



MOI UNIVERSITY
ISO 9001: 2008 Certified Institution
SCHOOL OF LAW
TOWN CAMPUS, ANNEX
ELDORET

ACADEMIC YEAR 2017/2018, 2ND SEMESTER

3RD YEAR

COURSE: INSURANCE LAW
COURSE CODE: FLB 316

Course Director: B.K. Sang (LL.M-UoN, Dip.-KSL, LL.B-MU, Advocate, Commissioner for Oaths, Notary Public, Tax Agent, Patent Agent)

COURSE OUTLINE

1. COURSE PURPOSE

To introduce learners to the law relating to insurance business in Kenya.

2. LEARNING OBJECTIVES

The aim of this course is to provide students with knowledge regarding the regulation of Insurance business to ensure an orderly relationship between the insurers themselves and between insurers and the insured. It will provide students with a broad understanding of insurance and the role it plays in the economy of the country alongside banks, securities exchange and other institutions that pool investment revenue/capital from diverse sources for allocation to deserving sectors of the economy. The course will also equip students with basic principles of insurance law, the development of insurance and regulation of insurance in Kenya.

3. LEARNING OUTCOMES

By the end of this course, the students will be expected to:

- a) Understand the origin of insurance law;

- b) Appreciate the role played by the insurance sector in the economy;
- c) Understand the nature of insurance contract;
- d) Discuss the Kenyan legal regime regulating the Insurance sector;
- e) Evaluate the types and categories of insurance contracts;
- f) Analyse the concepts and principles of insurance;
- g) Identify types and procedure of insurance claims
- h) Explain the dispute resolution mechanisms touching on insurance

4. COURSE DESCRIPTION

The origin and development of insurance law; control of insurance in Kenya; nature, scope and functions of insurance; the insurance contract, parties to the contract, offer: the proposal form, temporary acceptance: the cover note, construction of insurance policy, essentials/elements of an insurance contract; pertinent concepts and principles of insurance, insurable interest, extent of insurable risk, causation and proximity, non-disclosure, indemnity, reinstatement, subrogation, double insurance, appointment and contribution, salvage, abandonment, average clause, third party insurance; and insurance claims, procedural duties of the claimant, insurance disputes, first party claims, third party claims; utmost good faith in claims, negligent and willful act, damage assessment.

5. COURSE DURATION

The course will take a period of 13 weeks comprised of 3 contact hours per week and 2 weeks of revision and examinations, cumulatively 15 weeks.

6. TEACHING METHODOLOGIES

- a. lectures;
- b. seminars;
- c. tutorials;
- d. case method;
- e. discussion groups; and
- f. class presentations.

7. COURSE ASSESSMENT

- a. Coursework assessment (CATs/Assignments): 30%
- b. Main Examination: 70%

N/B:

- (i) A student shall **not** be allowed to sit for the Main Examination if he or she has not sat for all the CATs or missed more than 20% of classes. In any event, results for such Examination shall not be received on record.
- (ii) Students are expected to participate in class-this shall be taken into consideration while grading.

8. READING MATERIALS

8.1.Core Texts

- a. P.S. Atiyah, Accidents, compensation and the Law, Butterworths
- b. John Birds, Modern Insurance Law, Sweet & Maxwell
- c. Joseph Bymugisha, Insurance Law in East Africa, EALB

8.2.Other Texts

- a. Vance, Handbook of the Law of Insurance, West Publishing Co.
- b. Meir Kohn, Financial Institutions and markets, McGraw Hill, 1994.
- c. Robert Merkin, Colinvaux's Law of Insurance Sweet & Maxwell, Thomas Reuters, 9th Edn, London, 2010.
- d. John Lowry & Philip Rawlings, Insurance Law: Cases and Materials, Hart Publishing, Oxford – Portland, Oregon, 2004.
- e. The FSA Authorization Manual: Consultation of draft guidance on the Identification of Contracts of Insurance, FSA 2002 Paragraph 1.3.4.
- f. Saunders, A and Cornett, M.M, Financial Markets and Institutions, McGraw-Hill, New York, 447-449
- g. Rob Thoys, Insurance Theory and Principle Rontledge London; 201, p. 165.
- h. Hazel Genn: Paths D. Justice: What people do and think about going to Law (Oxford Hart Publishing, 1999.
- i. Donald Harris at al, Compensation and Support for illness and Injury (Oxford Clarendon press, 1984.
- j. Dworkin, G, Odger's construction of Deed's and Statutes, 5th Edn, 1967
- k. Bertram Harnett & John V. Thornton, insurable interest in Property: A Socio Economic Re-Evaluation of Legal Concepts (1948) Columbia Law Review 1162
- l. R.A Hasson, Reform of the Law Relating to Insurable Interest in Property-Some Thorgh's (1983-1984) & Canadian Business law Journal 114
- m. John Lowry and Phillip Rawlings "Rethinking Insurable Interest in Sarah Worthington (Ed) Commercial Law and Commercial Practice (Oxford ,Hart Publishing 2003)

- n. Sir Jonathan Mance, Commentary on Rethinking Insurable Interest in Sarah Worthington (e.g.) Commercial Law and Commercial Practice, Oxford Hart Publishing (2003).
- o. R. Merkin “Gabling by Insurance –A Study of the Life Assurance Act 1774(1980) 9 Anglo Arnewlel Law Review 331.

8.3. Constitutional and Statutory

- a. The Constitution of Kenya 2010, particularly on Consumer Protection in Insurance.
 - b. The Insurance Act, 1985 as amended.
 - c. Marine Insurance Act Cap 390
 - d. The Consumer Protection Act of 2012.
 - e. The East Africa Order-in-Council, 1895.
 - f. The 1909 Insurance Ordinance.
 - g. The 1922 Insurance Ordinance.
 - h. The 1926 Credit with Africans Ordinance.
 - i. The 1945 African Life Assurance Control Ordinance.
- NB- Judicial precedents/case law shall be referred to.

9. COURSE CONTENT

1. THE INTRODUCTION TO INSURANCE LAW

- The origin of insurance
- Development of insurance in Kenya

2. CONTROL OF INSURANCE IN KENYA

- Control of insurance in Kenya
- Control mechanisms

3. NATURE, SCOPE AND FUNCTIONS OF INSURANCE

- Definition of Insurance
- Distinction between insurance and wagering
- Nature of insurance
- Classification of insurance

- Scope of insurance

4. THE INSURANCE CONTRACT

- Parties to the contract
- Offer: the proposal form
- Temporary acceptance: the cover note
- Acceptance-Issuance of a Policy
- Termination of Insurance Policy
- Construction of insurance policy
- Essentials/elements of an insurance contract

5. PERTINENT CONCEPTS AND PRINCIPLES OF INSURANCE

- Insurable interest
 - Definition
 - Time of insurable interest
 - Who has insurable interest?
 - Functions of insurable interest
- Extent of insurable Risk
 - Time covered
 - Subject matter
 - Risk covered
- Causation and proximity
- Non-disclosure
 - When the duty exists
- Indemnity
 - Payment as gifts

- Payment as third party tortfeasor
 - Payment under contracts
- Reinstatement
 - Subrogation
 - Double insurance
 - Apportionment and contribution
 - Salvage
 - Abandonment
 - Average clause
 - First and Third party insurance
 - Moral hazards and adverse selection

6. INSURANCE CLAIMS AND DISPUTE RESOLUTION

- Insurance disputes
- Compensation for accidents- fault based system and no fault insurance system
- Insurance disputes

7. DAMAGE ASSESSMENT AND POLICY HOLDERS COMPENSATION

- Measurement of Loss
- Under insurance
- Excess and Franchise clause
- Policy holders compensation
- Reinsurance

NB- 3 Hours Examination administered at the end of the course