QUESTION 1 – 25 MARKS

(1) The main duty of the insurer under a contract of insurance is to pay the insured a sum of money or render him or her an equivalent upon the occurrence of an event. Explain the extent of the insurer’s liability to make payment and any factors that may affect the amount payable under the policy (note: do not discuss when the insurer’s liability to make payment arises). Explain also what is meant here by ‘render an equivalent’. Having completed your discussion, consider the following problems.

(a) Matilda insures her car against damage for R100 000. The car is involved in an accident and damaged beyond repair. The insurance company tenders to pay Matilda R75 000, as this is the current ‘book value’ of the car. Matilda insists on being paid the full amount of R100 000.

(b) Stooge wants to insure the contents of his house against fire and theft. The value of everything in the house is R1 million and Stooge ascertains that, to obtain insurance in this amount will cost more than R2 000 per month. Stooge is reluctant to pay this much, so he insures the household contents for only R500 000. The house is subsequently burgled and items worth R100 000 are taken. The insurance company tells Stooge that there is an ‘excess of R5 000’ and that because the insurance is ‘subject to average’ (referring to an ‘average’ clause in the policy), Stooge will have to bear ‘a rateable proportion of the loss’. Stooge insists on being paid the full amount of his loss.

(c) Cyril takes out a policy with ABC Insurance Co (ABC) insuring the contents of his house against fire and theft. To be sure that he has got full cover, he takes out a second fire and theft policy with XYZ Insurance Co (XYZ). The insured amount under the ABC policy is R400 000, and under the XYZ policy, R600 000. After a fire destroys part of the contents of his house, causing damage in the sum of R200 000, Cyril claims payment of his full loss under each policy. Explain the following.

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Question 1 (continued)

(i) Is Cyril entitled to recover R200 000 under each policy? If not, what amount may Cyril recover from each insurer?

(ii) If either insurer pays Cyril R200 000, does that insurer have any right of recourse?

(iii) How would the presence of a ‘contribution’ clause affect the position (if at all)?

(iv) What would be the position if the ABC contract contained a clause absolving the insurer from liability in the event of the insured having the same insurance with another insurer?

(v) What would be the position if both policies contained a clause to this effect?

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(2) 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 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 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.

[5]

QUESTION 2 – 25 MARKS

(1) A party proposing to enter into a contract of insurance owes the proposed insurer a duty of disclosure. Explain and discuss the following, making reference to the decided cases.

(a) The basis of the duty of disclosure.

(b) The ambit of the duty; in other words, what must, and what need not, be disclosed to the proposed insurer.

(c) When disclosure must take place.

Continued…/
Question 2 (continued)

(d) The effect of disclosure to the insurer’s agent.

(e) The insurer’s right of rescission for non-disclosure.

Having completed the above, consider the following problems.

(i) ABC Insurance Co (ABC) distribute pamphlets to a number of brokers advertising ‘a 10-year endowment policy plus life cover’. The company indicates to the brokers that the policy is intended for clients who are actively engaged in their usual occupations and fit enough to lead normal lives. The brochure states as follows: ‘Free life cover … available free of medical evidence … No medical questions whatsoever.’ Joop’s broker informs him about ABC’s offer and he completes the required proposal form. The form does not call for any medical details and Joop does not disclose to ABC that he is suffering from hypertension and has recently received treatment for an ulcer and skin cancer. ABC subsequently refuses to pay out on the policy on the grounds that Joop failed to disclose his medical condition. Is it entitled to adopt this stance? Explain.

(ii) Overland Hauliers (OH), a company that owns and runs a transport business, wishes to take out a policy against damage to its vehicles. The manager of the business, Rex, previously managed a similar transport business, and over a period of one year, seven of the vehicles used by that business were involved in accidents caused partly by the negligence of its own drivers. The directors of OH have never been informed of these facts and do not bring them to the insurance company’s attention. Are they under a duty to do so? Explain.

(iii) Swankee is intent upon taking out insurance for her clothing store. One of the questions in the proposal form asks: ‘Have you ever been declared insolvent?’ Swankee’s estate has never been sequestrated but, a few years before, a close corporation, in which she held the controlling interest, was liquidated after it got into financial difficulties. Is Swankee obliged to disclose this information? Explain.

QUESTION 3 – 25 MARKS

(1) Referring to the decided cases, discuss when an estate agent is entitled to recover his or her commission. Having done this, consider the following problems.

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’.

Continued…/
Question 3 (continued)

(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.

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

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