



# UNIVERSITY OF ESWATINI

SEMESTER II **RE-SIT** EXAMINATION PAPER, JULY 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 **two (2)** Questions from **Section A**, and **two (2)** 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

With specific reference to the following cases:

- *Department of Trade & Industry v St Christopher Motorist Association Ltd* [1974] ALL ER 395;
- *Littlejohn v Norwich Union Fire Insurance Society* 1905 TH 374;
- *Philips v General Accident Insurance Co (SA) Ltd* 1983 (4) SA 652 (W); and
- *Lynco Plant Hire & Sales CC v Univem Insurance Brokers CC* 2002 (5) SA 25 T,

Write an essay in which you comprehensively analyse the essential elements of a contract of insurance.

[25 Marks]

### QUESTION 2

- (a) Distinguish between indemnity and non-indemnity insurance. [5 Marks]
- (b) Discuss what is meant by the duty of disclosure. [5 Marks]
- (c) Distinguish between an affirmative warranty and a promissory warranty [5 Marks]
- (d) Discuss what is meant by subrogation and briefly explain the doctrine of subrogation in insurance law. [10 Marks]

[25 Marks]

### QUESTION 3

Compare the following sets of facts:

**[Set 1]**-On the 4<sup>th</sup> of January 2016, M 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 M sells the house for cash against transfer to B. 3 months later, the house was razed to the ground by fire. M 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]**- H insures the life of his wife W. Later on they are divorced. W dies a year after the divorce; there are no children to support and no property obligations between them.

With regard to M's possible claims above, contrast what the "nature" of insurable interest should be in the two situations. Support your opinion with case law.

[25 Marks]

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

**QUESTION 1**

Write an essay in which you describe the essential characteristics of the following:

- (a) Government/Public Sector Pension Funds
- (b) Pension funds and provident funds
- (c) Defined benefit funds and defined contribution funds
- (d) Umbrella funds

**[25 Marks]**

**QUESTION 2**

Write an essay in which you describe the statutory powers of the Registrar of Insurance and Retirement Funds in ensuring compliance with the Act, including a critical analysis of the Registrar's 'discretionary powers'.

**[25 Marks]**

**QUESTION 3**

Write an essay in which you analyse the jurisdiction of the Pension Funds Adjudicator, referring to past determinations and court cases.

**[25 Marks]**

**END OF PAPER**