



NATIONAL OPEN UNIVERSITY OF NIGERIA
Plot 91, Cadastral Zone, Nnamdi Azikiwe Express Way, Jabi – Abuja
FACULTY OF LAW
DEPARTMENT OF COMMERCIAL LAW

APRIL 2019_1 EXAMINATION

COURSE CODE: CLL 432

COURSE TITLE Law of Banking and Insurance – II

CREDIT UNITS: 4

- INSTRUCTIONS:**
- (a) Indicate your Matriculation Number clearly
 - (b) Attempt Question one (1) and any other three (3) questions.
 - (c) Question one (1) is compulsory and carries 25 marks; while the other questions carry 15 marks each.
 - (d) Using appropriate statutory and judicial authorities, present all your points in a straightforward, coherent and orderly manner.

TIME ALLOWED: 3 Hours

Question 1

- (a) According to **Oguntade JCA** opined that insurance interest is very elastic and not always coterminous with the ownership, wholly or partially of the particular goods insured. Bearing this statement in mind, concisely discuss the concept of insurable interest as the core of every insurance contract. **(8 marks)**
- (b) **Joyce** took out insurance policy against fire in respect of her apartment at Abiola Gardens Ikeja. The house was actually a gift from her father. However in line with the law, the father effected a formal assignment of the property to her and secured the requisite Governor's consent to that effect. In order to join the rave of the moment, she approached her banker for a financial accommodation so she can buy the latest Honda Pilot SUV. The bank advanced N25 million to her. To secure payment of the loan, she created deed of legal mortgage over the property in favour of the bank. Six months later, a section of the duplex was damaged by fire, due to power surges from the Eko Electricity Distribution Company. Further, in the proposal form, which constituted the basis of the policy, **Joyce** inadvertently forgot to state her sex and age. In a similar vein, she mistakenly forgot to state in the relevant section of the proposal form that there was a section of the property where gallons of fuel were stored normally against the perennial fuel shortages in the country. The loss adjuster turned in his report, the basis on which the insurance company will take its decision to pay or not.
 - (i) The insurance firm paid the claim, but her father insisted that he was the one entitled to the payment since the house belonged to him. He argued that since the property belonged to him and he only made an assignment, the insurable interest in respect of the subject matter of insurance resided in and with him. Advise him. **(3 marks)**

- (ii) Joyce decided to use the money to purchase another property instead of applying it towards making good the damage to the property. The bank, as the mortgagee with legal interest over the property, resisted this move. Advise her. **(3 marks)**
- (iii) The insurance company viewed the failure to state her sex and age in the proposal form, albeit inadvertent, as a breach of warranty. Having regard to the Insurance Act 2003, do you think the insurance company has a case? **(3 marks)**
- (iv) If you are the insurance company and knowing that the cause of the fire was from another source, would failure to disclose the storage of fuel in the premises constitute a sufficient ground for you to avoid the contract? **(3 marks)**
- (v) Prof Do-good, the uncle of Joyce, learnt of the fire incident. To help mitigate her loss and ensure that the property is restored fully to its original condition, he sent through Western Union wire transfer the sum of US\$1,800 to Joyce. Since she has been indemnified, what is the position of the law on this gift of money? **(3 marks)**
- (c) State the persons who may carry on insurance business under the Nigerian jurisdiction. **(2 marks)**

Question 2

- (a) Discuss the concept of subrogation, bringing out the limits to its application. **(5 marks)**
- (b) The case of *Macaura v Northern Assurance Co Ltd* (1925) All ER 51 is an undisputed authority with reference to one of the fundamental principles of insurance.
 - (i) What is this principle? **(2 mark)**
 - (ii) Identify and discuss no less than three examples of this principle **(3 marks)**
 - (iii) List and explain the divisions of insurance policies by reason of this principle. **(5 marks)**

Question 3

- (a) The concept of double insurance and contribution is a witty, beguiling and above one's head coinage which has taken a life of its own as a principle of insurance. In a simplistic fashion, disentangle and explicate this twin concept. **(10 marks)**
- (b) The interplay of relations between the offeror and offeree in furtherance of an insurance contract is similarly obtainable in ordinary contracts. In other words, just as offer and acceptance is a *sine qua non* for the fruition of a contract the same can be said of an insurance contract. However, there may be context-specific factors that set them apart. Discuss the concept of "counter offer" in the context of an insurance contract. **(5 marks)**

Question 4

- (a) Define and explain the concept of Assignment of Insurance Policy in the context of Insurance Act 2003 **(4 marks)**
- (b) SGS Industrial Estates Limited has taken All Risk Industrial Policy with Gems Insurance Company Limited. SGS however approached its bankers for financial accommodation to facilitate its expansion, including opening up of new branches. The bank asked for security. SGS, with the consent of its insurers assigned the policy in favour of the bankers. In line with Insurance Act 2003, draw up the usual endorsement of policy, which is the subject of an assignment in compliance with the statutory regulation. **(7 marks)**
- (c) In the context of insurable interest, the Insurance Act 2003 defined the phrase "legal relationship". Identifying the relevant section, define legal relationship. **(4 marks)**

Question 5

- (a) Define insurable interest under Marine Insurance Act Cap M2 LFN 2004. **(2 marks)**
- (b) Identify the usual persons with insurable interest in a marine insurance contract. **(5 marks)**
- (c) State and explain no less than four types of marine insurance policy. **(8 marks)**

Question 6

Write short notes on the following:

- (a) Motor Vehicle (Third Party Insurance) Act Cap M22 LFN 2004. **(5 marks)**
- (b) Define indemnity, pointing out the exceptions to the no-profit rule. **(5 marks)**
- (c) Define utmost good faith, bringing out the limits of its implementation. **(5 marks)**