SECTION A – 25 MARKS

ANSWER THIS SECTION IN THE SEPARATE ANSWER BOOK PROVIDED

QUESTION 1 – 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 her ‘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.

Continued…/
Question 1 (continued)

(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. [15]

(2) Samuel, who has inherited several pieces of engineering machinery, contacts Ace, a dealer in such machinery, who sells second-hand items and has a large client base. Samuel instructs Ace to find a buyer for the machinery for ‘at least R800 000.’ This price is somewhat below the market value of the machinery. Ace’s initial attempts to find a buyer are unsuccessful. He resolves to form a close corporation with another party, Bok, and buy the equipment through this corporation. He does not inform Samuel of his plan. After the corporation is formed, Bok approaches Samuel and offers on behalf of the corporation to buy the machinery for R800 000. Samuel, who has heard nothing from Ace since asking him to find a buyer, reluctantly accepts the offer. He then receives a claim for commission from Ace for bringing about the sale. Explain the legal position. [10]

SECTION B - 50 MARKS

ANSWER THIS SECTION IN THE SEPARATE ANSWER BOOK PROVIDED

QUESTION 2 – 10 MARKS

‘For an insurance contract to be enforceable, the insured must have 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 interest, and examples of such interest. Having completed your discussion, consider the following problem.

Sonny 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 accidents. He persuades a friend, Sue, who has never had a motor accident, to insure his car in her name, on the understanding that Sonny will provide money for the insurance premiums. Sonny subsequently has an accident while driving the car and Sue claims payment in terms of the policy. Is the insurer entitled to repudiate liability? Would the position differ if Sonny and Sue were married? Explain
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.

i) The basis of the duty of disclosure.

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

iii) When disclosure must take place.

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

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

Having completed the above, consider the following problems.

a) ABC Insurance Co (ABC) distribute pamphlets to a number of brokers advertising ‘a 10 – year endowment policy plus 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’. Daniel’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 Daniel does not disclose to ABC that he is suffering from hypertension and has recently received treatment for an ulcer and for skin cancer. ABC subsequently refuses to pay out on the policy on the grounds that Daniel failed to disclose his medical condition. Is it entitled to adopt this stance? Explain.

b) 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, Mark, 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?

c) Paris 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.’ Paris has never had her estate sequestrated but, a few years before a close corporation, in which she held a controlling interest, was liquidated after it got into financial difficulties. Is Paris obliged to disclose this information? Explain.
QUESTION 4 – 15 MARKS

With reference to the decided cases, write a note explaining the doctrine of subrogation. Include in your answer a discussion of the specific requirements for subrogation and its consequences. Thereafter consider the following problems.

a) John is driving home from work when he is involved in a collision with another vehicle, driven by Reklas. Neither party is injured but, John’s car is badly damaged. The fault for the collision lies entirely with Reklas who veered onto the wrong side of the road while attempting to find a number on his cell phone. John’s insurance company compensates him, for the damage to his 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, John 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, John’s insurance company repudiates her claim. Is it entitled to do so? Explain.