



# UNIVERSITY OF ESWATINI

SEMESTER II **MAIN** EXAMINATION PAPER, MAY/JUNE 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

Course Code: **LAW404**

**INSURANCE & PENSIONS LAW (LLB N/P)**

Time allowed: 3 Hours

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**Instructions:**

1. Answer **2 (two)** questions from **Section A**, and **2 (two)** questions from **Section B**.
2. Each Question Carries 25 Marks.
3. Begin each question on a new page.
4. Make sure that you write legibly, that your expression is clear and that you refer to authority.

Special Requirements: NONE

Additional Material(s): NONE

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance card but must NOT write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT turn examination paper over until instructed to do so.**

## SECTION A - Answer two (2) questions from this section

### QUESTION 1

- (a) What are the main purposes/objectives of the Insurance Act, 2005? [3 Marks]
- (b) What are the Registrars' statutory considerations for the licencing of insurance brokers? [6 Marks]
- (c) Name four functions of the Registrar of Insurance and Retirement Funds. [4 Marks]
- (d) The Insurance Act, 2005 provides for the protection of insurance policy-holders and consumers of credit. Discuss some of the relevant provisions [12 Marks]

[25 Marks]

### QUESTION 2

Abel signs a proposal form for a life insurance policy and submits it to an insurance company. Though no medical examination is required, the proposal form asked whether Abel has seen a doctor during the past two years. Abel has in fact not seen a doctor in the past two years, but six years ago his doctor told him that he had tested positive for cancer, and probably would die soon. Abel does not mention this to the insurer. Abel dies and his wife claims on the policy. Consider and analyse the following situations:

- (a) Is the insurance company obliged to pay?
- (b) Would your answer be different if the proposal form stated the following: "No medical evidence required. All applications are accepted"? [20 Marks]
- (c) It is possible in insurance contracts that the non-disclosure of certain facts material to the risk happens through mistake, without any intention to defraud on the part of the proposer. In such cases what is the legal status of the resultant policy contract? Give an authoritative reason why the agreement is classified as such. [5 Marks]

[25 Marks]

### QUESTION 3

Compare the following sets of facts:

**[Set 1]**- On the 4<sup>th</sup> of January 2016, X takes up an insurance policy with the Swaziland Royal Insurance Corporation, insuring his house against risk of damage or destruction by fire. He pays the premiums upfront for the whole year. Six months later X sells the house for cash against transfer to Y. Three months later, the house is razed to the ground by fire. X has been paid the purchase price at this time and ownership of the house has been transferred to the buyer, therefore he has no further pecuniary interest to the house.

**[Set 2]**- X insures the life of his wife Y. Later on they get divorced. Y dies a year after the divorce; there are no children to support and no property obligations between them.

With regard to X's possible claims above, discuss the element of insurable interest as it should apply in the two situations referring to relevant case law.

[25 Marks]

**SECTION B – answer two (2) questions from this section**

**QUESTION 1**

Mr. Shakantu is a member of UNESWA Pension Fund managed by Fairlife. On becoming a member of the fund, Mr. Shakantu completed a beneficiary nomination form in terms of which he nominated two persons as beneficiaries in the event of his death. He nominated his girlfriend Penelope, whom he had been dating for the past 5 years. He also nominated his daughter from a previous marriage, Zinhle. Penelope is a Chartered accountant running her own practice and lives at her house in Thembelihle Mbabane. She had always spent her weekends at Mr. Shakantu's home, and was planning on moving in with him. Zinhle is a 2<sup>nd</sup> year university student who has been living with his father since childhood. Mr. Shakantu's unemployed mother, Tracey, has also come to stay with him after becoming widowed 2 years ago.

Upon Mr. Shakantu's death, the UNESWA Pension Fund trustees considered the nomination form as well as the Retirement Funds Act of 2005. They then decided to distribute the benefits payable by the fund to Penelope, to Zinhle, and to Tracey, in equal proportions (i.e. each was to receive 33.3%). Zinhle felt unhappy about Penelope being declared a beneficiary as, in her opinion, Penelope has never been dependant on Mr. Shakantu. Zinhle was also unhappy about having to share her father's death benefits 'equally' with the other beneficiaries.

She wishes to challenge the trustees' decision, and she approaches you for legal advise. At the time she contacts you, the benefits are not yet paid out to the declared beneficiaries. She informs you that she had written a letter of complaint to the management board, but a year has since passed and no response has been communicated to her. Write a legal opinion in which you advise Zinhle on the merits of her case, as well as the procedures for pursuing her cause.

[25 Marks]

**QUESTION 2**

With specific reference to the case of *Financial Services Board and Another v De Wet NO and Others* 2002 (3) SA 525 (C), distinguish between a 'defined benefit' fund and a 'defined contribution' fund.

[25 Marks]

**QUESTION 3**

Write an essay in which you analyse the jurisdiction of the Pension Funds Adjudicator, referring to decided cases.

[25 Marks]

**END OF EXAM**