

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

Attachments:

1. Commercial General Liability Policy (29 pages)

**THIS EXAMINATION CONSISTS OF 11 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – December 2019

**LAW 440/540
Section 1
Insurance Law
Professors Doyle and Lamb**

TOTAL MARKS: 100 marks

**TIME ALLOWED: 180 minutes
plus 15 minutes reading time.**

THERE ARE TWO (2) PARTS

**PART 1 General Insurance: 65 marks - 5 Questions
Suggested Time – 120 minutes**

**PART 2 Automobile Insurance: 35 marks –6 Questions
Suggested Time – 60 minutes**

INSTRUCTIONS:

1. For those handwriting the exam, correctly label all exam booklets:

This Exam consists of two parts:

- Part 1: General Insurance (Adjunct Professor Julie Lamb, Q.C.)
- Part 2: Automobile (Adjunct Professor Jim Doyle)

Answers to each part are to be written in a Separate Book or Books: One Book or set of Books for Part 1; and a separate Book or set of Books for Part 2.

Clearly Label the Cover Page of Each Book either “Part 1” and “Part 2”, and include your Examination Code and the Course Name (“Insurance Law”) on each Book.

Answer each question by reference to the question number (eg. Q2 ... [answer]).

INSTRUCTIONS, continued**2. Open Book Exam**

This is an open book examination. Students may bring whatever materials they wish into the examination room. A copy of the IBC policy wordings will be supplied.

3. Exam Format

This examination is divided into 2 Parts. Part 1 is General Insurance. Part 2 is Automobile Insurance. The suggested time allocation totals 3 hours which does not include the additional allowed 15 minutes reading time.

Point form answers are acceptable.

READ ALL PAGES

ANSWER ALL QUESTIONS

THIS EXAMINATION CONSISTS OF 10 QUESTIONS

4. Assumptions

Unless otherwise indicated, all persons mentioned herein are British Columbia residents and all events occur in British Columbia and are subject to British Columbia law.

For the purposes of Part 2, the Automobile Insurance Part, assume that all accidents and claims occur after June 1, 2007 and that all applicable certificates or policies came into force after June 1, 2007.

5. Marking Scheme**PART 1****GENERAL INSURANCE**

Total Questions: 5

Total Value: 65 marks (10, 15, 15, 10,15)

PART 2**AUTOMOBILE INSURANCE:**

Total Questions: 6

Total Value: 35 marks (4, 5, 7, 7, 8, 4)

PART 1 – GENERAL INSURANCE

Total Suggested Time for All General Insurance Questions:
Approximately 120 Minutes

Total Marks for Part I 65 Marks
Total Questions for Part I 5 Questions

10 MARKS	QUESTION # 1	SUGGESTED TIME: 15 MINUTES
	What is a material fact? What are the consequences if an insured mis-states a material fact on an application for property insurance? What are the consequences if an insured mis-states a material fact on an application for life insurance?	
15 MARKS	QUESTION # 2	SUGGESTED TIME: 30 MINUTES
	<p>The Foundation Company owned a warehouse in Mission, B.C. The warehouse was insured by Super Insurance Company with the IBC Property Insurance wordings with a policy period May 1, 2013 to May 1, 2014. On July 1, 2013, the warehouse burned down and was a total loss. A fire investigation report determined that the fire started as a result of an electrical surge that related to the electrical bypass installed by Foundation to facilitate an illegal grow-op.</p> <p>a) Determine whether there would coverage for the loss.</p> <p>b) If Super Insurance Company sends Foundation a letter denying coverage on September 1, 2013, when does the limitation period for bringing an action against Super Insurance Company expire?</p>	
15 MARKS	QUESTION # 3	SUGGESTED TIME: 30 MINUTES
	<p>Each week, the Office Bar and Grill, a local watering hole, holds a Taco Tuesday night. It is well-attended by the neighbourhood.</p> <p>Recently, it has been so well attended that things have gotten out of hand. There have</p>	

been a few instances where patrons have drunk too much and have gotten into fights with each other and with bar staff. In an effort to quell these issues, the manager of the Office Bar and Grill hired additional staff for Tuesdays. This included hiring Bob Pennywise as a doorman. Mr. Pennywise has worked as a security guard in a mall before, but he has no prior experience working as a doorman at a bar.

On November 26, 2019, the Office Bar and Grill held Taco Tuesday. It was a hit. Everything was going smoothly until about 11pm, when four new patrons attended. One of those four attendees was Bradley Lee, who came with his three friends to join another group of patrons who had been drinking at the bar since 2pm. In an effort to “catch up” to his other friends, Mr. Lee ordered 10 shots of rye. Despite the Office Bar and Grill’s corporate policy not to allow an individual to order more than two drinks per purchase, the bartender hastily poured the 10 shots for Mr. Lee. Mr. Lee drank all 10 shots at the bar in quick succession.

Mr. Lee then became generally hostile towards other patrons. After many complaints, Mr. Pennywise and another doorman approached Mr. Lee and told him it was time to leave. Mr. Lee refused. Mr. Pennywise determined that force might be necessary to remove Mr. Lee. Mr. Pennywise grabbed Mr. Lee’s arm to guide him out of the bar. Mr. Lee took offence. In an effort to break free, Mr. Lee threw a punch at Mr. Pennywise. Mr. Pennywise had not received any training from the Office Bar and Grill, but he was well-trained in Thai-style kick-boxing. Mr. Pennywise deftly ducked under Mr. Lee’s attempt at a strike and threw his own left hook to Mr. Lee’s liver, causing Mr. Lee to collapse to the ground and hit his head. Mr. Pennywise and the other doorman then removed Mr. Lee from the premises.

Mr. Lee was taken to the hospital. He suffered permanent damage to his liver and a head injury, all of which left him unable to work for three months.

Mr. Lee sued the Office Bar and Grill and Mr. Pennywise, alleging that he was overserved by the bar and that he was injured by Mr. Pennywise’s strike.

The Office Bar and Grill has a Commercial General Liability Policy issued by Impact

	<p>Insurance Company. It uses IBC Policy wordings, with a policy period of January 1, 2019 and January 1, 2020.</p> <p>Does Impact Insurance Company owe a duty to defend to the Office Bar and Grill and Mr. Pennywise if the acts are described as follows in the notice of civil claim:</p> <ol style="list-style-type: none"> 1. As against the Office Bar and Grill, in negligence only (e.g., negligent training and supervision of its bartending staff and doormen; failing to properly staff with sufficient doormen; negligently over-serving alcohol); 2. As against Mr. Pennysise, in negligence only (e.g., negligent use of force); 3. As against Mr. Pennywise, in battery only; 4. As against Mr. Pennywise, in battery or in the alternative, in negligence. <p>In preparing your answer, please refer to any policy wording that is relevant.</p> <p>Please remember to identify any and all assumptions that you need to make in order to answer the question (if any).</p> <p>And please cite and apply the leading authorities, in providing your response.</p>	
10 MARKS	QUESTION # 4	SUGGESTED TIME: 15 MINUTES
	<p>Explain the following insurance terms:</p> <ol style="list-style-type: none"> (a) subrogation; (b) coinsurance; (c) innocent coinsured; (d) deductible. 	
15 MARKS	QUESTION # 5	SUGGESTED TIME: 30 MINUTES
	<p>Jane Doe owns a large property in northern B.C. that she bought as an investment. There are a few buildings on the property that she uses to store her RV and other recreational vehicles, and she rents out space to others for storage.</p>	

Jane purchased property insurance with Wonderland Insurance Company to cover the buildings for the last 15 years. The property policy was written using IBC policy wordings. The 12 month policy period ran from June 1 each year. She bought liability insurance with the IBC CGL policy wordings with the same policy period. Jane renewed the policies on June 1, 2015.

In September 2015, Jane Doe met Steve Antman. Steve began storing his carpet cleaning business equipment in one of the buildings on Jane's property. Soon Steve was running his business out of the loft of the building. He set up a telephone and computer. He parked his carpet cleaning vehicles in her driveway and in the building. He dispatched cleaners from her property. When Jane dropped by the property to store her RV for the winter on October 1, 2015, she noticed the vehicles and spoke briefly to Steve about his activities.

On October 31, 2015, the building occupied by Steve's business burned down following a lightning strike. Determine whether there is any insurance coverage for the loss.

TOTAL MARKS FOR PART 1 – 65 MARKS

END PART 1

PART 2 – AUTOMOBILE INSURANCE

Total Suggested Time for All Automobile Insurance Questions:
Approximately 60 minutes

Total Marks for Part 2 35 Marks
Total Questions for Part 2 6 Questions

Note: Begin a New Examination Book – Correctly Label All Examination Books

REMINDER: ASSUME THE *INSURANCE (VEHICLE) ACT AND INSURANCE (VEHICLE) REGULATION* ARE IN FORCE AND APPLY.

REMINDER: ASSUME THAT ALL ACCIDENTS AND CLAIMS OCCUR AFTER JUNE 1, 2007 AND THAT ALL APPLICABLE CERTIFICATES OR POLICIES CAME INTO FORCE AFTER JUNE 1, 2007

4 MARKS	QUESTION # 1	Suggested Time: 7 MINUTES
	<p>Kelly is driving her vehicle in downtown Victoria with her passenger Kim. They are having a lively conversation when Kim notices Kelly is no longer talking and has stopped responding to Kim's questions. Kelly has turned quite pale and has a glazed look. Their vehicle crosses the centre line into the path of an oncoming vehicle. Kim grabs the steering wheel, but before she can get their vehicle back into the proper lane, they collide with the oncoming vehicle. The other driver suffers injuries. Later, it was determined that Kelly had an unexpected seizure. The other driver commences an action, naming Kelly and Kim as defendants.</p> <p>a) With reference to the applicable legislation, what coverage is available to Kelly?</p> <p>b) With reference to the applicable legislation, what, if any, third party liability coverage is available to Kim?</p>	
5 MARKS	QUESTION # 2	Suggested Time: 10 MINUTES
	<p>Sean and Tammy are married and have lived in Nanaimo for the past 23 years. This is where they raised their son, David. When David was 18, he moved out of the house, eventually ending up in Alberta where he worked in</p>	

	<p>the oil fields. About a year later, he came back for a one week visit. He also wanted to show his father the new pickup truck he bought.</p> <p>Sean and Tammy have one vehicle between them. When David comes to visit, he parks his truck on the street in front of the house. Two days after he comes for his visit, his high school friends pick him up to go out to the pub. His keys are left on the dresser in the spare room where he is staying. Sean is pretty impressed with the truck and decides he would like to take it for a drive. He retrieves the keys and takes the truck up the Island Highway, where, unfortunately, he is involved in an accident. The person whose vehicle was hit by David's truck sues David and Sean. David's truck is fully insured, so he is covered.</p> <p>(a) Explain whether or not Sean is covered</p> <p>(b) Would it make a difference if David had not just come for a visit, but had actually moved back in with his parents?</p>		
7 MARKS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">QUESTION # 3</td> <td style="width: 50%;">Suggested Time: 15 MINUTES</td> </tr> </table>	QUESTION # 3	Suggested Time: 15 MINUTES
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	<p>Barb, Pat, Ted, and Mike are young adult members of a local tennis club. Mike is married. Barb lives with her mother. Pat and Ted are single. They are playing at a tournament at another tennis club out of town. When playing in these tournaments, it is traditional for the participants to stay for drinks at the host tennis club. Since Barb does not drink, she volunteers to drive. However, she only has a two-seater Smart Car. Mike has a luxury SUV so it is agreed that they will use his vehicle, and Barb will do the driving.</p> <p>When they are coming back from the tournament, Barb is distracted and runs a red light. Mike's vehicle is "t-boned" by a vehicle entering the intersection on a green light. The impact is on the passenger's side of Mike's vehicle, and the brunt of it is right where Pat is sitting. She is the only one injured between the two vehicles. Her injuries are substantial and include a traumatic brain injury(assume \$3,000,000.00 plus).</p>		

	<p>The following vehicles have the following policy limits:</p> <ol style="list-style-type: none"> 1. Mike's vehicle \$200,000.00; 2. Mike's spouse's vehicle \$1,000,000.00; 3. Barb's vehicle \$200,000.00; 4. Barb's mother's vehicle \$500,000.00. <ol style="list-style-type: none"> a) Which third party policies apply, and which do not apply, to provide coverage for the claim brought by Pat? b) What is the order of priority of the policies that do apply? c) What is the total amount of third party liability limits available to pay Pat's claim? 	
7 MARKS	QUESTION # 4	Suggested Time: 10 MINUTES
	<p>You act for a Plaintiff injured in a motor vehicle accident that is entirely the fault of the other driver. Your client suffers extensive injuries. He misses a substantial period of work after the accident. He requires extensive physiotherapy and chiropractic treatment, as well as medications. In all, he receives a total of \$75,000.00 in Part 7 benefits. (The Plaintiff does not receive any other collateral benefits, such as CPP, Employment Insurance, etc.) Unfortunately, the defendant driver only had minimum policy limits. However, he has a home with \$150,000.00 in equity.</p> <p>The matter goes to trial and a judgment is entered against the Defendant driver for \$925,000.00 (after taking into account the Part 7 benefits).</p> <p>Outline your advice to the Plaintiff as to:</p> <ol style="list-style-type: none"> a) What process, if any, is available to the Plaintiff to collect more than the third party liability insurance limits? b) How is the entitlement to any additional money determined? 	

	<p>c) Set out what, in addition to the third party liability limits, the Plaintiff will be able to recover, if anything. If he is entitled to more than the limits, provide particulars as to how the calculation is made, along with the total.</p> <p><i>Start with \$925,000.00</i></p> <ul style="list-style-type: none"> • <i>Deduct insurance proceeds, \$200,000.00; (1)</i> • <i>Deduct personal assets \$150,000.00; (1)</i> • <i>Deduct no fault benefits \$75,000.00; (1)</i> • <i>Total \$500,000.00 (1)</i> 		
8 MARKS	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">QUESTION # 5</td> <td style="width: 50%;">Suggested Time: 10 MINUTES</td> </tr> </table>	QUESTION # 5	Suggested Time: 10 MINUTES
QUESTION # 5	Suggested Time: 10 MINUTES		
	<p>Explain which of the following would, or would not be, considered breaches under the Insurance (Vehicle) Regulation. Include reference to the applicable section.</p> <p>a) Alexa lives in a remote part of the Kootenays. She has an illegal still which produces high alcohol “hooch”. She is transporting large tubs of hooch to a warehouse in a nearby village where it will be put into 26 ounce bottles so it can be sold on the black market. Before she gets to the warehouse, her vehicle slides off the road. Her vehicle is damaged, and she also suffers injuries.</p> <p>b) Bruce gets his third speeding ticket in a month and is told by the officer issuing the ticket that he will be hearing from the Superintendent of Motor Vehicles. Indeed, the Superintendent sends Bruce a registered letter notifying him that his license is suspended. However, before the letter is actually delivered, he has an accident where his vehicle is damaged.</p> <p>c) Jill and Jan attended high school together, and then became</p>		

	<p>roommates when they attended university. They have always been competitive, whether it be competing for marks, sports, or even cooking gourmet meals. One day when they were leaving the university, they made a \$10.00 bet as to which of them can get home the quickest. They leave at the same time and are speeding along Chancellor Boulevard when Jan loses control and crashes her vehicle.</p> <p>d) Jean is becoming more and more frustrated by an ongoing strike of clerical workers at UBC. On the day of her final exam, she arrives at the UBC gates (at 10th and Blanca), but there is a row of striking workers blocking the entrance. She drives towards them hoping they will disperse, but one of the strikers does not get out of the way in time, and is hit by Jean's vehicle. She sues Jean for her injuries.</p> <p>In a-d above, who has the onus of proof to establish a breach, if any?</p>		
4 MARKS	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">QUESTION #6</td> <td style="width: 50%;">Suggested Time: 8 MINUTES</td> </tr> </table>	QUESTION #6	Suggested Time: 8 MINUTES
QUESTION #6	Suggested Time: 8 MINUTES		
	<p>Aaron, a BC resident, is vacationing in the Northwest Territories. He is driving on a highway when a camper van travelling in the opposite direction crosses into his lane, requiring him to swerve to avoid contact. He ends up in the ditch and suffered injuries.</p> <p>a) Discuss whether he does or does not have a hit and run claim.</p> <p>b) Discuss whether the result would be different if the accident had occurred in B.C. rather than in the Northwest Territories.</p>		

TOTAL MARKS FOR PART 2 – 35 MARKS

END PART 2

END OF EXAM