

EXAM 6 – CANADA, FALL 2017

4. (2 points)

In each of the following scenarios, explain a likely outcome for the insurance company and cite any relevant precedents used to support the conclusion drawn.

a. (1 point)

In Ontario, Driver A was injured in a motor vehicle accident due to Driver B's negligence. Driver A has settled with Driver B for all of the damages, explicitly including medical expense. Driver A then brought action against his own insurer to recover his medical expenses, citing the following clause in the standard personal automobile insurance policy:

The Insurer agrees to pay for each person who sustains Bodily Injury caused by an accident while driving, all reasonable expenses incurred as a result of such injury, for necessary medical, surgical, hospital services.

b. (1 point)

An insured has been sued for causing damages as a result of sexual assault. The insurance company is denying any duty to defend, as intentional act is excluded from the insured's personal liability coverage. The possibility of action in negligence by the insured has also been ruled out. The insured in turn files a lawsuit against the insurance company, arguing the insurance company has a duty to defend.

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

QUESTION 4	
TOTAL POINT VALUE: 2	LEARNING OBJECTIVE(S): A3
SAMPLE ANSWERS	
Part a: 1 point	
<u>Sample 1</u>	
<ul style="list-style-type: none">- Glynn vs. Scottish Union- An insurance contract is assumed to be a contract of indemnity unless specifically stated otherwise- To recover from a contract of indemnity the insured must prove that<ol style="list-style-type: none">1. A covered event occurred2. Insured sustained a loss from the event- Since A already got paid for his damages by B, he can't obtain double recovery, because he doesn't satisfy #2	
<u>Sample 2</u>	
<ul style="list-style-type: none">- This is Glynn vs. Scottish Union case- The insurer would have to pay for the expenses, but can subrogate from Driver A on settlement collected from Driver B.- Section B is considered a contract of indemnity because payment is only triggered when claimant prove event of loss and amount of loss. Since subrogation stems from indemnification, insurer would be able to subrogate in this case	
<u>Sample 3</u>	
<ul style="list-style-type: none">- Somersall vs. Scottish York- Driver A is unlikely to get compensated from its own insurer- Insured shall not be double compensated, as that violates the principle of indemnity- Unless stated specifically in the contract as intention, contract of insurance is contract of indemnity	
Part b: 1 point	
<u>Sample 1</u>	
<ul style="list-style-type: none">- Case: Sansalone vs. Wawanesa- If the risk of injury is inherent in the insured's malicious acts such that the risk of injury is a natural and probable consequence of the act, then the intention to commit the act is the intention to cause the injury- Thus coverage doesn't apply and insurer has no obligation to defend	
<u>Sample 2</u>	
<ul style="list-style-type: none">- This is duty to defend and the same ruling as Nichols vs. American Home Assurance should apply- The duty to defend is not separate from duty to cover, because there would be too many disadvantages with a broad duty to defend. Therefore, since intentional act is excluded, duty to defend for intentional act should also be excluded.	

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

EXAMINER'S REPORT

Candidates are expected display an understanding of specific landmark court decisions.

Part a

Candidates were expected to understand the definition of contract of indemnity and the concept of principle of subrogation, as well as understand how insureds are prevented from profiting from a loss event.

Common mistakes include:

- Using the case of Somersall vs. Scottish York as a precedence to claim that the insurer will have to pay for the medical expenses. This is incorrect since the insured in the Somersall case was not fully compensated. The insurer's right of subrogation arises after the insured has been fully indemnified.
- Incorrect or missing precedence reference
- Mentioning avoidance of double recovery but insufficiently supporting this answer by not referencing the principle of subrogation or contract of indemnity

Part b

Candidates were expected to understand that intention to commit the act is the intention to cause the injury when injury is the natural and probable consequence of an intentional act.

Common mistakes include:

- Incorrect or missing precedence reference
- No mention of intention to commit the act or intention to cause injury