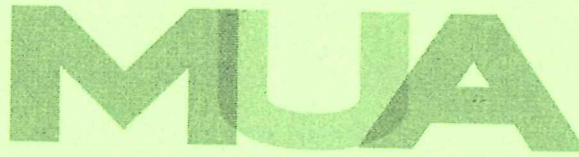


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UNDERGRADUATE UNIVERSITY EXAMINATIONS
SCHOOL OF MANAGEMENT AND LEADERSHIP
DEGREE OF BACHELOR OF COMMERCE

INS 324: LAW OF INSURANCE

DATE: 1ST AUGUST 2024

DURATION: 2 HOURS

MAXIMUM MARKS: 70

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **SIX (6)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **THREE** questions.
6. Question **ONE** carries **25 MARKS** and the rest carry **15 MARKS** each.
7. Write all your answers in the Examination answer booklet provided.

QUESTION ONE

Read the Case Study below carefully and answer the questions that follow:

KENYANS PAY SH43BN FOR NON-EXISTENT INSURANCE

UAP Insurance was owed Sh1.15 billion by agents as of last year. Businesses, individuals and households have spent Sh43 billion in premiums on non-existent insurance covers after agents failed to remit the payments to insurers, exposing the customers to heavy losses when they make compensation claims. The Insurance Regulatory Authority (IRA) has disclosed in court documents that insurance brokers collect billions of shillings from customers but fail to remit the money to insurance companies as required. This means that the risks covered, which are in excess of Sh500 billion, are not recognized under the "cash and carry" principle.

As a result of agent's failure to meet their statutory obligations, general insurers are owed Sh42 billion while companies offering life covers are owed Sh1 billion. Analysts say that premiums paid to general insurance companies represent between one and five percent of the value of the risks covered, meaning that customers expect to be protected from losses of much higher values. The Sh43 billion is equivalent to 19.8 percent of the Sh216.2 billion gross premiums that Kenya's 37 insurance firms underwrote last year.

Unremitted premiums have piled up over the years from Sh26 billion in 2014 to Sh43 billion last year. Policies covering motor vehicles have the highest premiums of between four and five percent of the value of the vehicles. Other policies in the general insurance segment include engineering, domestic fire, industrial fire, medical and theft.

The insurance regulator has disclosed the pile of insurance premiums held by brokers in a court case where the agents are fighting a law that bars them from receiving customers' payments on behalf of insurers. The Insurance Act was amended effective July this year, barring brokers from handling cash on behalf of insurers. However, the brokers received a temporary court injunction allowing them to continue receiving the premiums until the dispute is determined.

Defending the law change, the sector regulator says brokers were exposing customers to heavy losses besides weakening the financial stability of insurers by failing to remit the premiums collected. The intention of the amendments is to enhance liquidity of an insurer and promote payment of claims, while eliminating the perennial problem of outstanding premiums. The regulator cites a broker that collected premiums from a client but failed to remit the money to the mother insurance company. The move resulted in the insurer refusing to pay the customer's claim, which had been assessed at Sh14.7 million. The underwriters have been writing off increasingly larger sums, with provisions for the bad debt standing at Sh3.5 billion last year alone. The writing off as bad debt has an impact on the insurer's financial position and liquidity.

Further, the insurers had to bear the burden of Sh10 billion on capital adequacy for credit risk. Underwriters with the biggest exposure are UAP Insurance which was owed Sh1.15 billion by agents as of last year, followed by East African Reinsurance Company (Sh1.13 billion) and Jubilee Insurance (Sh930.8 million). Others are CIC General Insurance (Sh803 million), APA Insurance (Sh720.7 million) and ICEA Lion General Insurance (Sh605.5 million).

The Association of Insurance Brokers Kenya (AIBK) – the agents' lobby group – argues that the ban on cash handling, contained in the Insurance (Amendment) Act No. 11 of 2019 & Regulations, will drive its members out of business. During the process of changing the law, brokers had last year lobbied Parliament for a compromise, pushing instead for a penalty to be introduced to address the issue of embezzlement of premiums. As a result, MPs approved a Bill that allowed brokers to receive premiums but forward the cash to insurers within 14 days. However, when the Bill went for presidential assent with the brokers' recommendations, The President declined to sign it and sided with the National Treasury, which had sought to lock out the brokers.

Required:

- a) Explain the principle of cash and carry as used in the above case (1 Mark)
- b) Despite the many issues highlighted in the above case, examine five roles of brokers in the insurance industry (12 Marks)

- c) Evaluate four reasons why the Insurance Regulatory Authority is seeking to draft legislation limiting the scope of brokers in terms of handling client's finances.

(12 Marks)

QUESTION TWO

- a) In relation to the law governing insurance, explain five basic principles of insurance.

(10 Marks)

- b) Discuss five grounds the commissioner of insurance shall not register or renew the registration of or keep registered any person as an insurance broker or agent.

(5 Marks)

QUESTION THREE

- a) Akili Mingi owns a house at Muthaiga in Nairobi valued at Sh. 20 million. He insured it against fire with Linda Mali Insurance Co. Ltd and Pokea Insurance Co. Ltd for Sh. 15 million and Sh. 10 million respectively. He also insured his household goods against burglary with Lipa Insurance Co. Ltd. for Sh. 5 million. One night while he was away, burglars broke into the house, stole all household goods and set the house on fire completely destroying it. Akili Mingi claims the sum assured from the three insurance companies. Advise them. (10 Marks)

- b) Analyze five functions of Insurance Regulatory Authority as stipulated in the insurance Act. (5 Marks)

QUESTION FOUR

- a) Discuss five advantages of judicial precedent as a source of insurance law

(10 Marks)

- b) Evaluate five assets that shall neither be included in the capital available computation nor be used for the purposes of determining the insurer's capital adequacy. (5 Marks)

QUESTION FIVE

- a) Examine the provisions of the insurance ACT regarding person not to be appointed as an executive director, managing director, principal officer or other senior management official of an insurer. **(3 Marks)**
- b) Explore four circumstances under which an authorized insurance company shall be considered to be insolvent. **(12 Marks)**

QUESTION SIX

- a) Musa a Kenyan residing in Kisumu has interest in starting an insurance business in Kenya. Explain to him the legal requirements for successful application for registration as an insurer. **(12 Marks)**
- b) With the help of relevant examples, explain what is meant by term insurance surveyor **(3 Marks)**

