

Sample Insurance Law Exam Professor Meadows

Question 1 (30 minutes)

Sally Fields was driving her red Jeep Grand Cherokee on a road that runs alongside a state game preserve in the state of Widener on the first day of hunting season. Suddenly a shot rang out and Sally felt a sharp pain in her shoulder. Looking down, Sally saw that she had been hit by a bullet. She immediately pulled over to the side of the road. Fortunately, the car did not crash. Several hunters came running from the woods and one exclaimed that Sally must have been hit by the bullet he had shot at a deer. He apologized profusely and used his cellular phone to call for assistance. Examination of the bullet after it had been removed from Sally's shoulder disclosed that the bullet had in fact been from the hunter's deer rifle.

Sally incurred \$15,000 in medical bills for the treatment of the injury and missed work for 3 months, resulting in \$8,000 in lost wages. The state of Widener has enacted No-Fault legislation which requires motor vehicle owners to purchase \$50,000 in personal injury protection benefits to pay medical bills and lost wages. Sally had such a policy with County Ranch Insurance Company. The policy provided coverage for medical bills and lost wages "arising out of the maintenance, ownership or use of the covered motor vehicle."

Sally has made a claim for payment of her medical bills and lost wages with County Ranch. County Ranch has denied the claim on the ground that the policy does not cover this incident.

You have been hired by Sally to represent her in her claim against County Ranch. Explain the arguments you will make FOR Sally's position that her injuries are covered by her policy with County Ranch. Explain at least 3 different theories which might support Sally's position. Widener courts have not addressed this issue and therefore, this is a question of first impression in the state of Widener.

Question 2 (30 minutes)

James Beard and Julia Childs are roommates, having known each other since cooking school. They do not have a romantic relationship. James Beard owns the home in which the two have lived for 20 years. James pays all expenses related to the home, the mortgage, taxes and utilities (gas and electric). Julia pays for all food and telephone expenses. Beard has a child by a brief earlier relationship, Joey Schmidt. Joey is 21 years old and does not reside at the home. Although there was not a written lease, Beard and Childs have both signed an agreement whereby they agreed that neither party would ever make a claim for personal injury or property damage against the other or a member of either party's family for any damages sustained as a result of the use of the home. This was signed over 2 years ago.

One winter evening, Joey, while visiting, decides he really wants barbecue chicken for dinner. However, it is 20 degrees below zero outside, so he brings the gas barbecue grill into the dining room to cook the chicken. After Joey starts the grill and puts the chicken on, the telephone rings. His long-lost high school sweetheart is on the phone! Joey begins chatting away, completely forgetting about the chicken on the grill in the dining room. Unfortunately, before Joey remembers, the grill catches the dining room curtains on fire. The fire spreads and completely destroys the home. After the fire, Joey apologizes profusely

to his father and Childs.

Prior to the fire, Childs had purchased a standard policy of property insurance with D. Klein Insurance Co. on the home naming herself as the insured. Childs has made a claim against D. Klein Insurance for the loss to the home. The insurance company has decided to deny the claim. You are the attorney for the company and have been asked to give an opinion about the reasonableness of the company's denial. Be sure to discuss any reasonable justification the company may assert, even if you believe the company's position would be defeated in a trial.

Question 3 (20 minutes)

First Bank has decided to offer its mortgage clients a new product in lieu of title insurance. This product, called PILTI, (Protection in lieu of Title Insurance), can be purchased by a borrower for about 10% less than the equivalent title insurance premium. Title insurance is a product whereby an insurance company insures the interest of the owner of property and/or a mortgage holder on property against any defects in the title to the real estate. Generally mortgage lenders require a borrower to purchase title insurance on the mortgaged real property.

If a mortgage customer elects to have PILTI apply instead of purchasing title insurance, First Bank will conduct, at its expense, a title search for any defects in the title for the purposes of determining whether to lend against the property. (First Bank only offers PILTI to borrowers who are obtaining mortgages on residential property through First Bank.) Generally this search is contracted out with a local title company performing the actual search. A report on the title to the property is generated which is called a Title Condition Report. This report expressly states that it "does not insure or guarantee title to the property." If the Title Condition Report reveals no defects in the title and the client otherwise qualifies for the mortgage, First Bank, for payment of the PILTI fee, makes the loan and takes the mortgage without requiring title insurance. Additionally, if First Bank sells the loan and mortgage to another entity, it agrees to cure any title defects which are not revealed by its PILTI Title Condition Report. First Bank will not go back against its borrower to reclaim any monies it has paid to clear the title if such a defect is found after the loan is made.

First Bank has begun this practice in the state of Widener without the approval of the Widener Department of Insurance. First Bank's position is that this is not insurance and therefore is not subject to regulation by the Department of Insurance. You are counsel for the Department. Given the Department an opinion as to whether this practice constitutes the sale of "insurance" within the regulatory authority of the Department.

Question 4 (30 minutes)

Barry Singer got into a dispute at the Harris House Tavern with an old soccer rival, Harry Geesaman on the evening of December 21, 1997. Barry and Harry began pushing and shoving each other around before friends broke up the argument. Barry continued yelling obscenities at Harry, until the manager asked Barry to leave. Several of Barry's friends escorted him out of the tavern at about 11 p.m. Barry drove his car across the street to the bar at TGI Friday's where he had a drink. Unfortunately, Harry and his friends

later came over to Friday's bar as well. The argument began again. Finally, Barry's friends convinced him to leave Friday's bar at about 12:30 a.m. Barry got into his car and backed out of the parking space. As he was driving down the lane toward the exit, Harry stepped from behind a parked car. Barry missed the brake with his foot and hit Harry, injuring him. Blood tests drawn from Barry indicated that while he had been drinking, he was not over the legal blood alcohol limit for operating a car. The accident occurred at about 12:35 a.m. on December 22.

Barry called his insurance agent the next day, but the agent's office was closed until January 5 for the holidays. With all the excitement and bustle of the holiday season, Barry forgot to call the agent again. In fact, Barry completely forgot about the accident until he was served with a complaint filed by Harry's attorney on March 5, 1998. Barry immediately forwarded the papers to his agent, who called Barry's insurance company, Moststates, immediately. The agent then sent the complaint by priority mail to Moststates. Moststates received the complaint on March 8.

The complaint contained allegations of negligence and reckless misconduct. Moststates conducted a preliminary investigation and spoke to 4 people who were in the 2 bars that night. Unfortunately, Moststates was unable to talk to the bartender who threw Barry out of Harris Tavern because she had moved to another state. Based on this very preliminary investigation, Moststates suspects that Barry may have intentionally run Harry down, although no witness has indicated this.

A. Does Moststates have a duty to defend Barry? What steps, if any, would you recommend Moststates take with respect to this issue?

B. For B. only, assume that Moststates has decided to defend the lawsuit against Barry. You are the attorney for Barry and Moststates. In your initial interview with Barry, he admits that he purposely missed the brake when Harry stepped right out in front of his car, although Barry also states that it is unlikely he could have stopped in time even if he had hit the brake. What should you do with respect to the representation of Barry and Moststates?