

INSTRUCTIONS

You may use one bluebook if you write on both sides of the pages, or two bluebooks if you write on only one side (or every other line, or anything that adds up to one bluebook on both sides). If you type, make a good faith estimate of the equivalent. Please put answers in the bluebook; if you type, put the pages into the bluebook cover.

You may use any materials you wish, but nothing beyond the casebook and class discussion is necessary.

QUESTION 1

Phyllis was driving on a city street; her car was bumped lightly from behind. She and the driver behind both stopped. Phyllis walked into the back of her car to look for damage. The driver of the other car walked over to her, pulled a gun, and shot her. He then took her purse and fled in his car. Phyllis was seriously injured. She filed a claim under her no-fault policy, which provided coverage "for bodily injury caused by accident resulting from the ownership, maintenance or use of a motor vehicle." She also claimed under the under insured motorist provision for damages not covered by the no-fault provision. The underinsured motorist provision covered bodily injury "caused by accident arising out of the operation, maintenance or use of an uninsured motor vehicle." An uninsured vehicle included "a hit-and-run vehicle whose owner or driver remains unknown and which strikes the insured or the vehicle the insured is occupying." The insurer denied coverage under both provisions, saying the injury did not arise out of the ownership, operation, maintenance, or use of a motor vehicle. Phyllis sued, alleging breach of contract.

The trial court gave judgment to the insurer, finding that the injury did not arise out of the use of a motor vehicle. Phyllis appealed.

1. Argue the case for Phyllis.
2. Argue the case for the insurer.

QUESTION 2

An action was brought by several children and their parents against a private school and one of its teachers alleging sexual abuse by the teacher from 1988 through 1993 and negligent supervision of the employee by the school. The school had two liability policies during this period, one with Able Insurance Company for 1988 and 1989 and one with Best Insurance Company for 1990 through 1993; both policies had \$100,000 per-occurrence limits and both covered the school and its employees. There was also an umbrella policy with Carefree Insurance Company for the entire period with a \$2 million limit above the basic policy. All three policies

defined "occurrence" as "an accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injury during the policy period." The suit was settled for \$500,000, but the insurers disagreed as to their respective liabilities, so Able Company brought a declaratory judgment action.

Able argued that there was only one occurrence because the pattern of abuse came within the "continuous or repeated exposure" provision of the definition; therefore, its total liability was \$100,000. Best argued that this was one occurrence, so it had no liability because it was not on the risk when the abuse commenced. Carefree argued that each episode of abuse was a separate occurrence, and that it had no liability because the underlying limit was not reached for any occurrence. Decide the case.

QUESTION 3

Arthur crashed head on into another car. Beth, the driver of the other car, was severely injured, her husband was killed, and her two children were injured. Carl, a passenger in Arthur's car, was also injured. Arthur had liability insurance with limits of 10,000/20,000. The insurer offered Beth and her family \$20,000 to settle their claim. They refused because they wanted to explore Arthur's personal assets. The insurer then settled Carl's claim for \$5,000 and offered the remaining \$15,000 to Beth, but she demanded \$20,000. The case went to trial and the jury found Arthur liable for \$172,000. Arthur assigned his rights against the insurer to Beth in exchange for a promise not to execute the judgment. Beth sued the insurer in Arthur's name for negligence, gross negligence, and breach of the duty of good faith and fair dealing, arguing that the insurer should not have paid one person while much larger claims were pending. Decide the case.

The Smiths contacted Alice, a salesperson with an independent insurance brokerage firm, for insurance on their property. The property included a workshop that Hal Smith used in his business of building cabinets and furniture. Several insurance companies refused coverage, either because the insurers would not cover the type of risk involved or because the Smiths were unwilling to pay the premium asked for such coverage. On May 22, representatives of Allright Insurance Company visited the brokerage for the purpose of establishing a business relationship. Alice discussed the Smiths' situation, and Allright agreed to review their application and give a quote on coverage. Alice completed the application in consultation with the Smiths and submitted it the same day. It provided for an effective policy date of June 1. In response to a question about claims or occurrences that might have given rise to a claim within the past five years, the Smiths answered "none."

On June 1, a windstorm damaged the Smiths' building. On June 2 Wilma Smith informed Alice of the damage, but Alice did not notify Allright. On June 5, Wilma sent a premium installment and on June 29 Allright issued a policy. In May of the next year, Alan notified Allright of the loss. Allright denied the claim. It asserted that it would not have issued the policy if it had known of the loss, and that, even if the insurance was in effect, the delayed notice relieved it of any duty to pay. The Smiths sued for breach of contract and bad faith. The trial court entered summary judgment for Allright. It found that the Smiths were under a continuing duty of good faith to notify Allright of the loss prior to its acceptance of the application, Alice was an agent for the Smiths, not Allright, and the delayed notice did prejudice Allright. The Smiths appealed. Decide the case.