EXAMINATIONS OF APRIL/MAY 2005

CODE AND NAME OF COURSE: LA 34A (LAW3400) - INSURANCE LAW

DATE AND TIME: DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 questions.

ANSWER ANY THREE (3) QUESTIONS. Answers maybe confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

1. "Notwithstanding the critical importance of insurable interest to the validity of the policy, there is no consistent principle in common law jurisdictions governing its determination."

Discuss this statement.

2. In 2000, Godfrey, who was about to marry Fiona, was persuaded by Elvira, an agent for the Good Times Insurance Co. Ltd., to effect insurance on his fiancee's life. Elvira assured Godfrey that there were no legal problems involved in effecting such an insurance.

While filling out the proposal form, Fiona answered the following questions in the proposal form in this way:

Question 1: Have you consulted a physician during the past five years? - Reply - No.

Question 4: "Is there any other information about you which you feel the Company should know?" Reply - None.

In fact, Fiona had consulted her doctor on one occasion in 1998 because of `nervous tension', but she was told she did not need regular treatment. Furthermore, Fiona had twice been convicted within the past five years of shoplifting. This fact was not disclosed.
Just before signing the proposal form, Godfrey asked Elvira what the `basis of the contract' clause at the bottom of the proposal form meant. In reply to this question, Elvira said: `Oh, don't worry about that, it is just a piece of mumbo jumbo used in the trade.'

Godfrey and Fiona were married on 1st January 2001. The policy on Fiona's life was delivered on 1st March 2001. Suddenly, in May 2004, Fiona committed suicide. There is no policy provision dealing with the subject of suicide.

Discuss.

3. "It appears that the law after Pan Atlantic Insurance Co Ltd v. Pine Top Insurance Co Ltd. [1994] 3 All E.R. is much the same as it was after the much criticised CTI v. Oceanus Mutual Underwriting Association (Bermuda) Ltd. [1984] 1 Lloyd's Rep. 476.... Not only has the introduction of an inducement requirement served to muddy the waters rather than to clear them but the line between misrepresentation and non-disclosure in Insurance law is imperceptible to say the least."

Discuss.

4. After a rocky marriage of eight months, Portia leaves her husband, Richard, to cohabit with Ellen, a lesbian. Ostracised since leaving her husband, Portia is now dependent on Ellen for financial support.

Six years later, Portia effects two insurance policies with Equal Rights Insurer Ltd. The first, on her own life, is in the sum of $1 million (Bds) and designates Ellen as beneficiary. The designation is witnessed only by Steve, an insurance agent.

The second, on the life of Ellen, is in the sum of $2 million (Bds). It names Portia as beneficiary. Both policies provide that `they shall be incontestable after one year.' Later, Portia dies by drowning. Deeply depressed, Ellen commits suicide.

Thalia is appointed administratrix of Portia' s estate. Antoinette, Ellen's sole survivor, is appointed administratrix of Ellen's estate.

Advise Equal Rights Insurers Ltd.
5. "Regional insurance legislation is aimed at ensuring the solvency of the industry for the benefit of policy holder. However, it has not solved the problem of defining the contract of insurance for the purposes of regulation and has not addressed many of the substantive difficulties confronting the insured policy holder."

Critically analyse this statement.

6. Kinna, a successful businesswoman, effected two insurance policies on her factory in Insurance Town, located in South East Utopia. The first policy was an `all-risks policy' on the factory and machinery. This policy contained the following clauses:

(i) "Exception for damage done to the premises by `riot, civil commotion or usurped power.'

(ii) "Notification of any loss or damage must take place within twenty-four (24) hours of the loss or damage."

The other policy was an Employer's Comprehensive Insurance policy valued at $12million. This policy provided indemnity against any damages which Kinna `may become liable to pay any person arising out of an accident.'

After a crushing defeat of their party in the General Election of South East Utopia, a group of supporters stormed Kinna's factory, damaging the walls and machinery. The only access route, a bridge, was also destroyed.

During the disturbance, Kinna could not locate her general manager, Rea, who she suspected to be having an affair with Kinna's husband. After finally locating Rea, Kinna confronted her, brandishing a hammer. Unfortunately, the head of the hammer flew off and killed Rea instantly.

Because of the state of unrest, Kinni failed to inform the Insurers of the damage until the following week.

Advise Kinna.

END OF PAPER