FACULTY OF LAW

FINAL EXAMINATION — APRIL 2013

LAW 519:B2 INSURANCE LAW (Pratt/Corbett)

TIME ALLOTTED: (2.5) TWO AND A HALF hours

CODE NUMBER: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY and should be entered in the space provided above. This is to ensure anonymity during marking.

INSTRUCTIONS: 1. This examination question paper contains 9 questions on 5 pages, including the instructions. Some of the 9 questions contain a number of sub-parts, so please review the whole question to determine the mark distribution for each question. The entire exam is out of 100 marks. Check to ensure that the exam is complete before starting.

2. Answer ALL questions noting alternatives where offered.

3. Questions are NOT of equal value. Apportion your time accordingly.

4. This is a CLOSED BOOK examination, however, the class is entitled to bring in a highlighted, tabbed copy of the bound Insurance Act, and a copy of the Standard Auto Policy (S.P.F. No. 1), which may also be highlighted and tabbed. The tabs may have the referenced section numbers noted thereon. THESE DOCUMENT MUST CONTAIN NO WRITTEN NOTES other than those described above. A copy of the table of contents from the casebook will be provided to you on the morning of the Exam.

5. Candidates should have enough time to produce deliberate, organized answers with reasons. Substantial weight and grade will be allocated to conciseness and relevancy. Wherever possible, make specific reference to statutory provisions by section number but do not waste time by copying out statutory references.

6. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed.

7. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination will lead to a deduction of grades or a failure to accept the examination paper.

8. As the early exit of some students from the examination room is very disruptive for those students finishing the examination, it is requested
that no one leave the examination room during the last 15 minutes of the examination. **THANK YOU FOR YOUR COOPERATION.**

9. You are to ensure that your CODE NUMBER is entered on ALL of the examination booklets.

10. If more than one booklet is used, make sure you number the booklets consecutively and assemble them by inserting additional booklets in the back page of the previous booklet. Also, please indicate which questions are dealt with in each booklet.

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**Marks**

1. (2.5) A. What are the five basic elements of an insurance contract pursuant to the analysis in *Re Bendix Automotive*?

1. (1.5) B. How are insurance contracts distinguished from contracts of wagering?

2. (4) What are the “four cornerstones” of insurance law?

3. (2) Discuss whether the *Somersall v. Friedman* decision remains good law in Alberta.

4. (4) Identify the “essential terms” of an insurance contract that must be agreed to.

5. (8) Sally applied for $100,000 of life insurance from Wholife Inc. At the time of her application, Sally was asked about her medical history and she reported that she had been seen for coughs and colds by her physician on three occasions, and been to the hospital for a broken leg when she fell from her bike, all within the last 5 years. Sally did not mention her attendance at a wholistic healer/yogi for stress relief, who had provided her with treatment using yoga and herbs, because she didn’t consider that medical.

Three years later, Sally decided to increase her insurance to $200,000. She was again asked about her medical history, and Sally again gave an account of her various doctor’s appointments. However, Sally did not disclose that since her last application, she had been prescribed inhaled corticosteroids for her repeated lung infections. Sally’s mother had reported similar treatment to another insurer and had been denied coverage. Therefore, Sally thought it best not to mention it.

Five years later, Sally died in a car accident. Sally’s husband claimed on Sally’s life insurance policy as the named beneficiary.

Does the insurer have any basis on which to deny coverage to Sally’s husband?

6. Dr. Chocolate Addict needed to refill his ‘cache’ of chocolate, and went for a drive to see the Easter Bunny (his chocolate dealer). Unfortunately, Dr. Addict was speeding. Officer Dudley was participating in a speed operation, and clocked Dr.
Addict going well in excess of the posted speed limit. Officer Dudley's partner attempted to have Dr. Addict stop his vehicle; however, Dr. Addict was dying for chocolate so he decided to keep going. Officer Dudley decided to give chase in his police car. Dr. Addict was finally cornered while still in his vehicle with Officer Dudley using his vehicle to prevent Dr. Addict from escaping. Officer Dudley then decided to 'do right', and got out of his police vehicle to attempt to arrest Dr. Addict. He opened the door of Dr. Addict's vehicle and told him he was under arrest. Dr. Addict physically resisted Officer Dudley's attempt to remove him from the vehicle. He then lunged at Officer Dudley, coming out of his vehicle like a rocket ship. Unfortunately, both Officer Dudley and Dr. Addict ended up on the concrete road with Officer Dudley sustaining a significant injury. Fortunately, Officer Dudley's partner then arrived on scene, and subdued Dr. Addict. Officer Dudley sued Dr. Addict for his injuries.

The standard automobile insurance policy insuring Dr. Addict’s vehicle provided:

“The insurer agrees to indemnify the insured.... Against the liability imposed by law upon the insured .... For loss or damage arising out of the ownership, use or operation of the automobile and resulting from bodily injury to ... any person ....”

(8) A. Will Dr. Addict will be able to claim indemnity for Officer Dudley’s injuries under his standard automobile policy?

(10) B. This was not, however, the end of the story for Dr. Addict. Dr. Addict was released, and then decided that he needed to fuel his chocolate addiction. He knew that the Easter Bunny was likely out as a source as it was way past the Easter Bunny’s bedtime, and then recalled that he had Nurse Nancy in his office set aside a stash of chocolate (‘just in case’). Instead of going home to his beautiful wife and 3 children, he decided to pop by the office to raid the stash. Dr. Addict had fought his addiction to chocolate for years with previous quinoa and carob rehab stints/detox. He had attended the Bunny Ford Clinics in the past for his addiction, but sadly and secretly, he just couldn’t quit. Nonetheless, he was looking forward to the Harry Potter ride at Universal Studios Florida where he hoped that he would not be selected by a wand made of chocolate (as he might eat it). Dr. Addict stopped by his office, injected himself with pure 100% chocolate, and sadly died. He was found the next morning lying on his office floor dead of a chocolate injected overdose with his trousers down and the needle nearby. He had a happy but surprised expression on his face.

Dr. Addict had a policy in effect at the time of his passing with Accidental Death Insurance Co. with the following wording:

“Subject to this provision’s terms, the Company will pay the amount of the Accidental Death Benefit ... upon receipt of due proof that the Life Insured’s death resulted directly, and
independently of all other causes, from bodily injury effected solely through external, violent and accidental means ...."

It was clear to Accidental Death Insurance Co. that Dr. Addict’s death was the result of his deliberate injection of chocolate and he must have foreseen his death as a result of the toxic amount of the dosage of chocolate that he self-injected. Accidental Death has denied the claim. What arguments could be raised on behalf of Dr. Addict’s beneficiaries to respond to this denial?

7. Cora Coach coached her child’s sports team. Unfortunately, one of the children she was coaching was injured while playing a hockey game (Injured Annie). As a result, Injured Annie sued Cora Coach alleging that Cora Coach was negligent. Injured Annie’s claim was eventually settled with an agreed quantum of damages of $200,000.00. Cora Coach was insured by Home Insurance Co. under a homeowner’s policy with limits of $100,000.00. As Cora Coach was coaching a community league team, Cora was also insured by Community League Insurance Company under a commercial general liability policy with limits of $500,000.00. Both Home Insurance Co. and Community League Co. conceded that Injured Annie’s liability claim against Cora Coach fell within the scope of coverage of both of the policies.

Home Insurance Co.’s policy contained the following clause: “If other insurance exists which applies to a loss or claim, this policy will be considered excess insurance and the insurer is not liable for any loss or claim until the amount of such other insurance is used up”.

Community League Co.’s policy contained the following clause: “If other valid and collectible insurance is available to the insured for a loss we cover ..., our obligations are limited, as follows:...This insurance is excess over other existing insurance if any whether such other insurance be primary, excess, contingent or on any other basis...”.

Home Insurance Co. and Community League Co. both disputed the extent to which each of them was liable to pay the claim being made against the insured Cora Coach.

(6) A. Please discuss the general principles concerning the right of contribution among insurers.

(6) B. Please discuss whether Home Insurance Co. or Community League Co. ought to be held liable to Cora Coach under their respective policies. Please ensure you explain your analysis.

8. Debbie Driver was in a car accident one night when she ran a red light and hit Martin Motorist. Debbie was returning home after Ladies’ Night at the Union Hall, and she was intoxicated. Approximately 1 year later, Martin sued Debbie for damages resulting from his injuries. Debbie did not defend, so Martin gave notice to Debbie’s auto insurance company, Protect Insurance, that he was
suing Debbie, and suggested that they might want to get involved. Such was the first notice that Protect Insurance had of the accident.

A. Does Protect Insurance have any basis to deny Debbie coverage with respect to:

(2) i) S.B. coverage for treatment for her own injuries sustained in the accident?
(2) ii) Her auto damage?
(2) iii) Liability coverage with respect to the claim of Martin Motorist?

(8) B. Protect has not denied coverage to Debbie at this time. Assuming Protect has some basis on which they might deny coverage to Debbie in the future, what methods are available to Protect to preserve their right to deny coverage in the future, if they choose to investigate and respond to the claim of Martin Motorist? Which method would you recommend and why?

C. Protect has tried to contact Debbie on several occasions at her last known address to discuss Martin Motorist’s claim, but she appears to have moved. They are therefore unable to investigate the accident at all. As a result of this, Protect wants to deny her coverage, and have asked your advice in that regard.

(2) i) Does Protect have grounds to deny Debbie Driver coverage because they are unable to contact her?
(2) ii) If Protect does deny coverage to Debbie Driver, how might Protect still defend the tort claim of Martin Motorist?

(8) D. Martin obtains judgment against Debbie Driver in the sum of $350,000.00. Debbie does not pay the judgment. Martin brings a creditor’s rights action against Protect pursuant to s. 579 of the Insurance Act. What defences, if any, could Protect raise in response to Martin’s claim?

(12) E. If Protect is able to bring themselves within the elements of any of the permissible defences, is there any further argument Martin can make to suggest he is entitled to full payment of his loss, and in what circumstances would such an argument be successful?

9. (10) Discuss the framework for analysis of insurance coverage cases post-Progressive Homes using salient examples, and explaining the general principles applied by the Court in the cases that you discuss.