

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 6

NOTE : Answer **ALL** Questions.

1. KK (suffering from cancer-terminal stage) was admitted to the hospital in Kanpur City. He felt difficulty in breathing. The duty nurse called some doctor to attend to the patient. No doctor turned up for 20 to 25 minutes. Then the appellant Doctor and another Doctor came to the patient's room. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The oxygen cylinder was found to be empty. There was no other gas cylinder available. Later, the patient was declared dead.
An offence under Sections 304-A/34 Penal Code, 1860 was registered and charges filed against the doctors. Doctor's petition to High Court to quash the charges was dismissed. According to the appellant, the deceased KK was suffering from cancer in an advanced stage and as per the information available, he was, in fact, not being admitted by any hospital in the country because of his being a case of cancer at terminal stage. He was only required to be kept at home and given proper nursing, food, care and solace coupled with prayers. But his sons, who were very influential persons occupying important positions in Government, could prevail over the doctors and hospital management and got the deceased admitted as an inpatient on compassionate grounds for regulated medical treatment and proper management of diet. It was abundantly made clear to the informant and his other relations who had accompanied the deceased that the disease was of such a nature and had attained such gravity, that peace and solace could only be got at home. The patient was treated with utmost care and caution and given all the required medical assistance by the doctors and paramedical staff. The complainant and his relations, who were misguided or were under mistaken belief as to the facts, lodged police report against the accused persons which was wholly unwarranted and uncalled for.

The Hon. Court in its judgment concluded that :

A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men is found to be sufficient. So also, the standard of care, while assessing the practice as adopted, is judged in the light knowledge available at the time of the incident, and not at the date of trial. A professional may be held liable for negligence on one of the two findings : either he had not possessed the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices.

The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds well in its applicability in India. The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of '*mens rea*' must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304 A of the IPC has to be read as qualified by the word 'grossly'. To prosecute a medical professional for negligence under

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criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

Questions :

(a) In the light of the given case, differentiate between a Liability Insurance Policy and a Traditional Indemnity Insurance Policy and also explain the growing increase in the sales of Professional Indemnity Policies in India of late, with specific focus on Doctor's Professional Indemnity Insurance Policy.

(10 marks)

(b) "Negligence, actual or alleged breach of duty, neglect, errors in work, mistake, and misstatements" are generally the grounds for claims under liability insurance. Does Insurance pay for all these negligent loss claims ?

(10 marks)

(c) Discuss the underwriting factors considered for premium calculation in a Doctors' Professional Indemnity Policy.

(10 marks)

(d) Discuss the scope of coverage of persons and loss exposures under a Doctor's Professional Indemnity Insurance Policy.

(10 marks)

(e) Can the accused appellant and the hospital be prosecuted u/s 304 A of the IPC ? Discuss the liability of the insurance company in the given case.

(10 marks)

2. G Textiles Pvt. Ltd. Co. availed a Standard Fire and Special Perils Insurance Policy as per the standard format for factory building and machinery and also for stocks as given below. Insurance coverage for the building and machinery was on reinstatement value basis :

Assets	₹
Building	2,80,00,000
Machinery	7,20,00,000
Stocks	5,62,50,000

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An accidental fire occurred on a Sunday night, when the factory was not in operation. The factory, building, some machinery and stocks stored in the process block were damaged. As per the Appointed Surveyor's Risk Inspection Report, the reinstatement value of the entire building and machinery, value of stocks immediately prior to accident was as below :

Assets	₹
Building	4,00,00,000
Machinery	9,00,00,000
Stocks	5,62,50,000

The Surveyor's assessment of loss of different assets before application of underinsurance was as given below :

Assets	₹
Building (on the basis of actual repairs and replacement)	1,23,75,000
Machinery	
Totally destroyed machinery	
• On reinstatement value basis	2,81,25,000
• On depreciated value basis	1,57,50,000
Repairs to partially damaged machinery on actual	50,62,500
Stocks	27,00,000
Salvage Value	NIL

While the damaged building was completely repaired the insured did not reinstate the totally destroyed machinery for some business reasons. Based on the given facts, answer the following questions :

- (a) Define Fire and discuss the scope of coverage and exclusions under a Standard Fire and Special Perils Policy.

(10 marks)

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- (b) Interpret and explain the following clauses as applicable in a FIP :
- Reinstatement clause
 - Average clause
 - Coinsurance clause
 - Over insurance clause
 - Salvage clause
- (2 marks each)*
- (c) Calculate the amount of underinsurance in case of building and machinery and work out the total claims amount payable by the Insurance Company under the FIP.
- (10 marks)*
3. (a) X was a risk averse person by nature. He wanted adequate coverage for his health and so he took two health insurance policies from two different companies. But, he was unaware of the fact that he has to inform about the policies to both the insurers (new and existing). Discuss the liabilities of the insurers in case of such multiple health insurance policies.
- (2 marks)*
- (b) “A Trust under a life insurance policy is created by the policyholder holding the policy”. Explain the statement and its implications and advantages.
- (3 marks)*
4. Following a Supreme Court order, the insurance regulator IRDAI has introduced series of health insurance and motor insurance reforms and has asked all general insurance companies to offer *guaranteed renewal* health insurance and *long-term third-party* motor insurance covers which recently came into effect from 1st September, 2018.
- (a) Do you think this duration shift from yearly to long term in motor insurance and by elimination of waiting period and PED conditions in health insurance are going to have a positive impact on the earnings of the company and the economy at large ?
- (3 marks)*
- (b) What are the other major changes that has come about in the recent years in Indian insurance markets ?
- (2 marks)*

5. ABC is a newly started Life Insurance Company, which sells its products through banks, agents and brokers. Enumerate and explain the various general insurance policies that would be appropriate and necessary for ABC Life Insurance Company to manage its various risk exposures.

(5 marks)

6. Write brief notes on the following :

(a) Off-Balance Sheet Capital of an insurance company as a risk transfer mechanism.

(3 marks)

(b) Principles of Insurable Interest and Utmost Good Faith as applicable to Life and General insurance contracts.

(2 marks)