: ‘Don’t worry about paying for the damage to my car! I am insured. My insurance company will see to it that I am paid for the damage. So I do not hold you responsible.’ On discovering the facts, Myope’s insurance company repudiates her claim. Is it entitled to do so? Explain.

[15]

(2) ‘For an insurance contract to be enforceable, the insured must have an insurable interest.’ Discuss this statement, making reference to the decided cases. Include in your answer, an explanation of what is meant by ‘insurable interest’, the purpose of requiring such an interest, and examples of such interests. Having completed your discussion, consider the following problem.

Dash is an extremely bad driver and has had six car accidents in the past two years. His insurance company refuses to insure him against any further accidents. He persuades a friend, Minki, who has never had a motor accident, to insure his car in her name, on the basis that he will provide her with the money for the insurance premiums. Dash subsequently has an

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accident while driving the car and Minki claims payment in terms of the policy. Is the insurer entitled to repudiate liability? Explain. Would the position differ if Dash and Minki were married? Explain. 

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