

NAME OF SUBJECT	INSURANCE LAW	
LEARNING & SKILL OUTCOMES	OBJECTIVES	
Examine the basic legal concepts and general principles of laws	<ul style="list-style-type: none"> <li>• Examine the factors contributing to the formation of insurance contract and agency</li> <li>• Examine the law of insurance relating to intermediaries, its importance and application</li> </ul>	
Examine knowledge and understanding of the laws relevant to insurance the system which applies these laws	<ul style="list-style-type: none"> <li>• Examine the principles of insurable interest, principles of utmost good faith, warranties and other terms, void and illegal contracts and joint and composite insurance</li> <li>• Illustrate the Takaful system (Islamic insurance) in Malaysia</li> </ul>	
Illustrate an analytical approach to the application of knowledge and skills to interpret problems/issues related to insurance law	<ul style="list-style-type: none"> <li>• Examine the main legal principles governing the doctrine of proximate cause and the making of an insurance claim.</li> <li>• Appraise the implications of subrogation and contribution to insurance claims</li> </ul>	
CONTENT OUTLINE		
<p><b>INTRODUCTION INSURANCE LAW IN MALAYSIA</b></p> <ul style="list-style-type: none"> <li>• Financial Service Act</li> <li>• Personal Data Protection Act</li> <li>• Takaful <ul style="list-style-type: none"> <li>• Concept of Takaful</li> <li>• Takaful Law in Malaysia</li> </ul> </li> </ul>		
<p><b>FORMATION OF INSURANCE CONTRACT &amp; AGENCY</b></p> <ul style="list-style-type: none"> <li>• Offer, acceptance and consideration</li> <li>• Parties to a contract of insurance <ul style="list-style-type: none"> <li>○ The insured</li> <li>○ The insurer</li> </ul> </li> <li>• Discharge of the rights and duties under a contract including: <ul style="list-style-type: none"> <li>• Performance breach</li> <li>• Frustration</li> <li>• Agreement</li> <li>• Operation of law</li> </ul> </li> </ul>		
<p><b>THE LAW OF INSURANCE INTERMEDIARIES</b></p> <ul style="list-style-type: none"> <li>• Nature of insurance agency &amp; broking (ICAGIB) Inter Company agreement on general insurance business &amp; life insurance agent's guidelines</li> <li>• Understanding of the relationship between the Principal and Agent <ul style="list-style-type: none"> <li>• Intermediaries, principals and third parties</li> </ul> </li> <li>• Intermediaries; the scope of their authority <ul style="list-style-type: none"> <li>○ What will happen if the agent acted beyond the scope of his/her authority</li> <li>○ Is principal be liable for the criminal act committed by the agent</li> </ul> </li> <li>• Creation of insurance intermediaries</li> <li>• Rights and responsibilities of intermediaries <ul style="list-style-type: none"> <li>• Product disclosure</li> <li>• Transparency</li> </ul> </li> <li>• Termination</li> </ul>		
<p><b>PRINCIPLES OF INSURABLE INTEREST</b></p>		

- Insurable interest
  - Definition of insurable interest
  - Insurance interest in life insurance
    - Section 152 of the Insurance Act 1996
- Time at which insurable interest must exist
- Insurable interest and the amount recoverable under a life policy
- Effect of insurable interest on a life policy
- Insurable interest in non-life insurance
  - Insurance on goods
  - Insurance on land
- Insurance involving the interest of third parties

#### **PRINCIPLES OF UTMOST GOOD FAITH**

- Duty of Disclosure
  - Origins
  - Nature of material facts
  - Prudent underwriter
  - Facts that need to be disclosed & facts that need not be disclosed
  - Effect of non-disclosure (insurer and insured)
  - Time of disclosure
  - Answer in the proposal form and duties of disclosure
  - Onus of proof
  - Changes on the pre-contractual duty of disclosure for consumer insurance contracts pursuant to the new Financial Services Act 2013
- Misrepresentation
  - Its applicability in insurance law
  - Section 18 & 19 of the Contracts Act 1950
  - Changes on the Misrepresentation in respect of insurance contracts pursuant to the new FSA (deliberate or reckless misrepresentation and careless or innocent misrepresentation)
  - Effects of English Law on misrepresentation
  - Consumer Insurance (Disclosure & Representations Act 2012 UK)
- Duration of duty of disclosure
  - Effect of the proposal form
  - Renewal of insurance contracts
  - Duty of good faith at time of making a claim
- Legislation and codes of practice
- BNM guidelines on claims
  - Products Disclosure & Transparency Act- Insurer's obligation
- Fraud
  - Applicability in insurance law
  - Section 17 of the Contracts Act 1950

#### **WARRANTIES & OTHER TERMS, VOID & ILLEGAL CONTRACTS, JOINT & COMPOSITE INSURANCE**

- Warranties, conditions & other terms
- Void and voidable contract
- Illegal insurance contracts
- Joint and composite insurance contract
- Assignment in relation to insurance
  - Forms of assignment
  - Types of assignment
- Special rule for compulsory insurance
  - Motor
  - Foreign workers compensation insurance scheme
  - Legal Profession Act

#### **THE MAIN LEGAL PRINCIPLES GOVERNING THE DOCTRINE OF PROXIMATE CAUSE & THE MAKING OF AN INSURANCE CLAIM**

- The doctrine of proximate cause
- Establish of proximate cause of an event
- Chains of events
  - Concurrent causes
  - Remote causes
  - Remote causes
  - Efforts to avoid loss
  - Efforts to reduce loss
- Net of events
- Modifications of the doctrine of proximate cause
- Claims process
  - Notice and proof of loss
  - Form of notice
  - Notice to the insurer's agent
  - Continuing duty of good faith
  - Time for giving notice of loss
  - Time for making a claim
  - Condition precedent or collateral stipulation
- Parties who can make a claim under a policy
- Proof of loss
- Arbitration
- Fraudulent claims
- Claims arising out of illegal conduct
  - Claims arising out of motor accidents
  - Claims arising out of other illegal acts
- Settlement of claims
  - Methods of settlement
  - Ex gratia payments
  - Payment of interest
- Payment of claims under a
  - Life policy
  - Personal accident

#### **THE IMPLICATIONS OF SUBROGATION AND CONTRIBUTION TO INSURANCE CLAIMS**

- Subrogation
- Subrogation justifications and origins
- Prerequisites for the application of the doctrine
- Source of subrogation rights
- Insurers' rights against the insured
  - Gifts and other voluntary payments
  - Windfalls
- Modification of subrogation rights
- Waiver of subrogation rights:
  - Impact to insurer
  - Impact to insurance company
- Contribution
- The nature of double insurance and contribution and how contribution arises at common law
- Common contribution conditions
- Basis of contribution
- Application of contribution
- Market Agreements i.e. KFK