

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Insurance Law

Semester- VIII (Batch: 2019-24)

End Semester Examination: May 2023

Date: 06<sup>th</sup> May, 2023

Duration: 3 hours

Max. Marks: 50

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Work limit: 10 Marks: 650 words, 5 Marks: 300 words.

- |   | <b>Marks</b> |
|---|--------------|
| <p>Q.1 Vikram, a software engineer at Tata Consultancy Services (TCS), Gandhinagar had taken a life insurance policy on 15-01-2014 from Life Insurance Corporation of India (LIC) Gandhinagar branch, for sum assured of Rs. 500000/- with yearly premium of Rs. 15000/- for 15 years term and same was backdated from 15-07-2013. He had nominated the policy in favour of Raj, his brother to claim the money after his death. He got married to Anshu on 15-06-2014, but did not change the nomination in her favour. On 15-04-2016, Vikram had assigned the policy in favour of Fearless Insure Plus Pvt. Ltd., the Company involved in trading of life insurance policies and they offered Rs.250000/- as consideration amount. The assignment document was submitted on 20-04-2016 to the LIC office located at Gandhinagar to make changes accordingly. The Insurance Company declined to act upon the endorsement of assignment. Meanwhile, the Insured committed suicide on 17-08-2016. The brother of the deceased claimed the sum assured money as a nominee and Anshu as a legal heir. The Fearless Insure Plus Pvt. Ltd. challenged the act of the LIC for refusing to recognise the assignment. LIC also denied the claim of the claimants by relying on clause 4(B) of the policy. Clause 4(B) of the policy reads as follows:-</p> <p style="padding-left: 40px;">“Notwithstanding and agree that in the event of the death of life assured occurring as a result of intentional self-injury, suicide or attempting to suicide....on or after the date on which the risk under the policy has commenced, but before the expiry of the three years from the date of this policy, the corporation's liability shall be limited to the sum equal to the total amount of premiums paid under the policy without interest”</p> <p>Based on the above facts, answer the following questions:-</p> <ol style="list-style-type: none"> <li>a) Analyze the basic essential tenets for the formation of life insurance contract. When is a life insurance contract deemed to be concluded? Whether the LIC is right in declining to act upon the endorsement of assignment?</li> <li>b) What are the rights of nominee and legal heir in the above case, before and after passing the Insurance (Amendment) Act, 2015? Who is entitled to receive the policy money?</li> <li>c) Whether denial of claim by LIC by relying on Clause 4 (B) of the policy was justified?</li> </ol> | <p>(10)</p>  |



- Q.2 A Civil Appeal is filed before the Supreme Court of India against an impugned order, dated 07.08.2004, passed by the National Consumer Dispute Redressal Forum (NCDRC), New Delhi in an Original Petition filed before it. The complainant (appellant herein) Handloom and Furniture Industries Ltd. had taken a fire insurance cover dated 01.04.1998 from New India Assurance Company Ltd. for one of its factories situated in Jamnagar, Gujarat. On 08.01.1999 at about 3:00 pm, there was a short circuit in the main switch board installed in the sub-station receiving electricity from the State electricity board which resulted into flashover producing over currents. The flashover and the over currents generated excessive heat. The paint on the panel board was charred by this excessive heat producing smoke and soot and the partition of the adjoining feeder developed a hole. The smoke/soot along with ionized air travelled to the generator compartment and there was short circuiting and the generator power also tripped. As a result, the entire electric supply to the plant stopped and due to the stoppage of the electric supply, the waste heat boiler got damaged. The smoke and soot produced also damaged certain finished products stored in the warehouse and so as to prevent further damage, the warehouse keeper shifted those products outside the warehouse which consequently got damaged because of a heavy rainfall. The Appellant company filed an application for the claim amount with the insurer for the damage caused to the waste boiler and finished products but the same was rejected. Thereafter, the insured company filed a complaint before the NCDRC seeking damages and claimed the amount but the same was rejected by the NCDRC. The Insured approached the Supreme Court of India challenging the impugned order passed by the NCDRC. The stand of the Insurance Company is that loss to the boiler and other finished products was not caused by fire (because a flashover is not a sustained fire) but was caused by stoppage of the electric supply due to the short circuiting in the switchboard and a heavy rainfall respectively. (10)

In light of the facts, elucidate whether the Insured is entitled to the claim amount or not? Briefly discuss the perils that are covered and excluded under the standard fire insurance policy.

- Q.3 X and Y were husband and wife travelling on a motorbike from the market to their home. On their way to the destination, they were hit by a truck which was being driven negligently. The unfortunate incident resulted in the death of Y and caused grievous hurt to X. X got two bruises one on his face and another on his back. He also suffered a fracture in one of his legs which ultimately resulted in a permanent disability. The doctor certified that X suffered from 50 % permanent disability in his legs. Considering the fact that X was working as a bus driver in a private institution, the doctor also certified that the injury would result in 70% loss in the earning capacity of X as a driver. Given that X was employed as a driver on a casual basis/need basis, he had no means of proving his income. Y worked as a clerk in the Municipal Corporation Office and earned a salary of Rs 8,000/- per month. X and Y were 26 and 25 years old respectively at the time of an accident. Due to the grievous injury which caused to X, made him to hospitalize for 3 months in which around Rs20, 000/- were incurred as expenses towards his medical needs. Both X and Y had four family members, 2 minor children and senior citizen parents, who were financially dependent on both of them. X and Y sent both their children to an English medium school and had their own home to live in. The minimum wage of a driver in the State to which X and Y belonged is Rs 10000/- per month for an unskilled driver and Rs 12,000/- per month for a skilled driver. (10)



X along with his father and son, approaches you for the purpose of filing a claim application before the Motor Accident Claims Tribunal (MACT) as per the provisions of the Motor Vehicle Act, 1988. As an advocate for the Claimant, advice the options for remedy available under the said Act and the approximate compensation that they are entitled to get considering the settled principles of law laid down by the Supreme Court of India in the leading judgments.

Age Bracket	Multiplier
0-15 years	18
15-20 years	18
21-25 years	18
26-30 years	17
31-35 years	16
36-40 years	15
41-45 years	14
46-50 years	13
51-55 years	11
56-60 years	9
61-65 years	7
65 & above	5

- Q.4 RKT was the driver of a privately owned car. On 28th January, 2017 at 6.30 PM, he took out the car for a joyride along with four other persons without the consent of the owner of the vehicle. While the vehicle was on the way to the temple, the car met with an accident, in which RKT and three other occupants of the car died and the fifth passenger sustained injuries. The legal heirs of the deceased RKT filed a case before the Commissioner of the Employees Compensation Act, 1923 under Section 163A of the Motor Vehicles Act, 1988 at Ahmedabad, Gujarat. The Commissioner dismissed the claim holding that neither the owner of the car nor the Insurance Company was liable to pay compensation to the driver because RKT had taken out the car of his employer unauthorized and against his express instructions and hence falling beyond the course of employment. On the other hand, Owner is also not liable as the vehicle was taken out from his premises without authorization and thereby committed the theft of the vehicle. The legal heirs of the other three persons along with one who had sustained injury also filed a claim application under Section 163 A of the Motor Vehicles Act, 1988 before the Motor Vehicles Claims Tribunal (MACT), Mehsana. All the claimants also filed an application under Section 140 of the Act for interim compensation. The Tribunal dismissed the claim application by holding that the Insurance Company was not liable to pay compensation as the driver was driving the car rashly after consuming liquor and it's a valid defense available to them against the owner. Tribunal further held that the owner is also not liable to pay compensation by stating the same observation as stated above by the Commissioner of Employees Compensation. The Tribunal has not even granted interim relief under Section 140 of the Motor Vehicles Act and dismissed the same. (10)

The aggrieved by the orders passed by the Commissioner and the MACT, legal heirs of the deceased persons and victim filed an appeal before the High Court of Gujarat, Ahmedabad. The issues before the court were as follows:-

- a) Whether the claim application under Section 163A of Motor Vehicles Act, 1988 is maintainable before the Commissioner of Employees Compensation Act, 1923?
- b) Whether Tribunal is right in dismissing the application filed under Section 140? What is the scope of the remedy available what procedures should the Tribunal follow for granting relief?
- c) Whether the claimants are required to plead or to establish negligence on the part of the driver of vehicle/vehicles for claiming compensation under Section 163A of the Motor Vehicles Act?

Substantiate the above issues with the help of decided cases and provisions of the Motor Vehicles Act.

Q.5 Write a short note on **any two** of the following:

(5x2=  
10)

- a) *Felo de se* clause under life insurance contracts.
- b) Pradhan Mantri Fasal Bima Yojana.
- c) The Married Woman's Property Act, 1874 and life insurance policy
- d) Public Liability Insurance

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