TIME ALLOTTED: TWO AND A HALF (2.5) 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 12 questions on 7 pages. Check to ensure that it 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, candidates are allowed to bring in tabbed copies of both the Insurance Act and the Insurance Amendment Act.

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. At the completion of the examination, you are to print your name on the front page of this examination question paper and turn this examination question paper in with your examination. Students who fail to submit the examination question paper will be penalized one grade point.

10. Also, you are to ensure that your CODE NAME is entered on ALL of the examination booklets.

11. 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.
1. (5) John has 5 sons, and his wife Jill is pregnant. John really wants a baby girl. He enters into an agreement with XYZ Corporation whereby he pays them $100 per month during each of the last 5 months of Jill's term. If Jill has a girl, he gets no payment from XYZ Corporation, but if he has another boy, they will pay John $2,000. With reference to the elements of an insurance contract, provide an analysis of whether this constitutes a contract of insurance.

2. (5) How did Constitution Insurance v. Kosmopoulos change the law in Canada with respect to “Insurable Interest”?

3. (2) Discuss the difference between Subrogation and Contribution.

4. (3) Jane agreed to sell her Louis Vuitton limited edition handbag to Cindy for $2,000.00. Cindy didn’t have the money to pay Jane for the handbag so they agreed that Cindy could pay Jane back in monthly instalments. Jane and Cindy were worried about the value of the bag, and they agreed that Jane would insure the handbag under a valued policy while Cindy made the instalments payments. Unfortunately, Cindy was the victim of the handbag thief who had been lurking around town, and the handbag disappeared. Jane made a claim for the loss of the handbag under the valued policy issued by Designer Goods Insurance Company. At the time that the bag was stolen, Jane had been paid $500.00, and Cindy still owed $1500.00. Can Jane recover the full $2000.00 from Designer Goods Insurance Company?

5. (5) Sam rented out his home to Corey Badtenant. Sam’s home was insured by We Protect You Home Insurance Company. Unfortunately, Sam did not ask Corey Badtenant for any references from previous landlords. Corey
Badtenant was actually a known drug dealer and an amateur chemist. Corey rented Sam’s home for the express purpose of starting a crystal methamphetamine laboratory. Corey then set up his laboratory using a number of tanks to store the product. Unbeknown to Corey, the tanks used to store the crystal meth in Sam’s basement were defective and leaked hazardous chemicals through the floor drains in Sam’s basement into his weeping tiles and sump pump, thereby contaminating the soil underneath Sam’s home. Unfortunately, one of the tanks exploded killing poor Corey Badtenant, and burning down Sam’s home. The basement and tanks were all that was left standing after the fire. Sam was very concerned about the possibility of further explosion - given the size of Corey Badtenant’s operation so Sam hired an expert to investigate the site to see what could be done to remediate what remained of Sam’s home. Although the damage to Sam’s home was $100,000.00, the expert’s investigation fees and the cost of his solution as he discovered the leaking crystal meth underneath Sam’s home was $200,000.00. Sam loved the location of his home and he was worried about the possibility of further explosion given the presence of hazardous chemicals so he told the expert to go ahead and fix the problem under his home so he could rebuild on the lot. Sam then claimed the $200,000.00 he spent to investigate and remediate the issue from We Protect You Home Insurance Company. Sam’s policy contained a standard Sue and Labour Clause, and Statutory Condition 9 was attached to his fire policy. Discuss whether Sam will be able to recover the $200,000.00 spent in the circumstances.

6. (10) “Subrogation rights against underinsured or uninsured drivers are rarely very valuable at all….a successful recovery in a subrogation claim is really a windfall for an insurer”. “… in view of the near negligible value of the subrogation right …very surprised indeed if the loss of the subrogation right with little practical value were significant enough to have any effect
whatever upon the insurer’s balance sheet”. Discuss the ramifications of the quote above in *Somersall v. Friedman*.

7. (5) Sam had an insurance policy with Cheap Rates Insurance Company. An agent for Cheaper Rates Insurance Company approached Sam to attempt to solicit Sam’s business as he knew that Sam was a good customer, with a very stable widget business. Sam was always on the hunt for a ‘good deal’ so he had no problem meeting with Cheaper Rates’ insurance agent to discuss the insurance policies and rates. Cheaper Rates’ agent quoted a premium of $100/month. Sam wasn’t satisfied as he was only paying Cheap Rates $90/month. Cheaper Rates’ agent tried to get a lower rate for Sam, and managed to get the rate down to $90/month and presented Sam with a letter attaching the policy and rate. Sam was still not satisfied. Unfortunately, Sam’s widget business then suffered a fire. Sam had two policies of insurance in his possession when the fire occurred, one with Cheap Rates and one with Cheaper Rates. Will Sam be required to make a claim against both policies since Cheaper Rates delivered a policy to him?

8. (10) Identify the general principles endorsed by the Supreme Court of Canada applicable to interpretation of insurance contracts. Discuss – using examples from the cases studied - whether these principles lead to greater certainty for the parties to the insurance contract. (10 marks)

9. (10) In the wee hours of the morning, Jane was driving her 2012 Volkswagen Beetle on her way home from work. As Jane was driving along, she was suddenly rear-ended at highway speed by Corey Crazy. Jane had not noticed Corey Crazy behind her until just before the accident when she saw headlights suddenly appear in her rear view mirror. The force of the collision – as Corey Crazy was travelling well in excess of the speed limit – forced her vehicle off the road into the ditch. Although momentarily stunned, Jane got out of her vehicle as she could smell gasoline. Jane then
saw Corey Crazy and she started to approach him thinking that they could exchange insurance information. Corey Crazy was cousins with Corey Badtenant, and was high on crystal meth manufactured by his cousin Corey Badtenant. As a result of his ‘high’, Corey Crazy thought that Jane was a deer, and shot her. Fortunately, Jane survived the gunshot wound as well as the injuries she sustained in the accident. Unfortunately, the gunshot wound resulted in Jane not being able to return to work and Jane had significant care issues going into the future. Corey Crazy was driving a stolen vehicle. Jane’s vehicle had an SEF 44 Family Protection Endorsement attached to it. Discuss whether Jane will be able to successfully claim under her own SEF 44 Family Protection Endorsement?

10. (15) Fred lived with several of his friends while attending University to become a pharmacist. His license was suspended, and so he asked his mom, Dora to insure his car as her own. Dora, who lived alone, agreed to do so on the condition that Fred only drive the car when it was absolutely urgent. Dora added the car onto her current policy, which covered her own car. One Saturday night, Fred and his roommates were out on Whyte Avenue to attend a party at one of the bars, when Fred struck a pedestrian. The pedestrian was drunk, wearing dark clothes, and stumbled in front of Fred's car unexpectedly. The pedestrian was seriously injured and his damages were approximately $350,000.

As a result of the accident, Fred himself suffered from severe Post traumatic stress disorder, and still is not able to face the fact of the accident himself. As a result, nobody reported the accident to the insurance company, until the Plaintiff's lawyer advised them 6 months after the accident. Fred was, at that time, still receiving active treatment at the Glenrose by a psychiatrist.

A. You represent Dora's insurance company. What would you advise them as to their possible defences in respect of:
a) The tort action  
b) The Third Party Creditor Action  

B. How should the insurer proceed to best preserve their rights collect the amount paid to the Third Party Claimant back from Dora or Fred?

11. (20) Corey Criminal had a friend, Arnie Agent, who works for Prime Insurance. Artie had been bugging all his friends for ages to buy life insurance from him. Arnie convinced Corey that with his dangerous profession (bank robbery) and with his 5-year old daughter (Millie), Corey should buy $1 million in life insurance from him. Finally, in February, 2010, Corey agreed. Corey and Artie met and Artie asked Corey a number of questions, including whether Corey has been injured or hospitalized in the past 5 years. Corey advised Artie that he hadn't been hospitalized, but he was shot in a robbery attempt 4 years ago, which was tended by a private physician in his home. Artie was aware this might result in coverage being declined, so he recorded "NO" on the form to the question. Corey then signed the form without reading it. Within a week, a $1 million policy was issued on Corey's life, with $500,000 going to Millie as beneficiary and $500,000 going to Corey's Estate.

In March, 2012, Corey was shot and killed while committing a bank robbery. The insurer has suggested it might deny benefits to the beneficiary on the basis of Corey's misrepresentation of his prior injuries and due to his criminal acts. It has not yet done so as it is seeking legal advise. You are aware that another insurer, Mountain Insurance would certainly have provided coverage to Corey if they had known he had been previously shot, though the premium charged may have been higher.

Corey's current wife, Carla Criminal (nee Innocent) wishes to make a claim on behalf of herself and Corey's daughter for recovery of the insurance proceeds from Prime Insurance. What would you advise Annie
regarding the chances that her claim or Millie's claim would be successful? What can you advise them about when such an action should be brought?

12. (10) Sam’s company, Best Products, manufactured packaging. One of its customers, Best Blueberries, was a blueberry producer who used Best Products’ plastic packaging to deliver its delicious blueberries to Yum Yum Grocery Stores across Alberta. Best Products manufactured a plastic box with Best Blueberries’ logo inked into the same so Best Blueberries could package its blueberries. Somehow, Best Products and its ink supplier discovered that the presence of moisture from the fresh blueberries caused the ink to come off the packaging and leak into the blueberries inside the packaging. Best Blueberries concluded and Best Products conceded that these blueberries could not be sold to Yum Yum Grocery Stores as a result of the presence of significant volumes of ink on the blueberries. Best Blueberries returned all the packaging to Best Products, and received a credit. Best Products fixed the problem and made new packaging for Best Blueberries using different ink. Best Blueberries then filled the new packaging and happily delivered it to Yum Yum Grocery Stores.

Best Blueberries presented a claim against Best Products for its loss in the sum of $100,000.00. The losses sustained were directly associated with removing the blueberries from the defective packaging, disposing of the same and losing product during salvage operations. Best Products settled Best Blueberries’ claim. Best Products then reported the claim to its insurer, Manufacturers Best Insurance Company under their CGL policy. Manufacturers denied the claim. The policy contained the following clauses:

“The insurer agrees to pay on behalf of the insured all sums that the insured shall become obligated to pay by reason of liability imposed by law upon the insured for compensatory damages because of property damage due to an accident or occurrence”.

6 of 7
“Property damage” was defined as “physical injury to or physical destruction of property including loss of use or loss of use of property that has not been physically injured or destroyed”.
“Occurrence” was defined as “continuous or repeated exposure to conditions that result in property damage neither expected nor intended by the insured”.

There was also an Exclusion Clause, as follows:

“This insurance does not apply to claims for property damage to goods or products manufactured or sold by the insured; or work done by or on behalf of the insured where the cause of the occurrence is a defect in such work, but this exclusion shall only apply to that part of such work that is defective”.

Discuss the coverage issues arising in the context of the Progressive Homes decision. Does Best Products have a claim against its insurer?

END OF EXAM