

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L483 – INSURANCE AND BANKING LAW

MAY 2017

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. This paper is divided into TWO (2) parts: Part A and B.
2. There are six (6) questions to this paper. Answer any FOUR (4).
3. Refer to statutory law and case law where applicable.
4. All questions carry equal marks.

PART A**Question 1**

Moreki takes out a policy with Candy Insurance Co. insuring his car against theft. To be sure that he has full cover, he takes out another policy with Asset Insurers, but this time he takes up comprehensive motor insurance. The sum insured under each policy is M20, 000.00. The car gets stolen and the total loss is calculated in the sum of M20, 000.00, Moreki claims payment of his full loss under each policy. Explain the following:

- (a) Is Moreki entitled to recover M20, 000.00 under each policy? If not, what amount can he recover from each insurer? **5 Marks**
- (b) If either insurer pays Moreki M20, 000.00, does that insurer have any right of recourse? **5 Marks**
- (c) If Moreki only took out a policy with Candy Insurance Co., and the car gets damaged in an accident resulting in the cost of repairs being M25, 000.00, what is the amount that he is entitled to? **5 Marks**
- (d) If the sum insured was M15, 000.00 and the actual value of the car was M30, 000.00, how much would Moreki be entitled to under each policy and why? **10 Marks**

[25 MARKS]

Question 2

Distinguish between the following and give at least one example in each case:

(a) Indemnity and non indemnity insurance. **9 Marks**

(b) Insurance contracts and contracts of gambling and wagering. **8 Marks**

(c) A suspensive condition and a resolute condition in contracts of insurance. **8 Marks**

[25 MARKS]

Question 3

Sam is a sales person for No Dust, a company that manufactures and sells cleaning detergent. He uses a company car to sell and distribute the detergent. No Dust has insured all its vehicles and detergent with Peace of Mind Insurance Company and clause 2 of the insurance policy reads as follows:

“The doors, windows and roofs of any vehicles conveying samples, containers or detergent should be closed and locked at all times when it is left unattended.”

On the 5th of March 2016 as Sam was driving to Ha Tsolo to make deliveries gave Palesa, his ex-school-mate who was heavily pregnant, a lift. About 2kms before his destination, Palesa started experiencing labour pains and he rushed her to Maseru Private Hospital. Upon arrival, he quickly ran to the casualty department seeking assistance from the hospital personnel. Two porters assisted him to get Palesa out of the car and into the Maternity Ward. One porter went back to the car claiming to

get Palesa's bag only to drive off with the car which was unlocked and contained 100 litres of detergent.

No Dust had indicated to Peace of Mind that their sales persons were all below the age of 35 but it turns out that Sam was actually 36 years of age at the time of concluding a contract of employment.

No Dust has lodged a claim with its insurer for the loss.

With reference to case law, advise No Dust on its prospects of success.

[25 MARKS]

PART B

Question 4

Bill is a customer of Total Bank. He comes to you for legal advice about issues that he has brought up with his bank manager, which remain unresolved. In each of the following instances, advise him, explaining fully, whether or not he has a case against the bank's action.

(a) On the 20th March 2011, Bill deposited M500, 000. 00 into his investment account which accrues 5% interest per annum. He has learned that Total Bank invested over M20 billion in a Swiss company operating in Belgium and that no interest was credited to his account until only in March 2016 when he sought to withdraw the balance held on the account. He strongly believes that part of the money that the bank invested in the Swiss company was the one which he

deposited in 2011 and that is a breach of the bank's obligation to keep his deposited money locked up safely in the bank. **5 Marks**

(b) He has seen debited amounts described as "handling fees" and other charges reflected on his bank statements. He wants to recover these charges which he believes are unlawful. **5 Marks**

(c) Bill pays his water and electricity bills by stop order on the 2nd day of each month. Last month (April 2017) the payment was not debited and the water and electricity services were cut with immediate effect. **5 Marks**

(d) Bill discovered that, when he requested a loan from the bank in March 2016, the bank manager called other banks where he has accounts and enquired of them about his credit-worthiness. He believes that this is a violation of his privacy. **5 Marks**

(e) The bank has given him three months notice to terminate his account. He feels this is unfair because he has not done anything to warrant termination of his relationship with the bank. **5 Marks**

[25 MARKS]

Question 5

With reference to Payment Systems Regulations, 2017 and all other relevant statutory instruments, discuss whether issuers of e-money are sufficiently regulated to protect consumers and to combat money laundering.

[25 MARKS]

Question 6

Alto and Bravo are very rich brothers who wish to venture into banking. They want to open a bank but do not know anything about the business. They tell you that they have heard that banks are susceptible to risk.

Advise them by explaining each of the following risks and how each can be mitigated:

- | | |
|-----------------------|----------------|
| (a) Credit risk. | 5 Marks |
| (b) Market risk. | 5 Marks |
| (c) Operational risk. | 5 Marks |
| (d) Systematic risk. | 5 Marks |
| (e) Political risk. | 5 Marks |

[25 MARK]