

EXAM 6 – CANADA, SPRING 2017

4. (2.25 points)

In each of the following scenarios, an insurance company is defending its position in court. Explain a likely outcome for the insurance company and cite any relevant precedents used to support the conclusion drawn.

a. (0.75 point)

In Ontario, a personal automobile policyholder is injured in a motor vehicle accident as a result of the negligence of another driver. The policyholder obtains a settlement against the negligent driver which includes their total medical expenses. The policyholder then brings this action against their own motor vehicle insurer for the total amount of their medical expenses. The insurer objects to paying.

b. (0.75 point)

In Ontario, an insurer issues a policy protecting the insured's property against loss by fire, lightning, windstorm, theft, etc. The policy specifies proof of loss within 60 days after a loss. The insured's exposure is unrelated to marine adventure, even though the policy is headed "inland marine policy". Following a fire loss, the insured makes a claim as soon as practicable on the 70th day after the loss. The insurer denies the claim.

c. (0.75 point)

In Ontario, an insured A suffers serious injuries in a motor vehicle collision and brings an action against the driver of the other vehicle B, an underinsured motorist. Insured A subsequently enters into a limits agreement with B, without notice to A's insurer. The agreement provides that B will admit liability and A will not sue them in excess of their liability insurance coverage. A seeks to recover the remainder of the damages from their insurer. A's insurer argues that a limits agreement precludes A from advancing a claim against the insurer.

CONTINUED ON NEXT PAGE

EXAM 6C SPRING 2017 SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 4	
TOTAL POINT VALUE: 2.25	LEARNING OBJECTIVE(S): A3
SAMPLE ANSWERS	
Part a: 0.75 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Insurer would not be required to pay. The Insured has suffered a pecuniary loss (medical expenses), so this would be ruled as a contract of indemnity. Under a contract of Indemnity, double-recovery is not permitted. Relevant case is the Glynn case. • Relevant precedent: Glynn v Scottish. In this case, a first trial ruled that the insurer needed to pay for the loss of the insured but on appeal, the decision was reversed. Insurer doesn't need to pay for the claim. Because it is a contract of indemnity. And under a contract of indemnity, the insurer needs to be able to subrogate. Therefore, in this case the insurer won't have to pay for the medical expense. 	
Part b: 0.75 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Precedent is the Regal Films case. Ruling is that the "fire part" of the Act can't be evaded by calling it an inland marine policy. Fire part allows proof to be filled "as soon as practicable". So the insurer would have to pay the claim. • This case is substantially similar to KP Pacific Holding Co. According to the precedent, the contents of the insurance contract (in this case is fire & other perils) is more important than the policy header of "inland marine policy". If taken to court, the insurer will likely be forced to pay the loss, as the court will treat this as fire insurance. 	
Part c: 0.75 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Relevant precedent is the Somersall case. Ruling is that the amount of damages owed to the insured are determined based on what the insured was entitled to at the time of the accident. Since the limit agreement was created after the accident, the insurer will be required to pay the amount in excess of what the insured has received from the other driver. • Somersall vs Scottish & York. The insurer would have to pay because the limit agreement did not: 1) prevent insured from being fully compensated for entitlement at the accident. 2) Insurer's right of subrogation after insured is fully compensated. 	
EXAMINER'S REPORT	
<p>Candidates were expected to discuss the issues, outcome, rationale and implications of landmark decisions for the insurance industry.</p>	
Part a	
<p>Candidates were expected to discuss the issues, outcome, rationale and implications of decisions for the case Glynn v. Scottish Union & National Insurance Co. Ltd.</p> <p>A common error was stating that the insurer would be likely to pay, for example:</p> <ul style="list-style-type: none"> • The court is likely to request the insurer to pay the claimant and then subrogate the full medical expense from the negligent driver. 	

EXAM 6C SPRING 2017 SAMPLE ANSWERS AND EXAMINER'S REPORT

Part b

Candidates were expected to discuss the issues, outcome, rationale and implications of decisions for the case Regal Films Corporation Ltd v. Glens Falls Insurance Company or the case KP Pacific v. Guardian.

A common error was stating the correct conclusion however, including incorrect reasoning, for example:

- The insurer will have to pay the claim. There is no express time limit on inland marine policies. The requirement is that proof is provided as soon as practicable.

Part c

Candidates were expected to discuss the issues, outcome, rationale and implications of decisions for the case Somersall v. Friedman or the case Somersall v. Scottish & York.

Common errors include not providing enough information to support the conclusions, for example:

- Insurer is right. The insurer should be notified asap instead of after the agreement.
- The concern of this case is to state if the subrogation clause applies. The insured limits his insurer to recover claims. The likely outcome is that insurer won't have to pay.