

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LLB – SUPPLEMENTARY EXAMINATIONS

L4305: BANKING AND INSURANCE LAW

AUGUST 2023

MARKS 100

3 HOURS

INSTRUCTIONS:

1. Answer any **FOUR (4)** questions
 2. All questions carry equal marks
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QUESTION ONE

Write short notes on the following concepts:

- | | |
|---------------------------|---------|
| (a) Subrogation | 5 marks |
| (b) Transfer of risk | 5 marks |
| (c) Pooling of risk | 5 marks |
| (d) <i>uberrima fides</i> | 5 marks |
| (e) Salvage | 5 marks |

[25 MARKS]

QUESTION TWO

Immediately following his employment, Thabo took out a loan to purchase a car. Shortly thereafter, Thabo insured his car with Basotho Insurers Co against theft and accidents. Thabo's car was damaged in a collision with a motorbike belonging to Neo. Thabo was indemnified in full by Basotho Insurers Co for his loss. That notwithstanding, however, Thabo instituted a delictual action against Neo, claiming damages. In her defence, Neo argues that Thabo has no cause of action against her because he has already been indemnified for his loss by the insurer.

Critically discuss whether Neo's defence is correct in law.

[25 MARKS]

QUESTION THREE

Critically discuss the view, expressed by the court in *Malcher & Malcomess v Kingwilliamstown Fire and Marine Insurance & Trust Co* (1883) 3 EDC 271, that “[t]he very essence of the contract of insurance is that it is a contract of insurance.”

[25 MARKS]

QUESTION FOUR

Thabo and Palesa were united in marriage sometime in December 2019. Immediately after their wedding, Palesa took out a life cover with All Basotho Life (Pty) Ltd, wherein she insured Thabo's life to the value of M200 000. The marriage between the two was dissolved by a court of law in June 2021 after Thabo discovered that Palesa was having an extramarital affair with her former boyfriend, Motlatsi.

Despite their divorce, Palesa continued to pay monthly premiums on the policy. Upon discovering this fact in September 2021, Thabo approached the offices of All Basotho Life (Pty) Ltd to request that the policy be cancelled because Palesa no longer had an insurable interest in his life. That request was declined on the ground that only Palesa, being the policyholder, had the right to cancel the policy. Thabo approached Palesa to have her terminate the policy, but she refused.

Thabo passed away in December 2022 as a result of a car accident. A few days after Thabo was declared dead, Palesa lodged a claim with All Basotho Life (Pty) Ltd for payment of compensation to the full value of the policy. All Basotho Life (Pty) Ltd rejected Palesa's claim on the basis that she lost insurable interest in Thabo's life upon their divorce, consequently that Thabo's life has caused her no loss whatsoever (be it economic or emotional).

Palesa comes to you seeking legal advice on whether the ground on which All Basotho Life (Pty) Ltd rejected her claim is valid. **[25 MARKS]**

QUESTION FIVE

Briefly discuss the essential differences between indemnity and non-indemnity insurance.

[25 MARKS]

QUESTION SIX

With reference to the case of *Samancor Limited v Mutual & Federal Insurance Company Limited and Others* [2004] ZASCA 108, critically discuss the distinction between the doctrines of subrogation and contribution in insurance law. **[25 MARKS]**