

LAW OF INSURANCE

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Class-room live lectures edited, enlarged
and updated**

LAW OF INSURANCE

1. Insurance -- General Principles.

2. Fire Insurance

3. Marine Insurance

4. Life Insurance

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CHAPTER 1

General

LAW OF INSURANCE.

Ch. 1.1: Definition:

Insurance is a contract in which for a financial consideration, (called premium), the insurer incurs the risk of paying a large sum of money to the insured or to his legal representative on the happening of a contingency, or a specified event.

Its general features are:

- i) It is a social or co-operative device to share the loss arising out of the risk undertaken.
- ii) The risk is evaluated before insuring.
- iii) The payment is made by insurer on the happening of the contingency i.e., death, fire, marine-perils, etc, and
- iv) The amount payable depends on the conditions of the insurance - policy.

Ch. 1.2. **FUNDAMENTAL PRINCIPLES OF INSURANCE:** (Salient features)

The fundamental or basic principles of Insurance are:

- (1) Utmost good faith.
- (2) Insurable Interest.
- (3) Contract of Indemnity[^]
- (4) Mitigation of loss. *
- (5) Risk must attach and
- (6) Causa Proxima (Proximity Rule).

1) **UTMOST GOOD FAITH:**

Contract of Insurance, is a contract of "uberrima fides" (utmost good faith) and strictest proof of good faith is required in courts of law. The person to be insured knows **everything**, and the underwriter (insurer) knows **nothing** of the material circumstances, e.g. a serious disease[^] in case of life insurance.

Utmost good faith is the essential requisite, on either side and 'this applies generally to all kinds of insurance - life, fire, marine, etc.

This duty starts from the proposal stage and continues until the conclusion of the contract of insurance (policy).

NON - DISCLOSURE:

The effect of non -disclosure of material facts, makes the contract of insurance voidable at the option of the aggrieved party, on the ground of "Fraud". Hence, the contract is **not void but voidable**. *Armstrong V. Turquand* (1858). However, there is no claim for damages but the contract may be avoided by the aggrieved party once & for all.

In case of innocent misrepresentation, the contract is voidable and the premium paid is returnable. The right to avoid the policy was upheld in **Graham v. Western^A Australian Insurance (1931)** on the ground of innocent misrepresentation.

What facts are material depends on:

- (i) the nature of the insurance
- (ii) what would a reasonable assured would consider material, and also
- (iii) what the general practice of insurers is. Further facts which are within the knowledge of the insurer, or those which are obvious by reason of warranty or those which are waived by the insurer - need not be disclosed. **"A man can only disclose what he knows" is a safe rule,**

ii) Insurable interest:

A contract of insurance without the insurable interest is void. The "assured" should have an "actual" interest, called insurable interest in the subject matter of insurance. "Interest here is a term of art used in insurance law, & is an essential requirement.

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As Blackburn J, stated: A party has an interest in an event if he will gain an advantage if it happens, and, suffers a loss if it does not happen (*Wilson V. Jones*). Such an interest should be, real & actual & not a mere expectation.

In Marine insurance, for example, the owner of the ship has an insurable interest in.. "the ship, the Charterer, in the freight & the consignor of goods, in his goods and profits.

(iii) Contract of Indemnity:.

In all insurances -. including fire, marine, burglary etc, there is a contract of indemnity. The insurer should indemnify the assured of the losses. Exceptions: Life, personal accident or sickness insurance. In case of life insurance, indemnity is not the main principle as "life" cannot be indemnified.

In Building Insurance the insurer will reimburse the loss, when the Building insured is burnt by fire. The insured will not make any profit. If he makes a profit, it would be a wager and hence void. That, therefore is the

difference.

The measure of indemnity is the agreed value and this sum cannot be exceeded. Further the loss to property is determined by its value on the date & place of loss.

Mitigation (reduction) of loss:

When there is a "mishap" i.e. fire in the insured building or perils on the High Seas, etc., it is essential that the insured should take all necessary care which a prudent man would take in respect of his own property, to save the property from fire, perils etc., He should minimise the loss and should do all that is necessary to save what is left. He should, not be willfully negligent.

Even in cases of "all risks" coverage, the natural wear & tear, inherent vices of the subject matter, are ex-eluded.³

v) Risk must attach:

This means the risk must run. Otherwise, the consideration fails & hence the premium received by the insurer should be returned. Insurance is for running the risk and if there is no risk, the policy does not attach. The nature of the risk depends on the wordings of the Policy. The risk must operate e.g. if the intended voyage is abandoned for fear of capture, there is no risk by capture. Hence risk does not operate.

vi) Causa Proxima:

In a contract of insurance, the governing rule is the proximate cause to fix the liability of the insurer. This must be direct, dominant, operative & efficient. The maxim "**causa proxima non rempota spectature.**" (It is the proximate cause, not the remote cause that should be looked into is still the guiding principle.

The leading cases are: **Samuel V. Dumas, Leyland V. Norwich.**

What is a proximate cause? It is question of law & many rules have been deduced.

i) When the risk operates, any damage to the subject matter to check further loss, is covered.

In **Symington v. Union Insurance**: Cork had been insured against fire. Fire broke out some distance away, and to prevent fire from spreading, some quantity of cork was thrown to the Sea. It was held that (1) damage caused while putting out fire & (2) destroying some property by throwing to Sea, were both "Proximate cause".

ii) **An accident facilitating loss:**

In a case of fire insurance of a building there was fire. This encouraged the mob to plunder, and, a plate - glass was broken. Held, the proximate cause was not fire but the lawlessness of the mob. (Marsden V. City Insurance).

iii) **Novus actus interveniens**: Intervention of new cause:

This means the peril insured happens, but by human intervention there is further loss. When a building is on fire, the further loss caused by theft of articles is not proximate. Hence, insurance Company is not liable for such loss.

Ch. 1.3. Insurance and Wagering contract distinguished

Wagering Contract is void (Sn. 30 Contract Act): It is an aleatory contract. It is an agreement to pay money or money's worth on the happening of a specified uncertain event (Law of Contract :Anson).

The parties have no other interest in the contract than the stake or sum of money which one party may lose. Hence there is no real consideration. The essence is that one party will gain or incur loss depending on the event.

According to the Supreme Court, there must be the intention of both the parties to the wager.

Contract of insurance is also an aleatory contract, like a wager contract but there are main differences:

- (1) A wager contract is void and unenforceable but a contract of insurance is not void and so enforceable
- (2) The parties do not intend to do or perform the contract in a wager, but pay only the difference.
- (3) A wager can be inferred from the circumstances. Leading cases in Kong Lee Lone & Co. V. Lowjee Nanjee. Classical instances are agreements such as "bets" made by parties.
- (4) In a contract of insurance, the risk is evaluated in advance and the payment is made by insurer when the contingency happens. Excepting life and accident insurance, in marine, fire etc insurances, insurer contracts to indemnify the assured of what he may lose.

In fact, contract of insurance is a species of a special class of contract of utmost good faith, with an insurable interest. The risk i.e. death in life-insurance is certain though the future date is uncertain. There is an element of investment & protection. Payment is made on death of the assured or on attaining a definite age as per the policy.

In fire or marine insurance generally the period covered is one year or less and there may not be any fire or marine hazard at all. This type of insurance is only for protection, and if there is no fire or marine hazard, **no amounts are paid** by insurer on expiry of the duration, the policy itself lapses. Hence, **there is indemnity only if the risk or uncertain event occurs.**

- (5) The stake of money should come from the parties to the wagering

agreement.

If the subscribers are outsiders there is no wager.

A & B, agreed for a wrestling match & provided that if a party fails to appear on the fixed day for the match Rs. 500/- was to be forfeited from gate collection. A failed & B sued. Held the gate money was paid by the public & not by A & B. Hence not a wager.

(6) In **Alami V. Positive Govt. Security life Assurance Co**, the court distinguished a "wager" from an "Insurance" and held that in wagering or gaming, one party should lose & the other should win depending on the happening or otherwise of a future event.

(7) The distinction between wager & Insurance contracts is subtle & depends more on the intention of the parties.

The decisions of English courts are generally followed in India. In fact insurance is considered as a Social device where large number of individuals equitably contribute and reduce or eliminate the economic loss of the members of that group. It is even praised as a prudent man's device to make provision against loss or inevitable contingencies, or misfortune. A wager has none of these devices.

CHAPTER 2

UTMOST GOOD FAITH

Ch. 2. **Uberrima fides:**

means utmost good faith. In general contracts between parties, good faith is required but the doctrine of "**Caveat - Emptor**" i.e., buyer beware, applies. However, in a contract of insurance a higher standard of good faith is required as its essence is the risk which it covers. If there is non-disclosure, the risk "intended" will be different from that which actually runs. Hence, in all cases of insurance "Utmost good faith" is basic & essential, otherwise contract becomes voidable.

The leading case is **Carter V. Boehm**.

In this case, Carter, governor of the Fort Marlborough (an Island in Sumatra) had insured, the said fort against any loss of being captured by any foreign enemy. The French invaded & captured the Fort. Carter claimed. But the insurer contended that (i) the weakness of the Fort, and (ii) the probability of the French attacking the Fort, should have been disclosed by the insured. It was decided in favour of Carter. It was held that these were facts which were within the knowledge of a "prudent insurer". The court laid down the rule applicable to all sorts of

insurance - marine, life, fire, guarantee etc., The underwriter (insurer) knows nothing, but the assured knows everything. This is the standard & the meaning of uberrima fides in a contract of insurance.

In LIC V. Shakuntala Devi, the L. I. C. contended that the insured had not disclosed that he was suffering from indigestion since a few days before taking out

the policy. The insured had died within a year. The court rejected this plea & held that indigestion, headache etc., are casual disturbances of health & hence L. I. C. cannot take advantage of its policy's "basic" clause to disclose, Held L. I. C. liable.

(ii) Legal basis:

The legal basis to disclose, arises outside the contract of insurance, and, is not to be taken as an implied condition. Further, the duty to disclose everything "material" is reciprocal and hence duty is both on the insurer and the insured.

The duty is not contractual, tortious, or fiduciary in nature. The statutes or courts have laid down the standards in judging which is material & which is not. The disclosure should be BEFORE the contract of insurance is concluded.

(iii) Voidable:

Any breach of uberrima fides in contract of insurance, makes the contract VOIDABLE. In Rivaz v. Gerussi undervalue had not been disclosed to insurer. Held voidable.

Hence if the insurer has failed to disclose a material fact, the assured may avoid the contract & claim refund of premium paid; Similarly, the insurer may avoid, if material facts have not been disclosed. (Banque Financiere V. Westgate Insurance: the remedy to insurer is to avoid the contract of insurance).

(iv) Materiality test:

The courts apply the standards of a "prudent insurer" in deciding whether the disclosure by either party, was material or otherwise. Of course, the various Insurance Acts-Marine, Life, etc., - have set these standards.

For example, in the Indian Marine Insurance Act, Sns 19, 20 & 21 provide for what is material & what is not.

Sn. 20 says that before the contract is concluded, the assured should disclose every material circumstance, known to him, or ought to have known in ordinary course of business.

It further provides that every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

Hence, the insured need not disclose circumstances (i) known to insurer or

which he is presumed to know (ii) which diminish risk (iii) which are

superfluous in view of warranty clauses. However, he should disclose facts which show (i) greater than normal risk (ii) Special motive (iii) existence of physical or moral hazard. Thus,- character & moral integrity and the motive of the insured are relevant.

The fraudulent motive of the insured, may be inferred from circumstances. There is the temptation, when the machinery has become old or when business is under loss, to show losses due to fire & to claim under Fire insurance policy.

Duty is cast on the insurer or his agent to disclose circumstances, which he is bound to disclose.

In *Godfrey V. Brittan Assurance Co*, the assured had not disclosed his lung infection, kidney problem & attack of Pharyngitis-while signing the proposal, held these were material & company was not liable.

In *Lambert's case*, W had taken a policy on jewellery which belonged to her & her husband H. H had been convicted twice for dishonesty. W had not disclosed this. Held company not liable as fact was material & should have been disclosed.

V. Remedy:

The remedy available to the insurer & the insured is to avoid i.e. to repudiate the contract of insurance in case of non-disclosure of material facts, fraud or misrepresentation.

As the duty to disclose is mutual, the remedy to repudiate is also available to both.

The "Proposal Form" contains a series of questions to be answered by the proposer. If there is any suppression, untruth or inaccuracy, it will amount to breach of duty & the insurer may treat it as voidable.

The period of limitation to avoid the contract as per'-the Limitation Act is 3 years from the date the insurer or the insured comes to know the misrepresentation or fraud.

CHAPTER 3

"INSURABLE INTEREST"

Ch. 3 Contract of Insurance and Insurable interest:

(i) "Insurable interest" is one of the fundamentals or essentials of a contract of insurance; without it, the Insurance contract is void. This distinguishes it from a contract of wager. (Sn. 30 contract Act) In all Fire, Life, Marine and other Insurances, "insurable - interest" is essential.

(ii) Definition:

Insurable interest is the relation or concern in the "insured subject" of insurance, that the interested person is affected or prejudiced on the happening of the peril insured; he is interested in the preservation of the insured subject. He is entitled to the benefits from its destruction (Lucerna V Craufurd).

Marine Insurance Act defines insurable interest in Sn 7(i) :- A person is interested in marine insurance when he stands in a legal, or, equitable relation to the adventure at risk, and, he benefits by safe arrival of insured cargo or is prejudiced on its loss or destruction. Hence, in a Marine Insurance, the insurable interest is statutory. If this is lacking, the insurance is illegal and void.

Where it is not so provided in a statute, the policy comes under Contract Act. Here, if insurable interest is lacking, the policy is not enforceable. But, insurer may become liable for other purposes. Hence not void, ab initio.

Macaura V Northern Assurance Co: In this case M had taken out a policy of Fire Insurance in respect of. Timber in his estate. He sold the estate to a company, where he had sole share holding (one man company). Timber was destroyed by fire. He sued insurer. He failed

(1) He had insured timber, which is now the property of the company, and hence he had "no interest". Hence no claim.

(2) He had no insurable interest at the time of loss.

(iii) **Scope: When interest must attach:**

A person's ownership of the "insured property" is not the only type of interest recognised by Insurance. The "interest should be legal or equitable; it may be partial or limited ownership. Hence, joint owners, mortgagor or mortgagee, lessor or lessee, bailor or bailee, carrier of goods, custodian or warehouse-man have an interest

"insurable", recognised by law. Creditor has insurable interest in debtor's property; Surety in co-surety's property. In Marine & Fire Insurances, the assured should have insurable interest at the time of loss or damage or destruction of the property insured.

In life insurance, there is no indemnity of life. Hence, the assured should have insured interest at the time of insurance. However, law presumes "insurable interest" in respect assured's own life; interest of wife in husband; and Interest of husband in wife.

Griffith V Fleming:

G and his wife W took out a joint life insurance policy and both contributed to the premium. W, committed suicide. G, claimed.

The insurer stated that G had no insurable interest in his wife W, this was rejected by the Court. The interest is presumed, the court said.

(iv) Exceptions:

(i) Contract of insurance with an enemy during war is void, (Potts V Bell), However, if in an existing insurance there is loss before war starts, the loss may be recovered, after the war is over and peace restored.

(ii) Policies on an illegal "insurance interest" is void

(iii) Policies on illegal Marine adventures are void.

(iv) Criminal acts:

If the assured commits a crime he cannot recover on the policy, A, an assured person who puts fire to his insured house, cannot recover moneys from insurer!

The contract is not void, but moneys are not recoverable.

In Cleaver V Mutual Reserve:

M insured his life in wife's favour. The wife poisoned M. M died, and W was convicted. Held, she was not entitled to recover.

But, it was held that the executors of M's estate could recover, and, hold it to M's Creditors or heirs.

CHAPTER - 4

PROXIMATE CAUSE.

Ch. 4 Proximate cause:

(i) Meaning:-

In a contract of insurance, the liability of the insurer is determined on the basis of the rule called "Proximate Cause". The cause should be direct, dominant, operative & efficient. This originated from the maxim: "Causa proxima non remota spectatur". [meaning] **It is the proximate cause, not the remote cause** that should be considered.

This means, (i) if the cause is covered by the policy, the insurer is liable for loss and (ii) if the peril or cause is excepted (i.e, not included in policy), the insurer is not liable.

(ii) Rule displaced:

The insurance policies generally displace this rule by using words like "directly" caused by ----- or "where accidental injury is the direct & sole cause of death" etc.

Even then, there are cases where the Courts have applied proximity rule.

(iii) Multiple causes:

Difficulty arises when there are more than one proximate cause for the loss sustained by the assured. In such a case, according to Lord Dynedin, one of the causes should be selected as the proximate cause. The two causes theory is rejected. This means, in a policy, where loss is due to two causes: one covered by policy & the other excepted- then one of them should be decided to be the proximate cause.

Eg.: A had insured his goods against theft & burglary. A clause had excepted liability if theft was by A's servants. A's servants had connived in the theft & burglary, and, when insurer was sued the question was the proximate cause. Held that insurer was liable as theft was the direct cause. When one cause is selected, the other is secondary.

(iv) Proximate cause how determined:

Some rules have been formulated in determining the

proximate cause. Of course, difficulties arise, when these are to be applied in practice. The Courts apply "Common sense standard". Hence, from a complex of causes, one real, efficient, direct & dominant cause should be selected.

Briefly the rules are as follows:

- (a) The "risk" should in fact operate: In case of Fire policy for example there should be "actual ignition". If a voyage is not taken due to fear of capture, the risk does not attach.
- (b) Once the risk operates, damage caused in checking further loss is covered.

In Symington V Union Insurance,

a fire broke out some distance away, in a harbour. Some cork stored was thrown to sea, to prevent spreading of fire. Held, liable on both counts.

- (c) Accident causing loss is different from accident which facilitates loss.

(1) There were goods stored in a house were insured against air-raid.

In an air-raid, goods were stolen from the house. Held, the proximate cause was "Stealing". Hence, no claim.

(2) There was fire in a building. The mob plundered the building & window panes were broken, Held lawlessness of mob was the proximate cause for loss.

(d) **Intervention of new cause:**

This is Novus actus interveniens. [meaning new act intervening]

The intervention by persons, after the peril, may increase the loss.

Eg: Theft. If further loss is due to the wilful negligence of the assured, or due to his acts or omission, the insurer is not liable.

In fact, it is the duty of the assured to minimise the loss, after the peril. This is so in fire & Marine perils, where the assured should take all steps to prevent further damage to goods or cargoes.

(e) **Accident cases:**

The Courts give a wider interpretation in case of accidents where there is a chain of causation. In a motor

accident, A was injured. She moved in a dazed condition, fell into water & died of shock. Held, proximate cause was accident, and, hence, insurer liable.

In a Railway accident, a person had injury and got pneumonia due to exposure to cold. Held, accident was the cause.

(v) Burden of proof:

The assured, should prove the proximate cause that resulted in loss. If there is any Warranty or express condition which is excepted.. the insurer should prove it.

CHAPTER - 5

THE RISK

Ch. 5. The Risk: in Insurance

i) Meaning:

"Risk in Insurance is a "measurable uncertainty"; The uncertainty is the "unfortunate event", and when that event happens, there is a loss (financial). The objective of Insurance is to cover the loss. Insurance does not eliminate the risk, but, when covered, it reduces the financial loss resulting from the happening of an uncertain event. In Life, Marine, Fire, & other insurances, the "risk" covered by the policy, provides protection against "loss". The is pre-estimated & calculated, at the time of taking out the policy. Hence, the uncertainty is measured in terms of money and the policy fixes it as "insured amount".

ii) Insurable risks:

The risks may be insurable or non-insurable. Risks which are measurable, and which could be pre-estimated in terms of money are insurable.

Speculative risk is not insurable as it is not measurable. Speculation in shares, in the rates of commodities, etc., are non-insurable.

Greater risks attract greater premium, Hence, higher premiums are charged in fire insurance for explosives,

fire works, highly inflammable substance^ etc.,

A peril is a source of loss, like sea perils. Hazards are generally conditions which increase risks for example explosives, petrol etc.,

iii) **Extent of risk:**

The determination of the extent of risk is essential.

The assured will know precisely what his premium will be; the insurer will know his extent of liability. However, there are many factors which may reduce the liabilities.

1. **Negligence:** Usually negligence is covered as in the case of Carriers, their servants negligence etc.,
2. **Wilful misconduct:** The claim is not allowed when the assured wilfully sets fire to his own house etc, Some policies cover wilful misconduct of servants, strangers, co -owners etc.,
3. **Implied limitations:** Natural wear and tear is not risk; Inherent vices are not risks unless covered by policy, e.g. spontaneous combustion of a particular inflammable liquid.
4. **"All risks" policies:**

The modern tendency is to take out all risks policies,

e.g. "All risks" transit insurance. The liability depends on the policy issued. Hence, when goods are insured, for value and profits, the assured can claim loss of value of goods & profits.

"Consequential loss" if included in the policy enables assured to recover any loss due to a building being burnt, and other losses consequential::

e.g. rents, loss of profits etc.,

5. **Duration:**

The duration of the policy specifies the date of commencement & the date of expiry of the policy. Fire, vehicle, marine etc., insurances specifically mention the total duration. E.g. for one year from 1.1.1994 to

31.1.1994 both days inclusive.

Transit risk policies - on road, voyage etc- are very common.

From consignor's godown to Consignees godown. Marine policies have various coverages and, interpretation depends on the terms & warranties contained therein, e.g. to cover the particular voyage etc., Fire policies, generally fix one year as duration.

CHAPTER - 6

"KNOWLEDGE OF AGENT, IS KNOWLEDGE OF PRINCIPAL"

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Ch. 6: The Rule:

i) **General**

The general law of Agency in the Contract Act (Sns 182-238) is applicable to all cases of Agency in, Insurance law.

An agent represents his principal and acts for him & on his behalf - in all his dealing with third parties.
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Regarding insurance business in India, the L.I.C deals exclusively with life insurance.

The G.I.C i.e., General Insurance Corporation established in 1972, has constituted four of its subsidiary Companies:

- i) **Oriental Fire & General Insurance Company Ltd.**
- ii) **National Insurance Company Ltd.**
- iii) **New India Insurance Company Ltd.**
- iv) **United India Fire & General Insurance Company Ltd.**

These primarily deal with Fire & Marine and other Insurances, except life insurances.

ii) **Agency in India.**

The Agent has limited powers. He has powers to prepare the proposals & submit to the Principal for consideration. The Agents are appointed by L.I.C. & are

subject to LIC Regulations of 1972. They are not authorised to collect moneys, or to accept risk so as to bind the L.I.C. Similarly under G.I.C Insurance Companies, the agents are appointed by the Companies & are subject to their Regulations.

iii) Professional brokers:

In the United States, and U. K. there are Professional brokers, who are paid by the insurer Company, but, they are agents of the insured. Being qualified & skilled, they act with diligence and competence. In case of negligence or misconduct, they become liable to the insurer-company. (They are registered as brokers.)

India: The authority of the Agent may be express, implied or ostensible.

iv) Implied Notice:

So far as third parties are concerned, in respect of notice to Agent there is implied notice to Principal. Sn. 229 Contract Act, and doctrine of estoppel applies. Hence, Principal will be precluded from denying his knowledge, as notice to agent, is deemed to be notice to the principal. Hence, any information obtained by the Insurance agent amounts to notice to the Insurer, & the Insurer will be liable for all the consequences resulting therefrom. This information or notice should have been in Course of business of agency on behalf of the Insurer.

Bawden V. London Assurance Co:

Agent had knowledge that the assured "B" had one eye only. When claims came, the court held that agents knowledge should be imputed to the Insurer. Insurer was held liable.

There should be a duty of the agent to communicate the information to his principal.

v) Proposal forms:

This is the foundation of the Insurance contract. The details given, with answers to various questions, and declarations duly signed, become binding when accepted by the Insurer.

In case the proposer is illiterate, the insurer

cannot take advantage of any breach that facts were otherwise.

Estoppel :

When the agent, with authority, knowingly accepts the premium with proposal, & company issues policy on that basis, the insurer is estopped from denying that he had no knowledge of the untrue statement of the assured. (Wing V Harvey)

Evan's case: Answers in a proposal were untrue & the clerks of insurer could have easily detected. Policy was issued. Held, Insurer is estopped, & hence liable.

Ch. 6.2 Insurance Premium

1. Premium: Meaning:

Premium, in insurance policy, is the PRICE for which the INSURER undertakes the liabilities. It is fixed by the insurer. It is his estimate of the risk or liabilities based on his experience and of course ,office expenses, charges & profit etc. of his business of Insurance.

The calculation of premium for e.g. in life policies, is highly technical, involving specialisation in statistics and higher science.

Generally Premium is paid in money or cheque or Draft.

Where periodical premiums are to be paid-quarterly, yearly etc- days of grace are allowed. If the liability arises during the grace days, (say by death of assured) the liability of Insurer depends on the conditions in the policy issued.

If premium is not paid, the policy lapses, unless it is renewed by paying premiums due interest etc. and sometimes following other conditions of the insurer, e.g. medical exam.

Repayment:

The rule is that if the insurer is not on risk of the policy, he has not earned the premium & hence, should return it. Certain rules are, in general followed:

- i) When insurer rejects the policy (which he should refund premium received, also
- ii) Premium paid on void policy is to be refunded.
- iii) For fraud, the insured cannot recover premium; but for his innocent misrepresentation he can recover.
he is not bound to accept)

CHAPTER - 7

FIRE INSURANCE

Ch. 7.1: **Fire insurance - Meaning:**

Fire insurance is a contract of insurance against loss by fire, and, incidental to fire and, includes certain risks which are customarily covered under a fire policy.

In the absence of a Statute in India, Fire Insurance is governed by the customary rules & principles as are followed in England and India and by the judicial decisions & juristic opinions.

Usually a marine policy contains clauses covering fire, but with that it will not become a fire policy.

Ch. 7.2: **Salient features:**

- i) Special features of fire insurance,
- ii) Insurable interest,
- iii) Utmost good faith,
- iv) Proximate cause.
- v) Standard Fire Policy - & - risks covered.

i) Fire insurance: Special characteristics:

a) **Privity of Contract:**

When a fire policy on the property of the insured is taken out the insurer is not guaranteeing against fire, but when & if, fire occurs, he will make good the loss, which the policy covers. As such, it is a personal contract between the insurer the insured; However, the

insured may assign the policy, with the acceptance of the insurer, to a transferee. The policy terminates, when transfer is made without the consent of the insured.

b) **Contract is one & indivisible:**

Generally the fire policy covers the building, its contents like stocks, machinery etc., It is a contract to cover the entire property, and hence indivisible. (However, the policy may provide for individual items covered if so agreed upon).

c) **Fire & not cause of fire that is material:**

It is the loss or detriment which the insured suffers that is covered by fire policy & hence, when claims are made, the cause of fire becomes immaterial.

However, the claim will be defeated if

- i) fire is caused wilfully by the insured or
- ii) when the loss comes under excepted clauses of the fire policy.

The insurer will not be liable in such circumstances,

Ch 7.3 **Insurable interest:** Note Add Chapter 1.2

A fire insurance without insurable interest of the insured is voidable, and, the insurer may avoid the liability.

The leading case is **Hacaura V. Northern Assurance Co.**

M insured his timber against fire, with Northern Assurance Co. for 42,000 pounds. When the policy was still in currency, he sold the timber to a company in which he himself was the sole shareholder (One man company) .

When timber was destroyed by fire the question was the insurable interest of M.

It was held that as shareholder, M had no insurable interest, at the time of loss as the property was owned by the company. Hence as shareholder has no insurable interest in the Company.

Insurable interest is the interest of a person in a property as to have benefit from its existence and prejudice by its destruction. There should be the interest at the time of the insurance & to claimant at the time of loss by fire.

In *Colling Ridge V. Royal E. A.*, C had insured his house against fire for 1600 pounds. It was to be acquired by the Municipal Board, and the document of conveyance was yet to be executed by C. There was fire & the property was destroyed. Held, at the time of loss, property was still with C, and, C was entitled to the claim.

Insurable interest possessed by the owner of property, or by mortgagor & mortgagee, or Lessor & lessee, trustees, bailee, pawnbrokers, warehouseman etc., qualifies them to take out fire policy.

iii) Utmost good faith (See Ch. 1.2 p.1)

One basic essential of fire policy is "Utmost good faith" - *Uberrima fides*. - a mutual duty on the insured and the insurer.

The leading cases are *Carter V. Boehm & L.I.C. Vs. Shakuntalabai*.

The fire policy becomes voidable if there is misrepresentation or fraud in regard to matters which are material.

The proposal form of fire insurance contains questions about all material facts, which should be answered by the insured. *It* also contains all minute details relating to use of goods insured, whether for ordinary or for hazardous processing etc. In particular the insured must disclose high risk factors, special items like valuable documents, valuables etc, and any factors touching moral hazards. Of course, he need not disclose those facts which the insurer is presumed to know, or those which lessen risk factors, and those waived by insurer.

In *Halves V. RFA*: A had insured his shop for groceries, & stationery. However, in a season, he brought fire crackers for sales. Fire broke out & loss resulted. Held, material fact not disclosed. Insurer not liable.

In *Dawson's case*, the insured had declared that the property was cement-brick building. Fire broke out & destroyed the building. In fact there were timber-based walls or an upper storey. Held, Insurer not liable.

When there are excepted clauses in the fire policy,

the burden of proving is on the insurer.

In Thompson's case, the fire policy had stated that if loss or damage occurs while gasoline was stored or kept, in the drugstore, the insurer was not liable. The drug store man was using a gasoline stove for burning. There was a fire. Held, the insurer was liable as using a stove for routine purposes was not "storing" gasoline.

iv) **Proximate Cause** (Add Ch 1.2)

The doctrine of proximate cause is applicable in fire policy. When there are more than one perils occurring simultaneously or one after the other, the question will be to find out the actual, efficient, dominant cause. If it is a remote cause, no liability arises & hence insurer will not be liable.

In Tootal V. L Fire Co. there was fire due to earthquake. The fire started spreading by wind and T's building which was 500 yards away was burnt down. T who had insured his building sued. Held, fire was not the proximate cause. Hence, not liable.

V) Fire standard policy -

1. The Tariff Advisory Committee, has approved a standard policy and this format is issued to cover Fire or other perils like lightning, riot, storm, cyclone, explosion, malicious & terrorist damage, earthquake fire, shock etc. There are also others which are excepted. There are other clauses:

a) When due to fire, the property or part of it is damaged, the value of the loss or damage caused will be paid by insurer or he may replace or reinstate such property.

b) Insurer's liability does not in any case exceed the total sum assured.

c) Policy expires at 4 P.M. on the last day noted in policy.

2. Fire:

Fire is not defined. It is understood in its popular sense* Ignition is essential for fire.

We have "friendly fire" - used in cooking/ manufacturing etc - & also "hostile fire" which destroys & causes loss. If the insured throws some property into such hostile fire, he is not reimbursed of his loss.

Harris V. Polland:

H. a lady had insured her house against fire One day, she kept concealed her jewels & currency note under a grate, placed wood & coal over it, to misguide burglars, and, went out. After returning home, she inadvertently lighted » the grate. Then, she remembered that she had concealed jewels & notes, & tried to recover them but got only damaged jewels & burnt note. She claimed. Held, insurer liable. Reason : Loss was covered by policy as the items were something which were not intended to be burnt.

3 Damage : This is damage caused by ignition, and all damage due to fire as per the policy. These include all incidental losses which are the natural consequences of fire or events following thereof. E.g. loss caused by fire brigade in putting out fire.

Not covered : Loss by theft is excluded ; similarly consequential losses, like loss of profits, cost of working else, payment to workers etc - are not covered.

(Seperate Policies may be taken to cover them)

4 **Duty of insured :**

When there is an outbreak of fire, the insured is under an implied duty, in good faith to do his best to avert or minimise the loss & take all reasonable measures to extinguish fire & to give notice to insurer.

5 . **Insurer's rights :**

The Insurer gets a right to enter on the premises & to take all measures to extinguish fire and protect & take possession of property, goods. Insurer may make a sale of them.

Insured should file his claim detailing the goods, losses salvage, if any, & state his claim :

A survey is made by assessor. Claims are settled by the Insurance Company.

Ch 7.2 : Reinstatement :

Nowadays, all fire policies are issued in India, in "standard fire policy" form as approved by Tariff Advisory Committee. It specifies the risks covered & those excepted. The conditions of the policy are also detailed. All these will help in settling the fire claims.

Clause 7 of the policy says that the insurer Company has the option to reinstate or replace the property damaged or destroyed, instead of paying the amount of loss or damage the maximum shall not be more than the insured sum.

If insurer elects to reinstate, the insurer company should put the premises substantially as it was before the fire damaged it. *If* insurer company fails, it will be liable for damages.

The Insurance - Company may prefer to make monetary payment or in suitable cases it may make ex gratia payment to the insured & settle the claims.

Ch 7.3 : Average clause in Fire Policy,

The Fire Policy is issued in India in the "Standard Form" which is approved by the "Tariff Advisory Committee". This policy specifies the Risks covered (1 to 9) & also those which are excepted (i.e., not covered) in items 1 to 9, and there also conditions from 1 to 11.

The 10 th condition deals with Average clause.

Generally, the full value of the property is insured. However, if the value of the property is greater than the sum insured, (i.e under valuation) the insurer is no doubt liable but the insured will be considered as his own insurer for the difference and hence he should bear a rateable proportion of the loss himself. The objective is to punish the insurer for taking under-value insurance. This is Average clause. There is one exception : If the sum insured is above 85% of the value of the property, this clause will not apply.

The value of the property at the time of breaking out of fire (or other perils covered by the Fire policy,) is the basis to assess the value of property lost.

E.g: Sri Uraesh takes out a fire policy on his building, furniture etc., for Rs.1.5 lakhs, whereas the actual value is 2.5 lakhs. There is under-insurance. Fire breaks out.

Total loss estimated is Rs. 90,000, by fire.

$$\begin{aligned} \text{Amount of loss payable} &= \frac{\text{Insured Amount}}{\text{Actual value}} \times \text{Amount of loss} \\ &= \frac{1,50,000}{2,50,000} \times 90,000 \\ &= 54,000 \end{aligned}$$

Hence, the insurer will pay Rs. 54,000 only, the balance of Rs. 90,000 - 54,000 = 36,000, the insured should bear, i.e., he will be his own insurer.

When there is excess valuation, the insurer will pay only to the extent of loss estimated and not the over estimated value of the property.

Contribution.

i When the insured has taken out fire policies from two or more insurers, on the same property, the rule is that the insurers will bear the loss rateably in proportion to the loss. Hence, the insurer cannot get indemnified more than the loss caused by fire.

The insured can recover from one insurer, in which case, the other insurer will contribute rateably.

Smt.Rani has her property insured with A an insurance company for Rs. 30,000 and with B company for Rs. 20,000. The value of the property, is 80,000. The loss estimated was Rs. 25,000.

Liability of A company is,

$$\frac{\text{Insured Amount}}{\text{Total value}} \times \text{LOSS} = \frac{30,000}{80,000} \times 25,000 = 9375$$

$$\text{B company} = \frac{20,000}{80,000} \times 25,000 = 6250$$

Hence A & B contribute Rs. 9375 & Rs. 6250 to the loss.

For the balance the insured is her own insurer. Hence, she can claim from A & B Rs. 9375 & Rs. 6,250 respectively.

Smt. Rani may claim from 'A' company the total loss i.e., 9,375-«-6,250 ; B then will contribute Rs. 6,250/- to A

Ch. 7.4; **Reinsurance & Retention.**

Reinsurance is an arrangement between the original company which has insured a risk under a fire policy, and, another insurance company, to reduce its own liability. The risk is distributed or shared by both the companies.

The original company retains for itself the maximum amount it decides i.e. to share in case of loss. This is called retention. The balance is under the arrangement of reinsurance, transferred to the second insurance company called the reinsurer. The limit transferred is called "cessation".

Oriental company issues a policy for Rs.30 lakhs on a Commercial building with furniture etc. It retains its limit for 20 lakhs, and transfers the risk for Rs. 10 lakhs to New India Assurance. Of course, premium is proportionately shared by both.

This arrangement is between the two companies and the insured is not a party to it. The claim of the insured in » case of loss is thus protected by sharing by the two companies.

The legal basis of this arrangement is that it is an insurance contract between the two companies. Hence, -the principles of utmost good faith, insurable interest, indemnity etc., apply.

The advantage of reinsurance is to the original company which desires to distribute the risk by spreading.

5

CHAPTER 8

MARINE INSURANCE

- DEFINITION, SALIENT FEATURES.

Ch. 8.1: Definition:

Marine Insurance in India, is governed by the Marine Insurance Act 1963. Sn. 3, defines Marine Insurance. It is an agreement, in which the insurer undertakes to indemnify the assured in the manner and to the extent agreed upon, against maritime losses, incidental to maritime adventure.

Maritime adventure Sn 2 (d) :

It means the exposure of the ship, cargo and other movables to maritime perils. It includes the perils affecting the security for advances, and perils affecting the earning of freight, Commission & profits.

It should be a lawful maritime adventure; (Sn 5) . Hence, a smuggling adventure, piratical adventure are illegal & void.

Maritime Peril Sn. 2 (e):

It means the peril consequent or incidental to navigation of the Sea. This includes the perils of the sea, fire, war Perils, pirates, thieves, captures, seizures, detaining of Prince or people, Jettison, barratry and other similar perils. The maritime policy specifically states those which are covered, and those which are not i.e., excepted. No liability arises in respect of a peril excepted [not covered] in the policy.

Registration & Flag:

Every ship should be registered and should bear the flag of the country of registration.

Charter Party:

Vessels are generally Chartered (means hired) by Charterers (hirers) . The Charter Party is a contract between a Charterer and the owner of the vessel, by which the Charterer gets the lease of the ship, subject to certain conditions.

Maritime insurance is not compulsory. However, for financial and security reasons & practice, insurance has become a "MUST".

Ch 8.2 Marine Policy: Salient features:

The leading authority on "Marine Insurance" is Hardy Ivamy of U.K.

The essentials of Maritime Insurance are:

1. Insurable interest.
2. Utmost good faith.
3. Proximity Rule.
4. Risk must attach.
5. Mitigation of loss.

i) "Insurable interest" is one of the fundamentals of the contract of insurance; without it, the insurance contract is void. This distinguishes it from a contract of wager (Sn. 30 contract Act.) In all Fire, Life, Marine and other insurances, "insurable-interest" is essential.

ii) Definition: Insurable interest is the relation or concern in the "insured subject" of insurance, that the interested person is affected or prejudiced on the happening of the peril insured; he is interested in the preservation of *the* insured subject. He is entitled to the benefits from its destruction (Lucerna V. Craufurd) .

Marine Insurance Act defines insurable interest in Sn:7[1]

A person is interested in marine insurance when he stands in a legal, or, equitable relation to the adventure at risk; and, he benefits by safe arrival of insured cargo or is prejudiced on its loss or destruction. Hence, in a Marine insurance the insurable interest is statutory. If this is lacking, the insurance is illegal and void.

Persons having interest:

1. The owners have insurable interest in the ship, the charterers in the "freight", and the consignor in his "Cargo" or "goods & profits". The captain of the ship has no interest in Cargo or freight.
2. Even partial interest of any nature is insurable (Sn.10 of the Act)

Lender of money on Bottomry or respondentia has

insurable interest in respect of his loan.

Bottomry means in emergency the Captain raises loan, on the security of the vessel & the Cargo;

It is called "respondentia Bond" when the captain raises loan on the cargo only.

4. Sn 6(i) : The insured should have interest at the time of loss or the peril, though not at the time of insurance.

In *Anderson V. Morice, A*, the insured had taken a policy for a shipload of Rice from Rangoon. The policy said "interest" as may appear by ship "Sunbeam". There was peril when the loading was going on. Held A had no insurable interest as his risk would start, after the ship was loaded **as per the terms of the policy**, and not before.

5. Other persons who may have insurable interest are Mortgagor & Mortgagee, Agent, Carrier, Lien holder, Trustees, Executors, Captors in times of war and persons expecting a profit from the marine adventure.

2. Uberrima fides:

- means utmost good faith. In general contracts between parties, good faith is required but the doctrine of Caveat Emptor (buyer beware) applies. However, in Marine insurance higher standard of good faith is required. If there is non-disclosure, the contract becomes voidable.

The leading case is *Carler V Boehm*: In this case, the Governor of the Fort Marlborough had insured the said fort against any loss of being captured by any foreign enemy. The French invaded and captured the Fort, Carter claimed. But, the insurer contended that the weakness of the Fort, and the probability of the French attacking should have been disclosed by the insured. Held: Insurer liable.

It held that these facts were within the knowledge of a prudent insurer. The standard of good faith is "The insurer knows nothing but the assured knows everything."

Materiality test:

Sns 19, 20 & 21 of Marine Insurance Act say what is material & what is not.

Sn. 20 says that before the contract is concluded the assured should disclose every material circumstance known to him or ought to have known in ordinary course of business.

The insured need not disclose circumstances 1) known to insurer or which he is presumed to know 2) which diminish risk 3) which are not necessary. Character and moral integrity are relevant.

Voidable:

If this rule is violated, the remedy open to insured and insurer is to avoid the contract.

3. Proximity Rule;

The liability of the insurer is determined on the basis of the rule called proximate cause. This originated from the maxim: 'Causa proxima non remota spectatur' (It is the proximate cause, not the remote cause that should be considered) The cause should be direct, dominant operative & efficient. Hence, the insurer is liable for the peril covered by the Policy; if there are two or more causes, the direct or dominant cause should be determined by the courts.

Montaya v. London Assurance Co:

Hides & tobacco were shipped & insured. Due to storm, the hides became wet & due to its foul smell tobacco became unfit for use. Held, the peril of the sea: Storm. Hence, insurer liable.

In Samuel V. Dumas, when there was scuttling & then inflow of water to the ship resulting in sinking (with owner's connivance), the dominant reason was scuttling. Held insurer not liable,

The Marine Policy mentions the perils which are covered, and those which are not.

2. Indemnity:

Marine insurance is a contract of indemnity.
The insurer should indemnify the assured of the losses due

to maritime perils covered by the Policy. The measure of indemnity is the insured sum, and not more.

The **risk much attach**, e.g. if the intended voyage is abandoned for fear of capture, there is no risk. Hence, risk does not attach.

When there is a peril it is essential that the insured should take all necessary care which a prudent man would take to save his own property from further loss. He should not be willfully negligent.

The loss may be total; or constructive total loss or partial.

The insurer makes good the loss, when he is liable to the Perils covered by the Marine Policy & either conditions.

Ch, 8.3: **Total loss & Constructive total loss:**

(i) Total loss:

The loss by marine perils, may be total in respect of the ship, the Goods and Freight; According to Sn. 57(1) there is total loss, when the subject matter insured, is destroyed; or, so damaged as cease to be the thing of the kind insured; or where the assured is irretrievably deprived of the thing insured.

E. g: 1, Vessel entirely destroyed by fire.

2 Vessel captured by enemy during war.

3. George Cohen's case:

an old battleship was insured & towed up & carried. She went aground in Dutch port. Held, there was no total loss, as assured could retrieve to some extent.

4. Vessel missing, and not traced for a reasonable time one year (Koster v. Reed) . Held, there was total loss.

5. Total loss of ship does not necessarily mean total loss of goods or Cargo.

Asfar V Blundell:

Goods i.e. "dates" were discharged at port of destination, in an un-merchantable condition, unfit for human use as food.

Held, total loss of goods.

When the Vessel is lost while taking the cargo on board, the freight will be a total loss, as no journey is performed. Insurer liable for total loss of freight.

Leading cases:-

(i) Jackson V. Union marine Insurance Co. (ii) Kulukundis V. Insurance Society, (iii) Petros V. Robertson.

ii) **Constructive total loss:-**

This doctrine is confined to marine insurance and is a device intended to indemnify the assured. When a ship is stranded, the cost involved in saving her, may be much more & it may not be worthwhile to save her at such high cost. The assured may call upon the insurer to pay him the "Constructive total loss" by issuing notice of abandonment.

According to Sn. 60(1) :

there is Constructive Total loss when the "subject matter" insured (ship, Cargo, Freight) is reasonably abandoned. This abandonment should be on actual loss appearing to be unavoidable or it could not be saved except by incurring expenses exceeding the value of the subject matter itself.

Circumstances:

1. Insured is deprived of possession of his ship or goods, i.e., he is unlikely to recover except by investing more than the value lost by peril.
2. Cost of repairing the damaged vessel, would far exceed cost of the vessel itself.
- 3 . Cost of repairing the damaged goods & taking to destination would, far exceed the cost of goods.

Notice: From business standpoint, such an investment is not worth it and hence it is called, constructive total loss and the assured may abandon the subject matter by giving due notice to the insurer. Otherwise, it will be treated as partial loss. (No notice is necessary, when there would be no benefit to insurer by it. In some circumstances, insurer may waive notice.)

Effect: 1. The assured may treat the constructive total loss as partial loss, or, **in the alternative** abandon the ship or cargo to the insurer, and claim for total loss.

2. The insurer gets the right to take over the subject matter insured.

Cases:

1. Vaccum oil company V. Union Insurance:

10,000 tins of petroleum were insured from Alexandria to Cyprus. The vessel stranded resulting in total loss. However, 6000 tins were salvaged; leaking tins were repaired.

Question was whether there was total loss. Held, there was constructive total loss, as no ship would carry damaged tins of petroleum and the cost of transportation was prohibitive.

2. In Rickards V. FTR Co.:

Cargo in a German vessel had been insured. The vessel was from South American port to Hong Kong. War broke out. German Govt. issued orders to all its vessels to go to neutral ports or to return to Germany or to scuttle the ship. The vessel sailed from Rio, when German mandate operated. The insured claimed.

Held: There was in fact a scuttle of ship[(a vessel) to sink by opening the sea cocks or holes in the bottom] as per German Govt. order. Therefore there was constructive total loss. Insurer liable.

3. Hall v. Hayman:

Here the cost of repairing the vessel was estimated at 30,500 Pounds, whereas the value was 34,000 Pounds. The assured added the value of wreck and claimed total loss. Held the wreck should not be taken into account.

4. Panama Oriental v. Wright:

The vessel had been insured under a time policy. It was seized by Vietnamese Revenue authorities for carrying un-manifested goods. Her recovery was unlikely. Held: Constructive total loss.

Ch. 8.4. Marine Losses

The losses due to marine perils are generally classified as follows:

TOTAL -	Actual Total Loss -	
	Constructive total loss	
LOSSES - PARTIAL -	Particular Average	Sacrifice
	General Average –	
	Expenditure
CHARGES -	Salvage	
	Particular charges.	

The marine policies cover the ships, the cargo and freight, as the case may be, and the insurer becomes liable to reimburse the insured of the losses covered by the policy.

2. Note on each type of loss:

a. **Actual total loss:**

Total destruction of the vessel by fire; or damage beyond repairs; Sinking after collision etc. are instances. The loss to the insured is total and complete.

b. **Constructive total loss:**

In business sense, it is total loss if the damage or loss to ship or cargo is of such a nature that the cost of saving the ship or cargo, would be much higher than the cost of the subject matter, itself,

c. **Partial loss:**

The subject matter is ship, or cargo or freight and the loss due to peril is partial.

(1) Particular average: Damage may be to the ship e.g. due to heavy storm on the high seas, a machine on board may be damaged. This is repaired and the cost is met by the insurer. Damage to the cargo a portion of the cargo may be damaged; or a part of cargo may be damaged totally. e.g. 5000 bags of sugar damaged out of one lakh bags; Damage to the part or portion of the subject insured may cause loss in respect of freight. Freight cannot be recovered in case of loss of cargo.

The peril in all particular average losses, is accidental or fortuitous,- Only the insured property is damaged; Particular

charges recoverable are those which are spent in times of peril. These include preserving or repacking charges, expenses to minimise losses etc.

② **General Average:** When there is a maritime peril, any expenses incurred and sacrifices made by individuals to preserve the ship and the cargo should be made good by persons interested in maritime adventure. This is the general principle of Maritime law, whether insured or not. These expenses should be voluntary and reasonable;

e.g.,
Expenditure incurred may be to re-ship the goods, cost of repairs, cost of towing etc. Sacrifices mean damage done while saving the ship and the cargo e.g. damage to cargo, while extinguishing fire, damage to machinery, equipment, installations in saving the cargo etc. Expenses of the crew, fuel, stores etc. during these operations.

All these sacrifices and expenditure are met by the insurer, as per policy.

③ **Charges:**

The salvage charges and other specific charges met during the period of the peril, to save the ship and cargo should also be met by the insurer. The insurer is liable to pay S & L (Suing and Labour) charges met by the insured or his agents or servants.

E.g. Live cattle saved and then supplied with fodder etc. Held- These are S & L charges.

Any reasonable charge to save and minimise loss due to peril, is covered under "Charges."

Ch 8.5. **MARINE INSURANCE –**

TYPES OF POLICIES:

a. **Policy:**

The marine proposal is generally made to the marine agent on a slip duly signed by the insured. Premium is the consideration. Details regarding consignor (shipper) and consignee, goods, invoice number, date port of origin etc. are recorded in the slip.

The insurer accepts and issues the Marine policy in the standard G.I.C. (General insurance company) format, duly stamped signed and dated. The marine policy should be in writing (Sn 24 of Marine Insurance Act.)

b. **Subject matter:**

The insurance of the ship is called "Hull insurance/" Cargo insurance covers all goods or merchandise on board the vessel; Freight insurance covers

the cost of transportation of goods; The marine perils covered are set out in the marine policy issued.

c. Types of Policies:

1. **Voyage policy** covers the various destinations touched by the vessel;

Time policy is issued for defined period, generally for 12 months. Mixed voyage and time policies are common.

2. **Floating policy** is in general terms and leaves open, to fill up the name of ship and other details and to cover shipments.

3. "**Open cover policy**" gives scope to the exporter to make shipments for 12 months in respect of goods to be shipped from time to time, the rate of premium being fixed in advance with insurer. At each shipment exporter fills up the "cover note" and makes shipment; He serves a copy of the cover note to insurer, who issues a policy for each shipment so effected.

4. **Valued and unvalued policies:** In valued policy the agreed value of "subject-matter" is specified. It is unvalued when no such amount is specified, but the total limit is specified.

Ch. 8.6. Double Insurance: Sn. 34:

A marine insurance is a contract of indemnity. What is indemnified is the value of the "insured subject matter" and nothing more. Hence, there, is no advantage in over insurance by taking out two or more policies.

The maximum the insured may get is the value of the subject matter from the various policies put together. In actual practice, the excess premium so paid is returned to the insured. Hence, over-insurance or Double insurance will not enable insured to get any sum in excess Sn. 34(2).

If any sum is paid in excess of value to be indemnified, the insurer holds in trust, such excess sum, for insurer's who have right of contribution.

CHAPTER 9

Marine Insurance - Warranties, voyage and Perils

Ch. 9.1.: **Warranties: Sn.35.**

Warranties are included in Marine policies. These are undertakings by the assured, and, are of a promissory nature. (Hardly Ivamy).

The assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled or affirms (or negatives) the existence of a particular state of affairs.

Warranties are of 2 Types:

(i) **Express warranties**, which are included in the Marine Policy itself. These relate to:

(1) Sailing, (2) Position of ship (3) Number of Crew (4) Convoy (5) Nationality (6) Neutrality etc.,

(ii) **Implied Warranties**: There are three:

- (1) Seaworthiness of ship.
- (2) Reasonably fit to carry the goods to destination.
- (3) Marine adventure is legal and would be carried out in a lawful manner.

(i) **Seaworthiness of ship**: This means the ship should be reasonably fit in all respects to encounter the ordinary perils of the seas, of the adventure insured.

The vessel should have sound hull and tackle, competent master & sufficient Crew, the stores should be adequate; should have machinery, fuel etc., & other requisites as prescribed'. In Vortigern case, there was inadequate stock of coal used as fuel to take the full adventure. Held: not seaworthy.

Voyage policy & Time policy on ship govern the ship. In the voyage policy the implied warranty is that at the time of commencement of the voyage, the ship was seaworthy to take the adventure.

In Time policy there is no implied warranty that ship should be seaworthy at any stage, but that if with the connivance of assured, the ship is sent to sea in an unseaworthy state, the insurer would not be liable.

Thomas V Tyne Etc: the Vessel under time policy was totally lost. No connivance was proved. Held insurer liable.

2. Voyage policies on goods: There is no implied warranty that the goods are seaworthy. The implied Warranty is that the ship is seaworthy to carry the goods to destination.

Blackett V. N. B. Assurance Co-. Cotton was insured. Some quantity was lost due to peril. The contention by insurer that the Vessel faced turbulent condition, because of cotton stacked in the "hold" was light, etc., was rejected by the Court. Held: Insurer liable.

3. Legality:

There is an implied warranty, that the adventure is lawful and is carried in a lawful manner. Hence, a policy on an illegal Voyage is void & cannot be enforced.

Illegality may be due to violation of a Statute or contrary to war policy of the Country of flag etc. Trading with enemy is illegal.

Effect: (i) If the implied Warranty is not complied with by the insured, the insurer is not liable & hence would be discharged.

Quebec Marine Co V Bank of Canada:

The Vessel was found worthy for inland waters, but not for salt water of the sea. Though repairs were made there was a hurricane & the vessel was lost. Held: not seaworthy and insurer not liable.

(ii) Insurer may waive in some circumstances.

Ch.9.2. Voyage - Deviation:

1. The attachment and duration of the risk is '**the period during which the insurer is liable for loss or damage.**

The attachment of risk depends on the voyage policy; risk will not attach if the vessel does not sail from the port of departure stated in the policy or if it sails from a different destination.

Further, when the ship sails to a different destination, other than what is stated in the policy, there is deviation, and the risk will not attach.

2. Duration

Duration of risk depends on Policy. The risk on ship will end when she is anchored safe for 24 Hours at port of destination.

3. **Deviation.**- If the ship deviates from the voyage specified in the policy, there is deviation, and the insurer will not be liable.

There is deviation.-(i) When the specified course is changed,

(ii) When not specified, the customary and usual course, is changed.

Deviation should be factual and intention is not relevant. Even if the ship retraces back to its route, there is deviation "**To revisit, is to deviate**", the courts have held. Deviation may be trivial or extensive.

Elliot V Wilson:

Here goods were insured on board a vessel which had specified route. The ship touched a port, which was not in its course according to the policy, but which was usual for ships to touch that port. There was loss of goods. Held: Deviation and hence, insurer not liable.

Generally the geographical order is followed: *It is* not necessary that all ports named should be touched. "Liberty to touch and stay clause at any port or place whatsoever", does not also authorise to deviate.

Solly V Whitmore:

Where the ship had touched places totally un-connected with the voyage, it was held that there was deviation.

EXCUSES:

Sn 51(2) The Marine Insurance Act has stated the circumstances when deviation is excused.

Deviation is excused when:

- (i) Policy itself authorises deviation.
- (ii) due to circumstances beyond the control of Master, (iii) necessary, to fulfil a warranty.
- (iv) reasonably necessary in the interests of safety of ship or Cargo.
- (v) to save human life, or in aiding a ship in distress with human life in danger.
- (vi) to secure medical or surgical aid to person on board the ship and
- (vii) deviation caused by conduct of master of Crew amounting to barratry. However, the ship should resume its course and continue her voyage, as soon as the excuse ceases.

Cases:

1. National Insurance Co. V. J. Nadar:

The Company had issued an open policy to vessel Chidambaram to carry 2000 baskets of onion, on warehouse to warehouse basis. 2 boats carried onion from warehouse to the ship, but faced rough sea & hence were asked to return, but on return the sea became still worse and 1200 baskets were jettisoned (thrown to sea) to save human life & ship & cargo. Insurer contended the return journey was deviation. **Court rejected and held company liable.**

2 Marten V. Vestey Brothers:

A ship had been insured from port River Plate to any ports in France and/or U.K the ship discharged its cargo at two ports in these countries, but left for Barry and was lost. This was deviation and held insurer not liable.

4 . Delay if, unreasonable is not excused.

African Merchants Co B & F Marine Co.

In this case, the Vessel was insured from U.K. ports to West Coast Africa and return. After discharging at destination the vessel was loaded and when it was about to leave the port, it went to assist a vessel which had been wrecked. There was thus delay in leaving the port. The vessel was lost on its return journey to U.K.

. **Held** insurer not liable from the time the Master went to save the wreck.

5. **Bragg V. Anderson:** It was held that there was no deviation as the policy had provided for "any port or places" in west Indian Islands.

Ch.9.3 Insured Perils (Marine Perils).

Marine Insurance Policy, as issued in its standard form contains a list of Perils covered by the Policy and those which are excepted i.e., not covered.

The insurance contract should satisfy other essentials like Uberrima fides, insurable interest, proximate cause etc.,

The perils covered are:

Perils of the Sea, Fire, Enemies, Pirates, rovers, thieves, Jettison, Arrests, restraints and detentions Barrantry etc.

Additional Perils:

1. Inchmaree clause.
2. Run down clause.
3. Sister ship clause.
4. Theft & pilferage clause.
5. Strikes, riots & Civil Commotion (SRC).
6. War clause.
7. Leakage clause.
8. "All risks" clauses.

Exceptions: Clauses excepted in policy:

1. Loss not proximately caused.
2. Loss due to wilful misconduct of insured.
3. Delay
4. Wear & Tear.

5. Inherent Vice.

6. Ordinary breakage etc.

Other risks, which are not covered are expressly mentioned in the policy.

CHAPTER 10

Rights of Insurer on Payment:

SUBROGATION.

Ch. 10 : Subrogation :

In Fire & Marine Insurances where the insurer, indemnifies the assured of the losses of the Peril, the doctrine of Subrogation applies. When there is total loss, and the insurer makes payment to the insured, the insurer gets subrogated to the position of the "insured" & becomes entitled to all the rights which the insured had in the "insured subject matter."

The doctrine is not applicable to life insurance & personal insurances.

The rule of subrogation applies, when the assured has his rights against the "insurer and third parties," to recover from them, a "sum in excess of his loss."

Hence in a case where the insurer pays, and, the assured gets compensation from a third party, the insured should hold that as trustee & pay to the insurer.

In other words, the insured is prevented from making profit from the peril. The rule of indemnity enables him to get what he has lost in peril, but nothing more.

Hence, subrogation enables the insurer to get into the shoes of the insured,

Judge Mansfield has said "**every day the insurer is put in the place of the insured.**"

The courts have observed "**The assured cannot take from both hands.**"

The Rights of the insurer on payment are-

- i) To take possession of the property damaged by the Peril.
- ii) To handle the property in such a manner for all

reasonable purposes to minimise losses, and to sort out, arrange, remove etc. Also to sell or to dispose of the property.

iii) The insurer has the right of subrogation and the insured should help to reduce the losses.

iv) If the insured has any ways & means to reduce the loss, he should use them to benefit the insurer & in fact, cede them to him.

A is the owner of goods . B is the Bailee in possession of goods. For negligent handling of the goods A had sued B for compensation. When the goods are lost by fire resulting in total loss, & insurer pays in full to A, the insurer gets the right of A to sue & recover compensation from B.

Castellain V Preston :

In this case A had agreed to sell his house to B & B had agreed to pay unconditionally. The house insured by A, was destroyed by fire, & the insurance company paid total loss. B also made payment to A. Held insurance company was entitled to recover total loss paid by it.

iv) The right of the assured may be contractual, or a remedy in tort or any other right whether legal or equitable.

If there is "anything" which reduces the loss, the insurer is entitled to *it*. E.g. Gifts received by insured may be the subject matter of Subrogation.

In a case, gold which had been insured, was seized under regulations. Insurer paid in full.

Later, the insured got a portion as a matter of grace. Held, insurer was entitled to it.

vi) The insured, should not renounce or compromise his interest with third parties, so as to defeat the rights of the insurer.

vii) Where there are several insurers, the insurer who pays in full, is entitled to "Contribution" from other insurers.

Limitation:

i) The right of subrogation springs from the actual payment of the total loss, to the insured.

- ii) Insurer gets the rights of the assured when the latter has a right of action.
In Glen Line case, ship A was insured for 10,000 Pounds, She sank in a maritime peril & the insurer paid the total loss. Thereafter, the ship was recovered from seabed and was sold. The insurer sued to sale value.

Held : Insurer is entitled.

iii) The benefits to be subrogated by the Insurer are incidental to the loss.

iv) The insurer's claim itself is limited to what he has paid to the assured, and, not more.

Yorkshire V. N. S. Co.

Canadian Govt. Vessel collided with Vessel A causing total loss to A. Insurer paid 72,000 pounds to owners of A. The owner sued Canadian Govt. & got 1,27,000 pounds under devaluation etc. Insurer sued the owner of vessel A to recover. Held: Insurer entitled to 72,000/- pounds only.

CHAPTER 11

Life Insurance

Ch. 11.1. Definition:

Life insurance is a contract by which the insurer, in consideration of a premium undertakes to pay a stipulated sum of money on the death of the insured or at some designated time, to a designated beneficiary.

Insurance is an institution which eliminates risk & provides certainty in place of uncertainty. Death to human beings is certain. Life insurance provides for protection against loss arising out of death of the insured.

The Life Insurance Corporation of India owns all life insurance business in India since 1956.

245 private insurance companies were nationalised in 1956. The L.I.C. is statutory, and was established to carry on life insurance business in India, **under Life Insurance Act 1956.**

Ch. 11.2 : Salient Features :

1. Life insurance as a contract.
2. Insurable interest.
3. Utmost good faith.
4. Warranties.
5. Risk.

1. Contract :

Life insurance fulfils all the essential requirements of a contract : offer & acceptance, free consent between parties, premium as lawful consideration, parties having competency, and the purpose is lawful.

The proposer fills up the proposal form signs before the L.I.C. Agent, & also pays to him the first instalment of the premium. The L.I.C. gets the doctor's report of proposer and submits to L.I.C. with the premium and his own report. The L.I.C. scrutinizes, and if in order, issues the policy duly signed & sealed. Proof of age should be given by the assured.

Life insurance has the two-fold advantage of investment & protection. The payment of premium, in instalments, is an investment & accumulates until it becomes equal to the sum insured.

No further premium need be paid. In fire insurance, the policy is for one year and then it lapses & premium paid is not refunded. Hence, no investment protection.

The terms of the policy, sum assured, endowment or whole life etc., determine the nature of the protection to the assured.

2. "Insurable interest" :

There is no statutory definition of "Insurable interest" with reference to life insurance in India. The ratio of the decision in **Dalby V. India and London Assurance Co.** (1854) is accepted & applied in India

. The facts were as follows: John Wright took 4 policies for 3,000 pounds, on the life of the Duke of Cambridge in "A" insurance Co. (Subsidiary of G). Later he took reinsurance for 1,000 pounds, with the principal company G. The 4 policies issued by A were surrendered : Policy of G continued.

However ; Claim arose, and G contended that there was no "insurable interest" at the time the claim arose as policies had been surrendered & hence it was not liable.

The House of Lords rejected this & held, "**life insurance is not a contract of indemnity**" and it is enough if the insurable interest exists at the time of the contract of insurance, though not at the time of the loss."

Insurable interest is one of the fundamentals of the contract of insurance, without it, the contract is void.

This distinguishes it from a contract of wager (sn. 30 Contract Act). Everyone has Insurable interest in one's own life. Wife has insurable interest in the life of husband and vice versa and this is presumed by law.

Griffith v. Fleming : G and his Wife W took out a joint life insurance policy & both contributed to the premium. W committed suicide. G claimed. The insurer contended that G had no insurable interest in his wife W. The court rejected this, and, held that in respect of husband and wife, interest is presumed.

Others : There is insurable interest of employee in the life of an employer ; a creditor in the life of the debtor upto the limit of the debt, a surety in the life of principal debtor etc.

Relatives : Natural love and affection does not by itself create insurable interest. There should be some pecuniary interest in addition to it, for a person to insure his relative : parent child, Brother or Sister etc. However, father has an insurable interest, in an employed son on the presumption that in old age the father is likely to depend on his employed son.

3. Utmost good faith :

Contract of insurance is a contract of "Uberrima fides" and strict proof is required in courts of law. The person to be insured, knows everything, and the insurer knows nothing of the material circumstances. E.g. serious disease. Utmost good faith is essential on either side, and, the duty starts from the stage of proposal & continues until the conclusion of the contract of life insurance i.e., issue of policy.

In general contracts, good faith is required but the doctrine of "buyer beware" (Caveat Emptor) applies.

However, in insurance contract a higher standard of good faith is required as its essence is the RISK which it covers, otherwise the contract becomes voidable. **Hence, if material facts are not disclosed, the insurer may avoid the contract.**

In L.I.C. V. Shakuntala Devi, the LIC contended that the insured had not disclosed that he was suffering from indigestion, since a few days before taking out the policy. The insured had died within a year.

The Court rejected this plea and held that indigestion, headache etc., are casual disturbances of health and hence LIC cannot take advantage of its policy's "basic clause" to disclose. Hence LIC was held liable.

Godfrey V Brittan Assurance Co. the assured had not disclosed his lung infection, kidney problem and attack of pharyngitis, while signing the proposal. Held these were material and the company was not liable.

(i) Facts which need not be disclosed by the insured :

- 1) Facts which are reasonably known to the insurer in the ordinary course of business.
- 2) Facts which diminish the risk.
- 3) Facts which may be inferred from information continued given by insured.
- 4) Facts which need not be disclosed in view of conditions and warranties.
- 5) Facts which are waived by insurer.

Ratanlal v. M.I.Co.

The insured had signed the proposal and after medical exam and report the policy 'was issued on 27th March. On 27th insured had some exhaustion and his doctor examined him but gave no medicine. Insured died on 19th April. The company contended that material fact about health had not been disclosed. Court rejected and held company liable.

ii) The material facts are-

age, income, occupation, health, habits, residence,

family history and the plan of insurance etc. 4.

WARRANTIES :

Information given by the proposer to the insurer -i.e., agent of L.I.C. during negotiation is called representation. The proposal form with question and answers duly signed with verification by the insured, is Representation and part of the contract, and in practice is treated as informative warranty. Hence, if the statements are false, there will be breach of warranty. Policy also contains a number of warranties. A breach will make the contract voidable.

Decided Cases:

1. LIC V Janaki Animal :

LIC's contention that the insured has suppressed information regarding his illness, was rejected by the Court, and, the claim was allowed.

2. Trivedi Case :

One Trivedi took 5 policies of Rs.50,000 each during 2 years period. (70-72) He was 48. In May 1973 he expired. LIC contended that there were false declaration of health but failed to prove. Claim allowed.

3. **Srinivas Pillai** and his wife W took a joint policy. W had not stated that she was pregnant. W died and Srinivas Pillai claimed. LIC contended that the declaration was false and that she was pregnant (Over 3 months). The court declared that the statement by insured was false and hence, claim rejected.

Suicide:

In India, **attempt to** commit suicide Sn 306 I.P.C is an offence, but suicide is not an offence.

In England in *Beresford V Royal Insurance Co.*, one major R insured his life in 1925, which had said that if the insured happens to die with his own hand within one year, the policy was void. 'R shot himself in 1934. Lord Atkin, held that suicide was a Crime, contractual obligation coming from a Crime could not be enforced. Held: Claim rejected.

In India, claims are allowed.

In *Kankayalal's Case*:

The policy stated that if the insured commits suicide within a year, the policy would be void. K after 13 months of the policy, suspecting his wife's fidelity took poison and died. The court upheld the claim.

RISK :

The risk covered in the LIC policy is the 'death' of insured which may occur in any manner in whole life policies or on stipulated date of maturity or death.

Death includes murder by third parties.

Risk **not covered**: If the insured commits murder and then is hanged or dies when undergoing imprisonment - his policy becomes void, as his death is the consequence of crime.

CHAPTER 12.

General Topics.

Ch. 12.1 Barratry :

This is one of the Perils of the Sea, generally covered by the Marine Insurance Policy.

Barratry : Wrongful act willfully done by the master of the ship or its crew causing loss to owner.

Smuggling by the master is Barratry.

In **Cory v. Burr**, the ship was seized by Spanish authorities on the ground that its master had committed smuggling. Held : Insurer not liable as per the policy. Deviation of the Ship by master for his own purposes is barratry. When a Captain had deviated a Vessel & later sold it, it was held that it was barratry.

If the policy covers, barratry, the insurer will be liable to the insured.

Ch. 12.2 Inchmaree Clause :

The marine insurance policy sets out the Perils covered by it and those which are excepted, in its Standard Policy format.

The Inchmaree clause is generally an additional

peril, covered by the policy. The contract of marine insurance may be suitably altered to suit individual cases. One such clause which is generally included in the list of perils is the Inchmaree clause.

In **Thomas etc V. Hamilton**, the House of Lords held that the insurer was not liable, when a donkey pump had been damaged as a result of a check-valve becoming choked up with Salt. The loss was not within the perils set out in the policy.

This led to the setting out of "Institute Time Clauses" to include Inchmaree clause, under which loss or damage caused by accidents in loading, handling cargo, bunkering caused by negligence of master or crew etc. are covered.

Baxendale V. Fane :

The manager had negligently docked the vessel for bottom cleaning, & there was damage. Held : under Inchmaree clause liable.

In "**The Pacific Queen**" - which had a policy with Inchmaree, clause the vessel was lost as a result of explosion & fire. Held that explosion was because of want of diligence & hence insurer not liable.

Ch. 12.3 : "**All risk**" clause (See Chapter 5)

Risk insurance is a "measurable uncertainty." Uncertainty is the "event." The Marine Policy issued to cover Cargoes often contains "All risks" clause. The Institute Cargo clauses are also "All risks" clauses with certain exceptions. Hence, each policy sets out the nature of "All risks."

"All risks" of fire, transshipment, carriage by land.... until safely delivered.....

In **Gaunt's case**

wool was found to have been damaged during transit.

Held : Insurer liable under this clause.

In **Chester's case**, Sponges -had been shipped and insured against 'All risks.' The goods were damaged due to dirt, water etc., in transit. Held as per 'All risk' policy, the insurer was liable.

The Burden of proving is on the insured.

Exception:

Even in cases of 'All risks' coverage, the natural wear and tear, inherent vices of the subject matter etc., are not covered.

Ch. 12.4 Assignments of life policy

- rule in Dearle V Hall.

1. ASSIGNMENT:

Sn 38 of the Insurance Act provides for assignment or transfer of life insurance policy. The assignment may be by way of sale, mortgage, pledge or gift. It may be absolute or conditional. If absolute, the assignee gets the rights of policy holder, otherwise, not.

2. PROCEDURE:

(i) The Assignment should be made only by an endorsement on the policy itself or by a separate instrument.

(ii) It should be duly signed by the assignor, with two attesting witnesses.

(iii) The nature of assignment should be specified,

(iv) For gift also this procedure should be followed.

The assignee may be any 'person' and need not have insurable interest' in the policy.

Notice & effect:

Notice of assignment should be given to the insurer, by the assignor or assignee. Notice secures priority among assignees and also gets the right to sue for the amount of the policy. The notice should be in writing endorsement or copy thereof may be given.

The insurer should give priority to the assignees.

Rights of assignees inter se. Notice enables the insurer to make priority of assignment.

Rule in Dearie V Hall:

The Rule laid down in this case is as follows:

By giving notice to the insurer a bona fide assignee for value, gains priority over earlier assignees who have not done so.

The later assignee

(i) should have given value and

(ii) should act in good faith without notice of earlier assignment.

Good faith means the assignee should have made careful investigation and ascertained whether there was any assignment earlier.

This decision was given, on equitable grounds. Now this has become a legal principle and priority depends on the date of notice to insurer.

Effect: The rights of the assignor pass on to the assignee, and subject to the rule of priority in Dearie V Hall, the assignee in good faith and for value, giving notice, gets priority in his claims.

Ch. 12.5 Nomination'

Sn 39 of Insurance Act provides for nomination. The insured, as holder of his own policy has a right at any time, before maturity of the policy, to nominate a person or persons.

The nomination may be made on the policy itself by an endorsement or in the text itself with notice to insurer. The insurer issues a written acknowledgment of the nomination. If the policy matures, and the insured is alive, the insurer should pay the insured. Nominee gets nothing and has no right to claim. If the insured dies, when policy is in currency, the nominee is entitled to claim. The nomination can be cancelled or changed by "a further endorsement by the insurer; he may do so by his

If the insured assigns his policy to a third party, the nomination gets cancelled.

Right & Limits:

The nominee has a right to receive the monies, and, it does not give him the title to it. Hence, it is not transferable or heritable. He is only a receiver. The objective is to avoid the delay that may be caused in getting the claims settled on the demise of the insured. The insurer is discharged from his liability, when he pays to the nominee. The objective is to facilitate the settlement of claim and, hence, nomination is a right of the insured.

In. Sarbati Devi V Usha Devi.

U was a nominee of her husband's policies, and on the demise of her husband, she claimed absolute right to the sum assured.

Her son and her husband's mother claimed as heirs. The Supreme Court, dismissed the right of the nominee and held that S. 39 only indicated '**the hand to receive**' and the insurers are discharged, but the legal heirs can claim the amount according their law of succession.

Exception to nomination : Provisions relating to nomination will not apply to a policy taken by the insured for the benefit of his wife and children to which sn 6 of Married Woman's Property Act applies.

In such a case, the policy shall be deemed to be a 'trust' for their benefit and not subject to control of the husband or his creditors or become part of his estate.

Ch. 12.6 Annuity:

Definition: Annuity is a fixed, sum of money paid to a person called 'annuitant' yearly (or in installments) during his lifetime.

Annuity is defined as the payment of certain amounts periodically during the life-time of the annuitant, in consideration of payment of an agreed sum to the insurer.

The L.I.C. issues annuity policies, payment here may be on annual basis, or monthly, quarterly etc. as per the contract of annuity policy.

Contract: Annuity is a contract entered into between the L.I.C. and the annuitant wherein the latter deposits a lumpsum in one (or more) instalments, and, the L.I.C.

agrees to pay monthly, quarterly annually a fixed sum, to the annuitant upto his death. After his death the amounts, if any, become part of his estate,

The terms and conditions of the commencement of payment, number of annuitants and mode and fixed amounts to be paid are agreed upon in the contract.

Proof of age of annuitant is required. No medical examination is necessary.

Life insurance provides for accumulation of premium, but in annuity the lump-sum deposit made by the annuitant liquidates gradually. Life insurance is generally a protection against living too short, but annuity is financial protection against living too long. **Hence two extremes of life's greatest wonders –**

'One dying too soon, and, the other living too long.'

Ch. 12.7 **Transshipment:**

When a vessel on its voyage is interrupted by a peril at any place or any port, it is clearly necessary, for the safety and preservation of the goods (cargo) that the master should transship the goods. This he may do depending on the circumstances and the nature of the peril. He may re-ship the goods on board another vessel, so that the goods may land at port of destination named in the policy or as intended by the parties.

There should be very clear necessity to transship the goods, otherwise, it will amount to 'deviation.'

Transshipment is covered in the policy, generally and any loss due to transshipment, re-shipping etc., should be borne by the insurer. The liability therefore continues, to cover transshipment. (Oliverson V. Brighttnan)

Ch. 12.8: **Kinds of Life Insurance Policies:**

The L. I. C. has introduced a large number of policies to serve different purposes. Broadly these are divided on the basis of duration, method of payment of premium number of persons insured etc.

(i) Duration:

1. To this category belong a) whole life policies, b)

Convertible whole life policies etc., (Payment of the demise of the insurer)

2. Term policies: a) Temporary policies convertible term policies
3. Endowment policies: (Fixed number of years)
Payment is made to assured on attaining certain age or on death.

These are a large number of these policies with varied terms suit the insured.

E.g: a. Endowment Policy

- b. Double Endowment Policy
- c. Multipurpose Policy etc.

(ii) Premium based:

Single Premium Policy. (Lump sum) Level Premium Policy.

(iii) Policies according to participation in profits:

- iii) Number of insured based: Joint life Policy, Multiple life Policy & Last survivorship policy, Group insurance etc.

Sn.12.9 Constitution and function of the L.I.C.

The Constitution and the functions of the L.I.C. are governed by the **L.I.C Act of 1956**.

245 private insurance companies were nationalized and L.I.C was constituted to do exclusive life insurance business in India.

Constitution: Sn. 4

The Corporation is managed by 15 persons appointed by the Central Government with one of them as Chairman.

Such persons should not be having any financial and other interests to the prejudice of the Corporation. If a member is directly or indirectly interested in contracts of the corporation he should disclose his interest. He should not take part in the deliberation of the corporation regarding that contract.

Functions: Sn. 6

The entire administration of the L.I.C is carried on by the Corporation according to the Statutory provisions.

- (1) The general duty is to carry on life insurance business in and outside India.
- (2) It may exercise its powers to develop life insurance business, to the best advantage of the Community.
- (3) It has powers to carry on different types of business relating to life insure like annuity, reinsurance, capital redemption business.
- (4) It has powers to invest the funds of the Corporations to its best advantage.
- (5) It has powers to acquire, hold and dispose of property for purposes of the corporation.

It has powers,

- (a) to advance or lend moneys against security e.g. policy etc or immovable property
- (b) to borrow money on security of Corporation
- (c) to carry on any business connected with its business if profitable

6. It has powers to do all such things incidental or conducive to the functions of the Corporation.

The Corporation is vested with powers to run on business lines; It is gratifying to note that the LIC is one of the most successful corporation, of the Central Govt. doing business of life insurance in & outside India.

"Yogakshemam Vahamyahatn" is its motto. Its logo with two hands protecting the flickering flame of life is symbolic of its services.

THE MARINE INSURANCE ACT, 1963

2. **Definitions.** In this Act, unless the context otherwise requires,--

(a) "**contract of marine insurance**" means a contract of marine insurance as defined by section 3;

(e) "maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detentions of princes and peoples, jettisons, barratry and any other perils which

3. **Marine insurance defined.** A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

4. **Mixed sea and land risks.** (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

5. **Lawful marine adventure.** Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

6. **Avoidance of wagering contracts. (1) Every contract of marine insurance by way of wagering is void.**

(2) A contract of marine insurance is deemed to be a wagering contract--

(a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term: Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

7. Insurable interest defined. (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

8. When interest must attach. (1) The assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected:

Provided that, where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

9. Defeasible or contingent interest. (1) A defeasible interest is insurable, as also is a contingent interest.(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the sellers risk, by reason of the latters delay in making delivery or otherwise.

10. Partial interest. A partial interest of any nature is insurable.

11. Re-insurance. (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it. (2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance.

12. Bottomry. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

13. Masters and seamens wages. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

16. Quantum of interest. (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable to indemnify him in case of loss.

INSURABLE VALUE

18. **Measure of insurable value.** Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:--

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions, and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; in the case of a ship driven by power other than steam includes also the machinery and fuels and engine stores, if owned by the assured; and in the case of a ship engaged in a special trade, includes also the ordinary fittings requisite for that trade;

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

19. Insurance is uberrimae fidei. A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

20. **Disclosure by assured.** (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known to him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed,

namely:--

- (a) any circumstance which diminishes the risk;
 - (b) any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters, which an insurer in the ordinary course of his business as such, ought to know;
 - (c) any circumstance as to which information is waived by the insurer;
 - (d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.
- (4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

21. **Disclosure by agent effecting insurance.** Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer--

- (a) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to him; and
- (b) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

22. **Representations pending negotiation of contract.** (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it be made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation be material or not, is, in each case, a question of fact.

23. **When contract is deemed to be concluded.** A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not ;

and for the purpose of showing when the proposal was accepted, reference may be made to the slip, covering note or other customary memorandum of the

contract, although it be unstamped.

THE POLICY

24. **Contract must be embodied in policy.** A contract of marine insurance shall not be admitted in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

. A marine policy must specify--

- (1) the name of the assured, or of some person who effects the insurance on his behalf;
- (2) the subject-matter insured and the risk insured against;
- (3) the voyage, or period of time, or both, as the case may be, covered by the insurance;
- (4) the sum or sums insured;
- (5) the name or names of the insurer or insurers.

26. **Signature of insurer.** (1) A marine policy must be signed by or on behalf of the insurer.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

27. Voyage and time policies. (1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject-matter for a definite period of time, the policy is called a "time policy". A contract for both voyage and time may be included in the same policy.

(2) A time policy which is made for any time exceeding twelve months is invalid.

28. Designation and subject-matter. (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

29. **Valued policy.** (1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or

partial.

30. **Unvalued policy.** An unvalued policy is a policy which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore explained.

31. Floating policy by ship or ships. (1) A floating policy is a policy which describes the insurance in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by endorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

33. **Premium to be arranged.** (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable. (2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

DOUBLE INSURANCE

34. **Double insurance.** (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance--

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation, for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured;

(c) where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

(d) where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

WARRANTIES,

35. **Nature of warranty.** (1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

36. **When breach of warranty excused.** (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

REFERENCE SECTION

Selected Sections

The Life Insurance Corporation of India Act

Sn 2 (4) "**Corporation**" means the Life Insurance Corporation of India established under Section

(5) "Insurance Act" means the Insurance Act, 1938 (4 of 1938);

(6) "**insurer**" means and insurer as defined in the Insurance Act who carries on life insurance business in India and includes the Government and a provident society as defined in Section 65 of the Insurance Act;

Sn 4 Composition

(1) The Corporation shall consist of such number of person not exceeding [sixteen] as the Central Government may think fit to appoint thereto and one of them shall be appointed by the Central Government to be the Chairman thereof.

(2) Before appointing a person to be a member, the Central Government shall satisfy itself that the person will have no such financial or other interest as is likely to affect prejudicially the exercise of performance by him of his functions as a member, and the Central Government shall also satisfy itself from time to time with respect to every member that he has no such interest; and any person who is, or whom the Central Government proposes to appoint and who has consented to be, a member shall, whenever required by the Central Government so to do, furnish to it such information as the Central Government considers necessary for the performance of its duties under this sub-section.

(3) A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest to the Corporation; and the member shall not take part in any deliberation or discussion of the Corporation with respect to that contract.

5. Capital

(1) The original capital of the Corporation shall be five crores of rupees provided by the Central Government after due appropriation made by Parliament by law for the purpose, and the terms and conditions relating to the provision of such capital shall be such as may be determined by the Central Government.

(2) The Central Government may, on the recommendation of the Corporation, reduce the capital of the Corporation to such extent and in such manner as the Central Government may determine

6 Functions (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community.

(2) Without prejudice to the generality of the provisions contained in sub-section (1) but subject to the other provisions contained in this Act, the Corporation shall have power-

(a) to carry on capital redemption business, annuity certain business or reinsurance business in so far as such reinsurance business appertains to life insurance business.

(b) subject to the rules, if any, made by the Central Government in this behalf, to invest the funds of the Corporation in such manner as the Corporation may think fit and to take all such steps as may be necessary or expedient for the protection or realisation of any investment; including the taking over of and administering and property offered as security for the investment until a suitable opportunity arises for its disposal;

(c) to acquire, hold and dispose of any property for the purpose of its business.

(d) to transfer the whole or any part of the life insurance business carried on outside India to any other person or persons, if in the interests of the Corporation it is expedient so to do.

(e) to advance or lend money upon the security of any movable or immovable property or otherwise;

(f) to borrow or raise any money in such manner and upon such security as the Corporation may think fit;

(g) to carry on either by itself or through any subsidiary any other business in any case where such other business was being carried on by a subsidiary of any insurer whose controlled business has been transferred to and vested in the Corporation under Act;

(h) to carry on any other business which may seem to the Corporation to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable the business of the Corporation;

(i) to do all such things as may be incidental or conducive to the proper exercise of any of the powers of the Corporation.

(3) In the discharge of any of its functions the Corporation shall act so far as may be on business principles

7 Transfer of assets

(1) On the appointed day there shall be transferred to and vested in the Corporation all the assets and liabilities appertaining to the controlled business of all insures.

2) The assets appertaining to the controlled business of an insurer shall be deemed to include all rights and powers, and all property, whether movable or immovable, appertaining to his controlled business, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and right in or arising out of such property as may be in the possession of the insurer and all books of account or documents relating to the controlled business of the insurer; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing and appertaining to the controlled business of the insurer.

Explanation. - The expression "assets appertaining to the controlled business of an insurer"-

(a) in relation to a composite insurer, includes that part of the paid up capital of the insurer or assets representing such part which has or have been allocated to the controlled business of the insurer in accordance with the rules made in this behalf;

(b) in relation to a Government, means the amount lying to the credit of that business on the appointed day.

(3) Where any such assets are subject to any trust referred to in sub-section (6) of Section 27 of the Insurance Act or to any other trust for the benefit of policy-holders, the assets shall be deemed to have vested in the Corporation free from any such trust.

THE END

