DURATION: 2 HOURS

TOTAL MARKS: 60

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INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of FOUR (4) pages. Please ensure that you have all of the pages.
3. Please answer ALL questions.
4. Each Section must be answered in a different answer booklet.
5. Please note the marks allocated for each question and apportion your time accordingly.
SECTION A

QUESTION ONE

Sections 53 and 59 of the Long-term and Short-term Insurance Acts of 1998 (like their predecessor, section 63(3) of the Insurance Act, 1943) were enacted to mitigate the harsh effects of insurance warranties under the common law. Referring to the decided cases, explain the following:

(i) the meaning of 'warranty' in this context (5).
(ii) why, at common law, warranties brought about harsh results (5)
(iii) the content and effect of sections 53 and 59 referred to above (5).

[Total Q1: 15 marks]

AND

QUESTION TWO

With reference to the decided cases, write a note explaining the doctrine of subrogation. Include in your answer (but do not limit you answer to) discussion of the specific requirements for subrogation and its consequences. Thereafter, consider the following problems.

(i) Myope is driving home from work when she is involved in a collision with another vehicle, driven by Reklas. Neither party is injured but, Myope’s car is badly damaged. The fault for the collision lies entirely with Reklas who veered on to the wrong side of the road while attempting to find a number on his cell phone. Myope’s insurance company compensates her for the amount of damage to her vehicle and then brings an action, in its own name, against Reklas for the amount paid out. Is the company entitled to succeed? Explain.

(ii) The same facts as before except that, immediately after the collision, Myope says to Reklas: ‘Don’t worry about paying for the damage to my car! I am insured. My insurance company will see to it that I am paid for the damage. So I do not hold you responsible.’ On discovering the facts, Myope’s insurance company repudiates her claim. Is it entitled to do so? Explain.

[Total Q2: 15 marks]

TOTAL SECTION A: 30 MARKS
SECTION B

QUESTION ONE

Peter Jones is a director of Amazing Electrical Supplies (Pty) Ltd ('Amazing Electrical Supplies'), a company which carries on business in Durban and which sells electrical appliances such as dishwashers, washing machines, microwaves and fridges. Prior to joining Amazing Electrical Supplies eight months ago, Peter used to be the sole proprietor of his own business, 'Electrical World', which also sold the same type of electrical appliances. One day, a certain Michael Clarke, who runs his own business in Pietermaritzburg, wants to order certain electrical appliances and he decides to contact Peter Jones. Michael had frequently purchased appliances from Peter when Peter still owned Electrical World but he does not know that Peter has subsequently sold his business and that he now works for Amazing Electrical Supplies. Michael orders 10 dishwashers, 5 washing machines and 4 fridges from Peter, an order amounting in total to R 120 000. Peter accepts the order from Michael but does not tell Michael that he is now a director of Amazing Electrical Supplies.

Peter subsequently arranges for all of the above items to be delivered to Michael and Michael pays Peter a deposit of R 60 000. It is agreed between Peter and Michael that the balance of the purchase price must be paid within 3 months. Five months later, however, Michael has still not paid the balance of the purchase price. He subsequently receives a summons from Amazing Electrical Supplies (Pty) Ltd wherein the company is threatening to sue him for breach of contract and is claiming the full purchase price of R 120 000. Michael is confused as he was under the impression that he was purchasing the appliances from Electrical World and he did not know that Peter was selling the appliances on behalf of Amazing Electrical Supplies.

Michael now approaches you for legal advice. He wants to know whether Amazing Electrical Supplies can hold him liable for breach of contract under these circumstances. Advise him fully on the legal position in this instance, assuming that it is common cause that Peter was authorised to sell the abovementioned appliances on behalf of Amazing Electrical Supplies.

[Total Q1: 12 marks]
QUESTION TWO

John Davison is planning to buy a motor vehicle for his daughter, Mary, who is going to start University in 10 months’ time. John decides to take R 120 000 out of his current bank account and invest this money on a short-term basis so that he can earn interest on this money at a good rate and use this money and interest towards the payment of the motor vehicle. John subsequently approaches Expert Financial Services (Pty) Ltd, a company that provides financial advice to customers. John discusses the matter with the manager, a certain Timothy White, and explains the reason why he wants to make this investment. John then instructs Timothy to invest the money on his behalf so as to ensure that he gets a good interest rate but also to ensure that his capital amount is protected. Timothy agrees to invest the amount on this basis.

Timothy subsequently invests the money in an offshore investment. Ten months later, John decides to redeem his investment as he has now found the perfect car for his daughter. However, when the investment is redeemed, John discovers that the capital amount has depreciated to R 100 000 (i.e. R 20 000 of the capital sum has been lost). John approaches you for legal advice. Advise him on the duty of a mandatary to exercise reasonable care and skill in the performance of his mandate and thereafter explain whether Timothy acted in breach of this duty in the above instance.

[Total Q 2: 10 marks]

QUESTION THREE

Discuss the principal’s right to revoke the authority that he has given to his agent. Is there such a thing as an ‘irrevocable authority’? Explain with reference to relevant case law.

[Total Q 3: 8 marks]

TOTAL SECTION B: 30 MARKS

TOTAL FOR EXAM PAPER: 60 MARKS