INSTRUCTIONS:

1. If Handwriting, Correctly Label All Exam Booklets

This Exam consists of two parts:

- Part 1: General Insurance (Professor Julie Lamb); and
- Part 2: Automobile (Professor Jim Doyle)

Answers to each part are to be written in a Separate Book or Books:

One Book or set of Books for Part 1; and
A separate Book or set of Books for Part 2.

Clearly Label the Cover Page of Each Book either "Part 1" and "Part 2", and include your Examination Code and the Course Name ("Insurance Law") on each Book.

Answer each question by reference to the question number (eg. Q2 ... [answer]).
INSTRUCTIONS, continued

2. Open Book Exam

Students may bring whatever materials they wish into the examination room but electronic devices are not permitted.

3. Exam Format

This examination is divided into 2 Parts. Part 1 is General Insurance. Part 2 is Automobile Insurance. The suggested time allocation totals 3 hours which does not include the additional allowed 15 minutes reading time.

Point form answers are acceptable.

READ ALL PAGES

ANSWER ALL QUESTIONS

THIS EXAMINATION CONSISTS OF 11 QUESTIONS

4. Assumptions

Unless otherwise indicated, all persons mentioned herein are British Columbia residents and all events occur in British Columbia and are subject to British Columbia law.

For the purposes of Part 2, the Automobile Insurance Part, assume that all accidents and claims occur after June 1, 2007 and that all applicable certificates or policies came into force after June 1, 2007.

5. Marking Scheme

PART 1 GENERAL INSURANCE

<table>
<thead>
<tr>
<th>Total Questions:</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Value:</td>
<td>65 marks (15, 10, 15, 10, 15)</td>
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</tbody>
</table>

PART 2 AUTOMOBILE INSURANCE:

<table>
<thead>
<tr>
<th>Total Questions:</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Value:</td>
<td>35 marks (5, 8, 8, 5, 6, 3)</td>
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</tbody>
</table>
PART 1 – GENERAL INSURANCE

Total Suggested Time for All General Insurance Questions:
Approximately 115 minutes

Total Marks for Part I 65 Marks
Total Questions for Part I 5 Questions

<table>
<thead>
<tr>
<th>MARKS</th>
<th>QUESTION # 1</th>
<th>SUGGESTED TIME: 25 MINUTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 marks</td>
<td>The Jones family owned a house in Chilliwack, B.C. Their home was insured by the ABC Insurance Company on a standard homeowner policy. The policy covered all risks of loss. Mr. Jones was a hoarder. He kept most of his collection in one bedroom over the garage. One day, the floor joist gave way, and the house suffered a partial collapse. The estimate to repair the damage is $250,000. The policy contains the exclusions listed in the IBC form at page 464-466 and is subject to the statutory conditions in s. 29 of the Insurance Act.</td>
<td></td>
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<tr>
<td></td>
<td>a) Is there coverage under the policy for this loss?</td>
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<tr>
<td></td>
<td>b) Assume that the post-loss investigation discloses that the floor joists were termite-infested and significantly weakened as a result. Does that fact change the analysis? If so, how?</td>
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<tr>
<td></td>
<td>c) What advice would you give ABC about its policy wording?</td>
<td></td>
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<tr>
<td></td>
<td>If you require additional information in order to give a coverage opinion to ABC, identify what additional information you require and how that information affects your opinion.</td>
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<table>
<thead>
<tr>
<th>MARKS</th>
<th>QUESTION # 2</th>
<th>SUGGESTED TIME: 20 MINUTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 marks</td>
<td>Ms. Smith took out a policy of life insurance with the Wonderful Life Insurance Company. When she completed the application, she answered &quot;no&quot; when asked whether she had had any medical tests or examinations in the previous 5 years. In fact, Ms. Smith had undergone a mammogram 4 1/2 years before the application form was completed. The mammogram was negative.</td>
<td></td>
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</tbody>
</table>
You are advising Wonderful Life. Is there coverage under the policy

a) If Ms. Smith died within 2 years of completing the application of a heart attack?

b) If Ms. Smith died 4 years after completing the application of breast cancer?

As part of your answer, identify any evidence you would need to lead and who bears the onus of proof if the matter went to trial. Identify any sections of the *Insurance Act* that are operative.

<table>
<thead>
<tr>
<th>MARKS</th>
<th>QUESTION # 3</th>
<th>SUGGESTED TIME: 25 MINUTES</th>
</tr>
</thead>
</table>
| 15 marks | The Township of Langley owns a rink used by the Langley Rivermen, a junior hockey team. The Township is an additional insured under the Rivermen's third party liability policy issued by ACE Insurance Co., but "only with respect to liability arising out of the operations of the named insured". Does ACE owe the Township a duty to defend a lawsuit

a) for injuries sustained when a puck leaves the ice on an errant slap shot, flies over the protective netting, and strikes a young fan in the face?

b) for injuries sustained when an older fan slips on some water on the bathroom floor?

In both lawsuits, the claim against the Township is framed as a claim in negligence for faulty maintenance and under the *Occupiers Liability Act* for allowing a hazardous condition to exist on their premises.

As part of your answer, outline how a court would determine whether ACE owes a duty to defend.
### MARKS QUESTION # 4

**SUGGESTED TIME: 20 MINUTES**

10 marks

Explain any four of the following insurance concepts:

a) Material change of risk;

b) Insurable interest;

c) Innocent co-insured;

d) Claims made policy;

e) Fortuity; and

f) Exception to an exclusion.

### MARKS QUESTION # 5

**SUGGESTED TIME: 25 MINUTES**

15 marks

The Hubba Bubba Bubblegum factory is insured under a property policy issued by Kandee Insurance Company. The policy is written with standard IBC policy wording (see p. 462-472 of the Casebook plus statutory conditions). The policy did not include business interruption coverage.

On September 1, 2014, a contractor from XYZ Trades is called in to unstick the production line. The contractor negligently repairs the broken gasket and fails to test his repairs. When the production line is put back into service, the production line collapses onto the wrapping machine.

The damage to the wrapping machine costs $100,000 to repair. The limit of coverage under the policy issued by Kandee for all of the equipment in the Hubba Bubba factory was $4,000,000. The deductible for equipment loss was $5,000. The actual cash value of all of the equipment was $5,000,000. The policy included a 100% co-insurance provision.

The factory was closed down for 30 days to complete the repairs to the equipment. During the shutdown, Hubba Bubba lost $125,000 in profits.

a) How much would Hubba Bubba be paid for its losses under the Kandee Insurance Company policy?

b) Can Kandee bring a subrogated claim against XYZ Trades? Explain what a subrogated claim is. Who has control of the litigation against XYZ Trades?
<p>| |</p>
<table>
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<tbody>
<tr>
<td>If XYZ Trades agrees to settle the claim for $150,000, who is entitled to receive the settlement</td>
</tr>
<tr>
<td>funds (assume no legal fees incurred by Kandee or Hubba Bubba to get to the settlement)? Identify</td>
</tr>
<tr>
<td>any sections of the Insurance Act that apply.</td>
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<tr>
<td>Show your calculations for your answers.</td>
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</table>

TOTAL MARKS FOR PART 1 – 65 MARKS

END PART 1
### MARKS QUESTION # 1 | SUGGESTED TIME: 10 MINUTES

| 5 marks | a) Identify the section that deals with the deduction of 'no fault' benefits?  
|         | b) What is the purpose of the deduction?  
|         | c) When is the deduction made?  
|         | d) How does the defendant seek the deduction? |

### MARKS QUESTION # 2 | SUGGESTED TIME: 15 MINUTES

| 8 marks | Jane is a full time librarian at UBC. She is on her way home, driving westbound on West 4th Avenue. As she approaches MacDonald Street, the light is green. Frank is driving in the opposite direction. He attempts a left turn to go south on MacDonald Street. Their vehicles collide. The accident is entirely Frank's fault. The damage to the two vehicles is considerable. Jane is taken to the hospital by ambulance and is discharged later in the day. She sees her family physician early the next morning. Her doctor prescribes medication and physiotherapy. With the medication, she feels well enough to go to work. She continues working for 1 month. Over time, however, her symptoms become worse and worse. On her doctor's recommendation she takes 6 months off work. During this time she is able to collect Employment Insurance Sick Benefits totaling $5,000. One year after the accident, she starts a lawsuit against Frank. Two years later, the matter goes to trial and she is awarded total damages of $1,200,000 for general damages, past special damages, past income loss, and loss of future income-earning capacity. |
As at the time of trial, she has received a total of $50,000 in ‘no fault’ benefits.

Frank had the minimum mandatory limits of insurance for BC. As at the time of the trial, he also has $75,000 in personal assets. Obviously there is a shortfall in terms of Frank’s insurance policy limits.

Jane needs advice as to what she can do next. Outline your advice to Jane as to:

a) What process, if any, is available for her to collect more than the third party liability insurance limits.

b) How is the entitlement to any additional money determined?

c) Set out what, in addition to the third party liability limits, Jane will be able to recover, if anything. If she is entitled to more than the limits, provide particulars as to how the calculation is made, along with a total.

MARKS | QUESTION # 3 | SUGGESTED TIME: 15 MINUTES
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8 marks | Tony lives with his parents in Nanaimo. He has an old truck which is becoming more and more unreliable. He decides to buy a new vehicle but the choices in Nanaimo are limited. He decides to come to the Lower Mainland where there are many car dealerships. Conveniently, his cousin Chris lives in Horseshoe Bay with her husband and young children. Chris agrees to lend Tony her vehicle. He takes the ferry from Nanaimo to Horseshoe Bay. He borrows Chris’ vehicle and visits a number of the dealerships. On his way back to Horseshoe Bay he realizes, at the last minute, that he has almost missed the last exit. He swerves into the turn off lane, colliding with another vehicle, causing it to leave the road and strike the cliff side. The other driver is seriously injured and suffers a brain injury. (Assume the other driver’s injuries are in excess of $7.0 million).

The other driver sues Chris as owner, and Tony as driver, of the vehicle that struck his vehicle.

The respective households of Chris and Tony contain the following vehicles, with the following third party limits:

- Tony’s vehicle $200,000
- Tony’s father’s vehicle $3.0 million
• Tony’s mother’s vehicle $1.0 million
• Chris’ vehicle (involved in the accident) $200,000
• Chris’ husband’s vehicle $1.0 million

a) With reference to each of the above vehicles, which liability policies potentially apply and which do not apply to indemnify the other driver?

b) What is the order of priority of the policies that do apply?

c) What is the total of the third party limits available to pay the claim?

MARKS | QUESTION # 4 | SUGGESTED TIME: 10 MINUTES
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5 marks | For years, Nick has played hockey and is the captain of a “beer league” team. As captain, one of his responsibilities is to ensure that there is a cooler of cold beer in the change room at the end of the game. On the night in question, it is the final game of the season so he makes sure there is extra beer for a proper celebration.

He leaves the rink a couple of hours after the game. His drive home is uneventful until a jaywalker suddenly steps out in front of his vehicle. He swerves to avoid the pedestrian and has a minor collision with an oncoming vehicle. As he is exchanging information with the other driver, the police arrive.

Smelling alcohol on Nick’s breath, they twice administer a breathalyzer test. Both times the device registers 0.09, which is over the legal limit of 0.08. He is charged under s.253(b) of the Criminal Code. To make matters worse, the other driver makes a claim for the vehicle damage and his injuries.

ICBC retains you to provide them with coverage advice regarding a potential breach.

a) What would have to happen for ICBC to maintain a denial based on the breathalyzer reading?

b) If the prosecutor decided not to proceed with the criminal charges because the breathalyzer turned out to be faulty, what would ICBC need to do to establish a breach in any event?
### Question # 5

- **6 marks**

Tanis is stopped at a stop sign when a following vehicles collides with the rear of her vehicle. Her daughter, Emily, age 15, is the front seat passenger.

Addressing each of Tanis and Emily:

a) Set out the **notice** requirement to claim for ‘no fault’ benefits.

b) What is the **limitation period** for commencing an action for ‘no fault’ benefits?

c) What is the **limitation period** for commencing a tort action?

### Question # 6

- **3 marks**

a) What is a “principal operator”?

b) When must the principal operator be declared?

c) Who has the onus to provide the identity of the principal operator?

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**TOTAL MARKS FOR PART 2 – 35 MARKS**

**END PART 2**

**END OF EXAM**