INSTRUCTIONS

1. This paper contains six (6) pages and three questions, each totalling 25 marks.
2. You are required to answer all the questions.
3. This is a closed-book examination, and you are not permitted to take any study materials into the examination room or to consult any such materials when writing the examination.
4. You are requested, in your own interests, to write legibly.
QUESTION 1

(1) The main duty of the insurer under a contract of insurance is to pay the insured a sum of money or render him an equivalent upon the occurrence of an event. Discuss the extent of the insurer’s liability to make payment and any factors that affect the question. Explain what is meant by ‘render an equivalent’. Having completed your discussion, consider the following problems.

(a) Matilda insures her car against damage for R100 000. The car is involved in an accident and damaged beyond repair. The insurance company tenders to pay Matilda R75 000, as this is the current ‘book value’ of the car. Matilda insists on being paid the full amount of R100 000.

(b) Stooge wants to insure the contents of his house against fire and theft. The value of everything in the house is R1 million and Stooge ascertains that, to obtain insurance in this amount will cost more than R2 000 per month. Stooge is reluctant to pay this much, so he insures the household contents for only R500 000. The house is subsequently burgled and items worth R100 000 are taken. The insurance company tells Stooge that there is an ‘excess of R5 000’ and that because the insurance is ‘subject to average’ (referring to an ‘average’ clause in the policy), Stooge will have to bear ‘a rateable proportion of the loss’. Stooge insists on being paid the full amount of his loss.

(c) Cyril takes out a policy with ABC Insurance Co (ABC) insuring the contents of his house against fire and theft. To be sure that he has got full cover, he takes out a second fire and theft policy with XYZ Insurance Co (XYZ). The insured amount under the ABC policy is R400 000, and under the XYZ policy, R600 000. After a fire destroys part of the contents of his house, causing damage in the sum of R200 000, Cyril claims payment of his full loss under each policy. Explain the following.

(i) Is Cyril entitled to recover R200 000 under each policy? If not, what amount may Cyril recover from each insurer?

(ii) If either insurer pays Cyril R200 000, does that insurer have any right of recourse?

(iii) How would the presence of a ‘contribution’ clause affect the position (if at all)?
(iv) What would be the position if the ABC contract contained a clause absolving the insurer from liability in the event of the insured having the same insurance with another insurer?

(v) What would be the position if both policies contained a clause to this effect?

[20 marks]

(2) Lynda wants to sell her house and instructs a number of estate agents, including Slicke, to find a buyer at a price of R1,1 million. Slicke informs Mary about the house. He gives her his business card with the address of the house written on it. Mary does not go to view the house immediately, because she thinks the asking price is too much. Six months later, after house prices have dropped substantially, Mary happens to be in the area where the house is situated and, using Slicke’s business card, she finds the property and goes in to speak to the occupant (Lynda). Over a cup of tea, Mary manages to persuade Lynda to lower her price to R800 000 and Mary agrees to purchase at this price. The parties subsequently sign a deed of sale. Is Slicke entitled to payment of his commission? Explain.

[5 marks]

[Total Q1: 25 marks]

QUESTION 2

(1) A party proposing to enter into a contract of insurance owes the proposed insurer a duty of disclosure. Explain and discuss the following, making reference to the decided cases:

(i) the basis of the duty of disclosure;

(ii) the ambit of the duty – in other words, what must, and what need not, be disclosed to the proposed insurer;

(iii) when disclosure must take place;

(iv) the effect of disclosure to the insurer’s agent;

(v) the insurer’s right of rescission for non-disclosure.

Having completed the above, consider the legal position in the following cases.

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Continued …/
(a) ABC Insurance Co (ABC) distribute pamphlets to a number of brokers advertising ‘a 10-year endowment policy plus life cover’. The company indicates to the brokers that the policy is intended for clients who are actively engaged in their usual occupations and fit enough to lead normal lives. The brochure states as follows: ‘Free life cover … available free of medical evidence … No medical questions whatsoever.’ Joop’s broker informs him about ABC’s offer and he completes the required proposal form. The form does not call for any medical details and Joop does not disclose to ABC that he is suffering from hypertension and has recently received treatment for an ulcer and for skin cancer. ABC subsequently refuses to pay out on the policy on the grounds that Joop failed to disclose his medical condition. Is it entitled to adopt this stance? Explain.

(b) Overland Hauliers (OH), a company that owns and runs a transport business, wishes to take out a policy against damage to its vehicles. The manager of the business, Rex, previously managed a similar transport business, and over a period of one year, seven of the vehicles used by that business were involved in accidents caused partly by the negligence of its own drivers. The directors of OH have never been informed of these facts and do not bring them to the insurance company’s attention. Are they under a duty to do so? Explain.

(c) Swankee is intent upon taking out insurance for her clothing store. One of the questions in the proposal form asks: ‘Have you ever been declared insolvent.’ Swankee’s estate has never been sequestrated but, a few years earlier, a close corporation, in which she held the controlling interest, was liquidated after it got into financial difficulties. Is Swankee obliged to disclose this information? Explain.

[20 marks]

(2) Referring to the decided cases, explain the legal effect of a ‘sole agency’. Having done so, consider the following problem.

Sella, who wishes to sell his luxury apartment, telephones Agent, an estate agent, and requests him to ‘find a purchaser’ for the apartment at a price of R2 million. Agent agrees on the basis that he will be entitled to his usual commission and that, for the next two weeks, he will have ‘the irrevocable sole right to sell the property according to whether or not the owner wishes to sell it.’ During this period, Sella receives a phone call from Buya, who says that he has heard from
one of the residents in the apartment block that Sella may be interested in selling his apartment. Sella immediately has a deed of sale drawn and later that day he and Buya conclude the sale for a price of R2 million. Agent insists that he is entitled to commission in respect of the sale. 

[5 marks]

[Total Q2: 25 marks]

QUESTION 3

(1) 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.

(a) 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.

(b) 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’. On discovering the facts, Myope’s insurance company repudiates her claim. Is it entitled to do so? Explain.

[15 marks]

(2) Consider the set of facts below and explain fully the applicable legal principles, making reference to the decided cases.

Samuel, who has inherited several pieces of engineering machinery, contacts Ace, a dealer in such machinery, who sells second-hand items and has a large client base. Samuel instructs Ace to find a buyer for the machinery for ‘at least R800 000.’ This price is somewhat below the market value of the machinery. Ace’s initial attempts to find a buyer are unsuccessful. He resolves to form a close corporation with another party, Bok, and buy the equipment through this
corporation. He does not inform Samuel of his plan. After the corporation is formed, Bok approaches Samuel and offers on behalf of the corporation to buy the machinery for R800,000. Samuel, who has heard nothing from Ace since asking him to find a buyer, reluctantly accepts the offer. He then receives a claim for commission from Ace for bringing about the sale.

[10 marks]

[Total Q3: 25 marks]

TOTAL FOR PAPER: 75 MARKS