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History

Indemnity Insurance

Predecessors

Bottomry Bonds and Respondentia

They are essentially mortgages on the ship. A bottomry bond was – money payable to mortgagee only on the safe return of the ship. Lender will be paid only if the mortgaged property, the ship, returns safely. It earns money and then it can repay

Code of Hammurabi

Mediterranean sea laws in the ancient times around 6th C BC. You find references to this method of insurance

Lloyds

1. There was a coffee shop called Lloyds – the main aspect of Lloyds was that at London port many of them would congregate at Lloyds for coffee and they

would exchange information wrt what they encountered in between voyages.

2. Pieces of paper would be circulated in Lloyds where people for certain conditions would agree to indemnify losses for a certain extent.
3. Certain details would be written on the piece of paper – that piece of paper would be circulated and then people would write how much risk they would take for what consideration (the premium).
4. Earlier method was bottomry bond – mortgaged to the lenders – another method was evolving – we are taking a risk on the ship though initially we had not financed it
5. Some of that particular risk was perfectly understandable – a person was seeking to indemnify the owner of the ship for any loss it would suffer if the ship was lost.
6. In the case of Lloyds because the liability is unlimited – the way they generate confidence is – people get together to do underwriting.
7. In Lloyds prominent people form partnership with the writers of the policy. They get part of the premium and the losses
8. Every partner has unlimited liability. They help someone sell the policy.
9. That is what we mean by Lloyds – it is not a company – it is a terminology given to a notional market place as it is now.
10. A distinguishing feature of Lloyds is that it is not the companies but individuals do business and unlimited liability is the norm. To afford credibility – they seek out prominent names.

The Great London Fire

1. Almost the entire city was burned down. After the great London fire – fire insurance started.
2. On the same line of marine insurance – there were certain legislations also mandating certain provisions in the fire insurance.
3. It was in the nature of indemnity insurance like marine insurance. But it was still separate – it did not suffer from the same risks.

4. This new line of indemnity insurance was covered in other insurance of property – covering risks other than fire like burglary, earthquake, etc. They fall in the same heading as fire insurance – difference is that the risk is different

Liability Insurance

1. In late 19th C – two other developments took place.
 - a. Vicarious Liability
 - b. Liability of employer for injuries to the employee
2. Vicarious Liability- Due to inventions there was vicarious liability of the employer and the liability of the employer for injuries to the employee. It was thought fit that the risk in this case should fall in the employer – trade and business would suffer. To spread out the risk to society – the concept of liability of insurance, which was compulsory in nature, that took off.
3. Another driver for liability insurance – increased use of motor power. Was it a domesticated animal or a wild animal – people would drive motor car and accidents happen. It may be without negligence – it was made strict. If it is made strict then the person concerned should have the money to pay – it was thought fit that in these instances the MV owner should have third-party liability insurance was made compulsory. It is in essence still an indemnity insurance.

Life Insurance

Scottish Minister's Widow's Fund

1. In mid 18th C – around 1748 – two ministers of the Scottish church while drinking thought out a problem. Robert Wallace and Alexander Wester – a minister if he died – he would be given half years salaries and the rest was dependent was pay as you go and members of clergy would pay some amount.
2. Now the system was unsatisfactory – it was depended on largess of other people + life expectancy was pretty low and people died frequently. They

looked at historical data and all that data they calculated and the sum that was sufficient to take care of it.

3. The money would be taken – it would be invested to give loan and earn interest.
4. They arrived at a figure – your family would be given this much money yearly or you can claim all of it on retirement.
5. It was called the **Scottish minister's widow's fund** [became Scottish Widow's Fund and taken over by Lloyd's and still exists] started in 1747.
6. An Edinburgh prof of math helped with calculation. First instance of Life Insurance which was started.
 - a. This is different from indemnity insurance – the earlier three types sought to indemnify you from loss which you might suffer – If you did not suffer – you got nothing and lost the difference.
 - b. Life Insurance provided for an eventuality where you had to pay regardless of the happening or non-happening of an event.
7. LI was a proprietary right and not a contractual right. LI involved not just as a contract – there was one – it had a proprietary right in it in favour of assured. Assignment is not given.
8. Till the insurer agrees to it. But in case of LI – as it is proprietary – it was an actionable claim or choses in action – could be assigned.
9. This was amended in 2015. Still. By and large property – with certain encumbrances to transfer. [this was transfer of policy and not just the benefit of the policy] in LI claim can only be made through the original holder and if it is transferred he cannot make a claim on it.

Definition of Insurance

What is insurance?

A means to distribute to risk. Instead of being on the head of one person – someone is doing business by limiting risk. The insurer is giving it to wide variety

of people – there will always be people who do not have to claim it. The risk needs to be distributed society wide.

Insurance is a contract of indemnity and only a person who has suffered a loss or has the potential to suffer the loss can be indemnified. Life insurance is not an indemnity insurance, it is more like a property. So, there has to be insurable interest at the time of taking the policy, but it need not be there at the time of the loss for life insurance.

Reinsurance

Done in order to avoid locality bias in risk mitigation.

There are different types of reinsurance policies. Two broad categories – one is treaty reinsurance and the second is facultative reinsurance.

Treaty Reinsurance

Treaty reinsurance – every policy of a particular type taken by an insurance company is reinsured.

It can have different rates to it. It is possible that entire loss, loss above a particular limit, particular proportion, or a certain proportion of the policy is reinsured.

Stop loss policies – if there is a heavy loss beyond a limit then that loss will be paid by the reinsurer. Its can be for the entire business

Facultative Reinsurance

Facultative is where the reinsurer and insurer will decide on a policy-to-policy basis whether to reinsure or not to reinsure.

'Facultative obligatory' insurer decides whether he goes or not. If he wants to go then it is obligatory on the part of the reinsurer to reinsure it. If there is an earlier agreement, you have to reinsure it

Cases

Prudent Insurance Company v Internal Revenue Commrs (1988)

Facts:

1. Life insurance endowment policy. Is it insurance?
2. You are assured of your money in all circumstances.
3. However, in death, you might get a little extra money depending on the point of death.

Held:

1. Insurance policy is "where one party (insurer) promises another party (assured) on payment of money consideration (premium) to pay him or provide certain benefits on the happening or non-happening of an event."
 - a. Assured has to pay the premium in money
 - b. Insurer can pay back in money or equivalent benefits

Dept of Trade v Christopher Motorist Association Ltd

Facts:

1. Provision of Services to members of an association on payment of association fees.
2. If a person's license is impounded or they could not use a car, the association would provide services of a chauffeur as a chauffeur driven car.

Held:

1. Yes, this is an insurance contract by nature.

Medical Defence Union v Dept of Trade

Facts:

1. Doctor's union to take up the cost of negligence suits.
2. Union reserved the right to provide or not provide the services, though it was known to never decline.

Held:

1. This is an insurance contract as doctors pooled their money and the defence union assured the bearing of costs for litigation.

2. In insurance you are bound to provide those particular services if the person concerned asks for those services.
3. Therefore, it is not insurance.

SANIKA

Because premium was decided on the likelihood of performance and divided amongst many assureds, therefore, the amount of premium was different from what insurers would generally pay to an insurance company.

1. Differentiate this from a laptop warranty. The salesperson asks for 2000 rupees to extend laptop warranty from 1 year to 3 years. This is not a warranty or insurance contract. This is just the purchase of the services of the salesperson within the contract for the purchase of product.

NM Superannuation Pty Ltd v Young

Facts:

1. Company provided benefits to employees upon (a) retirement (b) death (c) leaving or getting fired/terminated.

Held:

1. Yes this is insurance. On the happening or the non-happening of an event – you pay. It does not have to be an adverse event.

Fuji Finance Inc. v Aetna Insurance

Facts:

1. Keyman insurance case. Fuji finance employee Todd had a unit-linked plan with Aetna. Life insurance mixed with investment opportunity. A portion of your premium could be used for investment.
2. Here, a unique thing was that you could change what your money was invested in.

3. Through diligent trading, he made 50k pounds into 1 million. But then caps were put in. Next year, he only made 1 to 1.1 million.
4. So he surrendered the policy. But Fuji sued on behalf of Todd saying that this cap is breach of contract.

Issue: Is this an insurance contract?

Held:

1. Yes, this is an insurance. Keyman insurance.
2. Element of uncertainty, an event which is uncertain. Different outcome on death, retirement, or withdrawn. Uncertainty as to when it will be taken out and on what terms.

Card Protection Plan Ltd v Custom and Excise Commr

Facts:

1. Person provided a service that if you lost your card and in the interim before blocking, someone withdrew money from it, you could claim it back.
2. There were two limbs of the policy
 - a. if the person lost the card, he would call up and it would be blocked;
 - b. the person was protected from loss by an insurance policy from the usage of the card.

Held:

1. Primary purpose for the contract- is it insurance or something else.
2. Primary purpose was indemnity from the potential loss of card. Ancillary services did not change the nature of the insurance contract.

Insurable Interest

Three different types

Marine insurance

In 1745, the Marine Insurance Act was passed- Made it so that his Majesty or his subject's (HMS) ship, cargo or freight (SCF) cannot enter into wage.

It was illegal to enter into wagering contracts of shipping.

Persons taking insurance had to have an insurable interest in the property.

Insurance done without insurable interest (or expectation thereof) was void as well as illegal on HMS' SCF.

Interest or no interest, policy proof of interest (PPI), policies without benefit of salvage, were explicitly declared to be void.

All of these principles are reflected in the Indian Marine Insurance Act, 1963, where they are void (not illegal). They are applicable to all marine insurance and not just HMS SCF.

This concept of danger of wager on SCF was extended to life insurance.

In 1774, the Life Assurance Act was enacted. Wagering on life was both illegal and void.

On indemnity insurance, however, you could wager.

Person has unlimited insurable interest in his own life and in the life of their spouse. In every other life, insurable interest needs to be shown.

If policy covers more than the insurable interest, the policy is illegal and void.

Rules-

I. Actual Interest-

II. Equitable interest- Interest at the time of taking policy + interest on loss

Insurable interest in marine insurance- Does not mean expectation of expectation of insurable interest. It should be justifiable and reasonable with equitable interest in the property.

What happens when no equitable interest exists, but it is certain to develop in the future?

No legal or equitable right. But there is such a relation of the assured with the property that it is never known to fail. Lords Manfield gave the example of price courts. These are admiralty courts that determine whether a certain ship is a genuine price (enemy ship). If declared to be a price, it becomes his (the captor).

Lord Mansfield says that this is an insurable interest and can be insured because there is an expectation of insurable interest.

Gaming Act, 1845- Wagering made void. This has been replicated in Section 30 of ICA.

To be a wagering contract the person concerned should not have an insurable interest at the time of taking of the policy.

Section 7 of the Marine Insurance Act of 1963- Defines insurable interest (this is limited to indemnity insurance).

Every person has an insurable interest who is interested in a marine adventure, which means "a person standing in a legal or equitable relation to the adventure or to any insurable property at risk therein, in consequences 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. If there is no equitable relationship, then howsoever you may stand to benefit or lose, you don't have an insurable interest."

Lucena v Craufurd

Facts:

1. Ship captured in war as prize were insured by the commissioner for loss in transit.
2. In the interim period, before the prize is brought back, the ship gets captured again.

Issue: Was there an insurable interest in the ship?

Held:

1. Majority- needs a legal or equitable relationship. The mere possibility that the Court will declare it mine is not enough for there to be an equitable or legal insurable interest.
2. Mansfield (dissent)- some expectations were never known to fail (like a court declaring it prize and giving to me).

Routh v. Thomson

Discuss and reject Lord Mansfield's views.



If there is an irrevocable license to the property, in those cases you have a legal relationship.

Siu Yin Kwan Case

The Life Assurance Act can only be applied to non-indemnity insurance.

The person concerned can assure only to the extent and up to the duration he will be having an insurable interest.

Godsall v Boldero (overturned)

Fact:

1. A creditor took a life insurance policy on his debtor. The debtor pre-paid the debt and when the debtor died, he had no exposure to the creditor
2. Insurance company resisted this.

Held:

1. Court ruled that there is no insurable interest as the debt has already been paid.

Dalby v India London Life Assurance

Facts:

1. A vicar insured the life of his patron, the duke, as an employee of the duke for GBP 3,000 with the India London Life Assurance.
2. After he had insured it. The company took a re-insurance policy with another company.
3. The vicar surrendered the policy after a few years.
4. After the surrender, the insurer had no exposure to the life of the duke. But the reinsurance policy continued.
5. The Duke died. The insurer company laid claim on the re-insurance policy.

Held:

1. Godsall v Boldero overturned.
2. The assurance in the Life Assurance Act was not an indemnity insurance. All you require was an insurable interest at the time of taking the policy, but not at the time of loss.

Insurable interest in certain relations

1. Spouse: Unlimited
2. Creditor-debtor:
 - a. No ii for future interest, only for the interest accrued so far.
 - b. It is only for the duration of the debt. You cannot assume delay or default/litigation.
 - c. Creditor has interest in the life of debtor, debtor does not.
3. Employer-Employee:
 - a. Lasts for the duration of employment, even if terminable with notice prior to the period.
 - b. In life, there is ii only if the employee brings something to the table which cannot be replaced easily (keyman insurance).
4. Relatives:
 - a. a person does not have an insurable interest in the life of his relative howsoever they may be close (other than a spouse) as per English Law.
 - b. There has to be some legal relationship for him to say that there is an insurable interest.
 - c. A child in the life of the parent – you need to have a maintenance order then the II is the value of the maintenance order.
 - d. The Act is not applicable to India, by section 30 we infer the other policy practices are applicable to India.
 - e. But wrt relatives – it is contested not on the ground of II but on s 30 of Contract Act – wagering contract.

Barnes v London Edenborough Glasgow Assurance Co Ltd

A step sister gave a word to her dying step mother that she would take care in her absence of her step daughter and she took life insurance on the life of the step sister.

Issue: Is there ii?

Held: Yes, there is ii.

Mani Shankar Someshwar Pandya v Allianz Und Stuttgarte

Life Insurance Act 1930. Case of Delhi decided by Lahore HC.

Facts:

1. MSP took life insurance policy for his brother GSP. Insurance company denied saying there is no ii.
2. GSP's signature appeared, but the policy was written by MSP.
3. Immediately afterwards, policy assigned to MSP as primary beneficiary.
4. 7 months later, GSP dies.

Issue:

1. Who filled the policy?
2. Whether MSP had ii in GSP?

Held:

1. Discussed whether American law (triple test) is applicable (whether they are related, whether there is dependency, whether that is expected to continue).
2. Contextually, the Court in the present case looked at:
 - a. who was paying the premium (MSP)
 - b. how soon after the policy it was assigned (1 month)
 - c. who filled the policy (MSP)
3. The Court determined that essentially, MSP took the policy.
4. MSP claimed that he had ii in GSP's life because GSP was his employee (paid 11 rupees a month). But this, the court said, had nothing to do with

employment. He merely stayed with you and helped you out.

5. Also discussed *Barnes*. In *Barnes*, the sister expected to be repaid. This can be a ground to justify the ii.
6. Hence, no ii.



Even contingent and defeasible interest is ground for ii.

Examples:

1. Life Estate- In Hindu Succession Act, the widow has life estate in the property of her deceased spouse. There is an insurable interest in widow's life.
2. Partnership- In the life of other partners.
 - a. Joint liability
 - b. On death there is split
 - c. Keyman insurance- partners bring specific skills, network, etc.

Insurable interest of property

1. Ownership, either as an owner or trustee, give you ii in the property.
2. Equitable interest in property also gives ii.
3. A beneficial owner of a property has an insurable interest, like a karta in Hindu Joint Family.
4. Partial rights in the property will still give you ii, but that depends on what is the loss.
 - a. If there is a lessee, and they are liable for damage, then they have full insurable interest.
 - b. If the lessee has to pay the remaining lease rent, even if the lessor is no longer in possession, then the lessor will have insurable interest till the whole amount is not paid.

5. Secured property- security holder has an ii.
 - a. Movable property- the hypothecatee has insurable interest.
 - b. Mortgage property- Usually, mortgagee has an insurable interest.
6. License- you don't have a legal right in the property as a licensee- may be kicked out at will

Westminster Fire Insurance Co v Glasgow Provident

On Mortgage

Facts:

1. GP was the junior-most mortgagee in the property.
2. Westminster Fire Insurance Co tried to repel GP's claim on the ground that if the property had been sold, the juniormost mortgagee would not have gotten anything. Therefore, they could not claim the full mortgage value.

Held

1. The Court held in favour of GP holding that the junior-most mortgagee had a reasonable expectation — that the senior mortgages would have been paid off, if not for the fire, and the property would be sufficient to pay off the mortgage.

Gaulstone v Royal Insurance Co

On License

Facts:

1. Husband had transferred house and goods to his wife and declared bankruptcy.
2. Wife gave him the license to use the furniture, etc.

Issue: Could the husband have an insurable interest in this furniture?

Held:

1. Yes, there is an insurable interest.

2. If it is an irrevocable licence, it is similar to a lease. It could be irrevocable by contract or circumstance.
3. It irrevocable by circumstance as the wife could not have denied husband use of furniture in matrimonial house.

Anthony John Sharp vs Sphere Drake Insurance (Moon Acre Case)

On Licence by circumstance

Facts:

1. Person concerned was a sole shareholder of a company and had transferred to the company a yacht.
2. The yacht suffered damages in a fire.

Issue: Whether this person had an ii in the yacht.

Held:

1. The Court decided that the yacht is basically for personal use and is not held for business purposes.
2. As a sole shareholder, the yacht would never have been taken from him in a way that would deprive him of his enjoyment.
3. This was essentially a virtually irrevocable license. Hence, there was an insurable interest.

MacAura v Northern Assurance

Facts:

1. MacAura transferred his timber forest in lieu of shares to the company.
2. He was in a controlling position. The timber was insured in his name.
3. After two weeks, a fire occurred and it was lost.
4. The insurance company rejected the claim as he was a share holder. Only ii in the shares and not in the timber.

Held:

1. The Court agreed. No insurable interest.
2. No license at all for personal use.

Cosmopolos v Constitution Insurance Company of Canada

Facts:

1. Person doing business in the name of the company, had shares in the company.
2. The company's business premises were leased in this person's name.
3. The insurance company knew of the fact that he was doing business through the company.
4. He insured the property in his own name.
5. Fire, and loss.
6. Claim made. Rejected by the insurance company as the assets were the company's.

Held:

1. MacAura case was criticised: they came to a *factual expectancy test*.
2. The Court held in the person's favour. Because the insurance company knew, when they entered into the policy, that he was doing business in the company's name to avoid inconvenience of renegotiating the name, the lease, etc.
3. Here, the person suffers loss when the assets are lost.
4. It is also not a wagering contract as the person is interested in the fire not happening.

Wilson v Jones

Facts:

1. Marine insurance shareholders case.
2. Telegraph cables were being laid down and the person who owned shares in the telegraph company took insurance on laying the cables.

Issue: Whether there was an insurable interest.

Held:

1. There was an insurable interest u/s 7 of the Marine Insurance Act. This is because he was interested in the marine adventure.

Contingent and Defeasible Interest

In case of contingent or defeasible interest, there will be insurable interest.

1. In a voidable contract, the person who has an interest in the contract to buy something would have ii until it is voided by the other person.
2. In cases of stolen property, because it is not in public interest, there is no ii.
3. What if you came into possession of an unclaimed lost property? Then also you have an ii till a person with a better title comes along.
4. Time barred contracts- no ii as there is no equitable interest.
 - a. HOL has explained that the limitation period from a statutory cause of action can be applied to an analogous equitable cause of action. Here a court will apply the limitation period and extinguish the right in equity unless it would be unconscionable to do so.
5. Unregistered contracts- Generally there is an equitable interest. If that is there, there is ii. For example, equitable mortgage.
6. Vendor-Vendee- Owner of a property always has insurable interest.
 - a. Therefore, a vendor who enters into a contract to sell as well as the person who has contracted to buy has ii.
 - b. But at the time of loss, who can claim?
 - i. If by contract, the loss is upon the vendee, the vendor cannot claim vice-versa.
 - ii. But if the vendee has paid the price or part thereof, then there is an ii.
 - iii. However, if the vendor pays this amount back to the vendee, then subrogation happens.

- iv. There are cases where the sale has occurred and property has changed possession — this ENDS the ii of the vendor. However, the vendor might retain liability.



Subrogation- The person abandons the SCF. If the abandonment is accepted, then the insurer is now the owner of the ensured SCF. The insured is entitled to payment per the terms of the payment.

7. Bailor-Bailee- Bailor is the owner, has ii. Bailee has ii for bailment charges.
 - a. If the bailee has made himself liable, then he has ii.
 - b. If the bailee has not made himself liable, then what is the extent of his ii?

Waters v Monarch Fire and Life Assurance

Facts:

1. Waters was the wharfinger (owner) of a warehouse.
2. As per the contract, Waters would act as the bailee. He would not be liable for the loss of any good which were stored in that particular warehouse.
3. Goods lost in a fire. Waters as the bailee claimed full value from the insurer.
4. The insurance company contested that the ii was limited to bailment charges. As per the contract, there was no liability on the warehouse owner, i.e., Waters.

Issues:

1. Whether the warehouse owner was legally liable for the loss of any goods.
2. Even if the warehouse owner was not strictly legally liable was there a moral responsibility as a business person to take care of the loss. Because your future business depends on goodwill.

Held:

1. No, there is no legal liability

2. Yes, there is a moral responsibility which means that though legal loss was limited to bailment charges, the ii extended to the entire value of the goods.
3. However, the bailee cannot keep this entire amount. All money except bailment charges will be held in trust for the benefit of the goods' owner.

Tomlinson v Hapburn

The principle of *Waters* was applied in the case of carriages.

Held: A carrier of goods could ensure not just for himself but for his customers as well.

-
8. **Contractors:** Your insurable interest as a contractor only applies to the part of the contract that remains to be paid for.
 - a. Contractors have sub-contractors. Usually, they take an all-risk policy. This means that the contractor insures for himself and also for the benefit of those who are associated with him in doing the work.
 - b. What is the liability of contractors and sub-contractors and how it affects their ii?

Subcontractor's Negligence

PetroFina (UK) Ltd v Magna Load Ltd

Facts:

1. Contractors working to expand the capacity of a refinery. One of the constituent elements was to put cracking units for which subcontractors were engaged.
2. In an instance, when a cracking unit was lifted up, they wilted, and a loss was suffered. Here, the contractor themselves did not pay the money of the loss. But the subcontractor had money due, those invoices were not paid.
3. The subcontractor made a claim on the insurer.

Issue:

1. Whether the primary contractor can through contract create privity of insurance contract between subcontractors and the insurance company.

2. Whether in a suit for subrogation the insurer could sue the subcontractor if the subcontractor is one of the co-assured under the insurance policies.

Held:

1. Making a reference to how a bailee can have an insurable interest in the entirety of the goods in possession and not just on the bailment charges in the same way due to business prudence and ease of contract—
2. If a primary contractor or the principle enters into an insurance contract with an insurer and designates a class of actors who would be co-assured within the insurance, then the principle or the primary contractor can, through continuing disclosures, insure that the privity of contract is created between subcontractors and the insurance company.
3. Using the same bailment analogy, it was thought prudent and commercially viable to restrict the insurers right of subrogation against co-assured. Otherwise, the entire meaning of the insurance contract would be lost.

Stone Wickers Ltd v Appledore Ferguson Shipbuilders Ltd

Facts:

1. Propellers of a ship being built to be supplied by a subcontractor.
2. Before the handing over of the ship, the ship was damaged because of defective propellers.

Issue: Where contractors take all risk policy, what is the extent of subcontractors' ii in the contract works (ii in the entire project, or ii only in the part of the work they did).

Held:

1. Every minor part in a major project has the potential to destroy the entire subject matter.
2. Now, if a person is held liable for the entire damage, then the insurance will not cover it as per the insurer's argument. This would lead to every person taking an insurance for the entire subject matter and not their own constituent part.

3. This would increase the cost of insurance manifold. This cannot be the intention when the original policy by the contractor was taken.
4. It goes against public interest.

National Oil Well UK Ltd v Davy Offshore Ltd

Facts:

1. Subcontractor were to provide certain works which were defective due to which a loss was suffered.
2. The contractor paid for the loss. After the payment, he wanted himself to be subrogated against the subcontractor.

Held:

1. Privity of contract- When the contract is formed by the principal assured, at that time, the principal assured of the contracting party had express or implied actual authority to enter into that contract so as to bind some other party as co-assured.
2. Then the co-assured may sue on the property as an undisclosed principal and co-assured, regardless of whether the policy described the class of co-assured.

Deepak Fertilizers & Petrochemicals Ltd v ICI Chemicals and Polymers Ltd

Facts:

1. DF gave a design contract to a company which was taken over by ICI.
2. DF took a policy that covered the firm and its contractors in building an ammonia plant.
3. The contractor had supplied the design for the ammonia plant. The plant was commissioned soon thereafter.
4. An explosion occurred. The fault was determined to be inherent in the plant design
5. DF makes a claim and is paid.

6. The insurer sued the contractor who supplied the plant design.

Issue: Whether the policy taken by DF would also cover the contractor who provided the design?

Held:

1. Petrofina, Appledore, and National Oil were cited to say that if the policy was taken, then it also covers the subcontractors.
2. The Court rejected this objection. However, the above 3 cases were not overturned. They distinguished by saying that contractors and subcontractors' ii cannot continue for an undefined period.
3. It only continues till the time that the project has been delivered. After the project is delivered, their ii comes to an end.
 - a. They can still take liability insurance.

Formation of Contract of Insurance

In any insurance contract, five things need to be there:

1. Definition of the risk covered
2. The duration of the cover
3. Amount of premium
4. Mode of payment
5. Amount payable on loss

Duration of Cover

Cover Note- It is an insurance till a proper insurance is given.

It might be that cover extends till the policy is negated (depends on the terms). It is a small piece of paper – not detailed like other policy.

General Insurance Co v Chand Mull Jain

Facts:

1. Fire insurance policy.

Issue:

Held:

1. If there is any term in a cover note which imposes a specific duty upon the assured, which is not present in the general policy, that duty is not imputed onto the assured.

New India Assurance v Ram Dayal (SC)

Facts

1. Motor Vehicle insurance case
2. An hour after the accident, he takes insurance policy.

Issue:

1. When does your cover start?
2. Is the accident covered?

Held:

1. Mishra J- The person gets the benefit of the insurance cover from the start of the day. That is, from the midnight between the previous day and the day the cover is signed.

Later on, insurers started putting in clauses which mandated that insurance covers start from the last moment of the day.

Clauses:

- Date of Proposal
- Date of payment of premium
- Date of start of cover
- The policy concerned can be ante-dated

LIC v Dharamveer Anand

Facts:

1. Mr Anand had insured his daughter (a minor girl).
2. He got the policy antedated by 10 months.

3. The policy had a condition that if the person concerned commits suicide or suffers an accident not in a public place within 3 years of the policy then the insurer would return only the premium and not policy amount.
4. Now, the girl unfortunately committed suicide after 2.5 years.
5. From the date the policy risk starts was more than 3 years 4 months. But the date when policy was issued was 2.5 years.

Held:

1. Court held that the policy starts from the date of the issuance, even if it is antedated, and not from the date of commencement of risk.
2. Insurance company was ready to give the amount however, so no issue.



Marine insurance usually has a lost or not lost policy, which is an exception. Generally, insurance policies are not given with retrospective effect. But we can have an insurance policy which is retrospective (covers an occurred loss). Provided that the parties did not know of the loss or they were unaware of the extent of the loss at the time of making of the policy.

When does the cover end?

1. Defined date

New India Assurance v Ram Dayal

Should end at the beginning of the date. Practice is that it ends at the EoD. This is put in writing in the policies.

2. Occurrence of an event
 - a. For instance, in case of marine insurance, when a ship reaches the port of destination.
3. Combination of timeline and defined event
 - a. For example, some time passing after the ship reaching.

4. Maximum amount payable under the policy has been paid
5. Determination at the option of the parties as per the policy
 - a. If an assured terminates the policy, his paid premium amount would not be returned to him. This is because the assumption is that even if you were insured were one day, the insurer has earned that premium.
 - b. If the insurer terminates, on what timeline can he terminate?

Sunfire v Heart

Facts:

1. The assured had insured his sugar cane farm in the vicinity of which regular flames used to come up.
2. One or two mischiefs had happened around his farm. The insurance policy was terminated by the insurer.
3. After two days, the assured's farm was also burnt down.

Held:

1. The Court allowed this termination

Central Bank India v Hartford Fire Insurance

Facts:

1. At the time of independence, riots in Punjab were prevalent.
2. There was a warehouse which was hypothecated to CBI. Insurance was taken upon it.
3. During the riots, the insurance company told the owner of the goods that the goods should be transported from the warehouse to some other place.
4. The owner failed to do this. The insurance company terminated the policy.

Held:

1. The goods were burnt down one day later.
2. The SC upheld the withdrawal of the cover.

General Insurance Society v Chand Mal

Facts:

1. A person insured his house and warehouse for 51-65k.
2. Insurance policy covered for fire, flood, erosion, etc.
3. The house was located in Banyan, UP, where there was an erosion of soil.
4. The assured gave a proposal, and the insurance company gave a cover note for one month.
5. At the end of the month, the Ganges was having a high current. A lot of erosion was taking place.
6. The insurance company was asked to give annual cover. They sent an agent and exactly one month later, they withdrew the policy and returned the premium pro rata.

Issue: when does the power of the insurer to terminate come to an end?

Held:

1. When the insurance company withdraws the cover, the peril has already started operating, then it is difficult for the assured to insure with another insurer.
2. Even if the policy does give the power to withdraw the cover to the insurer. However, the Court said that the insurer cannot withdraw cover policy, since the peril had begun.
3. However, when the cover note was retracted, the house was 450 feet from the Ganges.
4. 10 days after withdrawal, it was still 200 feet away.
5. Therefore, when the peril starts will depend upon the facts.
6. In this case, the peril had not begun.



There is no withdrawal by insurers in life insurance.

IRDAI's Protection of Policy Holders Interests

IRDAI has come up with 'Protection of Policy Holders Interests' Regulations in 2017.

3 buckets for general insurance policy:

1. Health Insurance;
 - a. For health insurance, regulation 12 (21), it needs to have the clause specifically outline the circumstances under which the cover may be withdrawn.
2. Non-Commercial Insurance;
 - a. In the case of (2.), the insurer can void the policy on grounds of non-disclosure, fraud, misrepresentation, or non-cooperation (such as Central Bank of India v Hartford Fire Insurance). [Regulation 11 (13)]
3. General Commercial Insurance.
 - a. For (3.), the principles of Chand Mal Jain will be applicable.
 - b. Another circumstance for termination of insurance is 'Breach of a condition or warranty.' The moment a breach occurs, the insurance automatically terminates. The insurer might, at their option, waive the breach.

Renewal of Cover

Generally ought to be renewed as soon as over. Insurers generally give some days of grace. The assured concerned is not supposed to be covered in the days of grace. When he renews it, it is as if it is renewed from the previous date.

In life insurance, there is an issue.

1. Industry practice- months for which premium is not given is
 - a. deducted from the cover
 - b. given as a loan to the assured
2. If you are given cover during grace days, then the insurer deducts the annual premium and pays you the rest of the amount.

Pritchard v. Merchants & Trademans Mutual Insurance Society

Facts:

1. In this case, one month grace was given. The assured died on the last day of the month without paying his premium.
2. His successor (the beneficiary) paid the premium on the following day.
3. The insurer accepted this premium. A claim was made.
4. The insurance company contested.

Issue:

1. What is the status of this LI policy?
2. Is the LI for 25 years with a monthly premium, or is it an annual insurance with a right to renewal on same T&C for 24 years?
 - a. Implications- if it is an actual 25 years insurance, then the person would also be covered under days of grace. If it is an annual policy and the premium is not paid, then no coverage in grace?

Held:

1. LI policy is actually an annual insurance, wherein the assured has a right to renew.
2. It differs from a non-life policy, as renewal is a right. It has to be on the same T&C.



As per IRDAI directives, the assured is covered in days of grace. Therefore, it will be a policy for 25 years with responsibility to take the premium annually.

Muklut Lal Duggal v. United India Insurance (Delhi HC)

Facts:

1. A person took a health insurance policy. After four years of taking the policy, he went through multiple procedures.
2. Ull did not renew the policy on the ground that the person was not a good risk.

Held:

1. Cited an SC case (?)
2. Ull is a public sector company.
 - a. The refusal decision must be a considered because of Article 14.
 - b. Right to health under Article 21- cannot deny a person health insurance.
 - c. Therefore, there is a duty to renew health insurance if the assured wants to renew

(this principle might only be applicable to PSUs)

3. However, unlike LI, you can change T&C (charge higher premium) in health insurance.

Reinstatement of Life Insurance

Sometimes, LI policies lapse.

When lapses happen due to non-payment, companies provide for reinstatement.

For the interim period, the premium is paid by the assured along with certain penalties.

The reinstatement is as if the policy continued. For the reinstatement, there is a duty of disclosure upon the assured.

Premium

Amount and Mode of Payment

Principle 1-

1. Amount of premium should be decided before the policy comes into existence.
2. You can decide the premium amount in advance.

3. You can have a methodology for the calculation of premium.

Principle 2-

1. The insurer can provide the risks, which if accrued, the premium might vary.

Principle 3-

1. In marine insurance, there are cooperatives called mutual indemnity assurance societies.

2. These can create a separate fund where they deposit certain money.

3. From that money, whatever liability is incurred can be paid off.

4. This money is paid on the basis of how much risk can be associated with each ship.

5. Based on this, there can be an agreement of proportion of contribution.

Payment of Premium

Section 64VB, Insurance Act, 1938- provides that risk can commence only after the premium has been paid for the period.

Therefore, risk cannot commence before the payment of any premium.

There are issues with regard to premiums paid by cheque.

Oriental Insurance Co Ltd v Inderjeet Kaur

Facts:

1. An insurance had been taken for a lorry via check.

2. When the check was presented, it bounced.

3. Notice was issued to the assured that there is no insurance cover as check has bounced.

4. However, the policy remained.

5. Lorry rammmed into an SUV and some people died and Inderjeet Kaur (the widow) made claim.

6. As per MV Act, the claim was on insurance company.

7. Insurance company cited Section 64VB.

Held:

1. Court said that the insurer issued the policy on the basis of the check, when they could have taken the precaution of seeing to it that the check was encashed before issuing the policy.
2. The insurer was held liable to the deceased's estate. Issue was third-party liability, on the basis of which that lorry was on the streets.
3. Reasoning was in equity, as because of the insurance, the person driving the lorry was on street, and police was allowing it to operate.
4. The insurance company can recover premium from the person who failed to clear the check, but to Inderjeet Kaur they were liable.

National Insurance Company v. Seema Malhotra

Fact:

1. A Maruti car was bought and an insurance was taken upon it.
2. A check was issued for the policy premium.
3. The car went out, the same day, the check was sent out the same day and came back as bounced due to insufficiency of funds.
4. Before check was sent out for collection, the car went out and the car crashed and the person and another died.
5. The claim was made on the car and the two persons.

Held:

1. The court here said that this case has to be distinguished from Inderjeet Kaur, where there was third party liability.
2. Here, the question of valid/invalid insurance was for the person who insured the car/accident insurance.
3. Here, he was aware of the fact, really, that this was an invalid insurance, so he cannot get the benefit of his own fault (unlike that of the employer, in the *Inderjeet Kaur* case)

Delhi Electric Supply Undertaking (DESU) v. Basanti Devi

Facts:

1. In PSUs, there is a form after filling the money is deducted from salary and paid to LIC as premium.
2. Basanti Devi's husband's account was deducted, but Delhi Electric Supply Undertaking (DESU) which was in dire straits, did not pay the money to LIC.
3. When husband died, this came up.

Held:

1. The court held in this case, DESU was the agent of LIC, and not of the deceased.

Duty of Disclosure

Carter v Boehm

1. A fort in Sumatra was sought to be insured by the governor of the province.
2. The fort was insured because there was possibility of Anglo-French war breaking out.
3. When the fort was lost, the insurers sought to avoid the policy on the ground that they had not been told how vulnerable the fort was, and the possibility of war.
4. Lord Mansfield then said, that the insurer is speculating on whether the risk will arise or not arise.
5. However, his speculation can only be based on disclosures made by assured.
6. The insurer's ability to determine risks will always be very limited.
7. So he relies on the assured to act in good faith, where there is a duty of disclosure upon the assured.
8. Here, the duty of good faith starts even before the contract is made. During the continuation of good faith, the contract remains, and it has to be maintained throughout the contract.

9. This duty of good faith is not just on the assured, but also upon the insurer.
10. He pointed out a case where the assured sought an insurance on a ship which was not heard of.
11. The reinsurer knew that the ship had returned safely. The person seeking cover did not know this. Here, the duty of good faith was breached by the insurer.
12. If insurer is aware of the facts, or is supposed to be aware of the facts, then there isn't a duty on the assured to tell the insurer. If the facts are of common knowledge, or it's a known fact of business, then there is no duty upon the assured to reveal these facts to the assurer.
13. In the facts of the case, the court found that there were already rumors of a war breaking out and everyone was taking into account that a war would have implications on the far east. The fort was well-known, and its vulnerabilities were also well-known. So, there was no breach of a duty in this particular case. Nothing was withheld which the insurer did not know.
14. **'Prudent Insurer' test**- If you are part of the same business, then you know what the other knows and what they are interested in knowing. It is a different matter, that subsequently, did not have interest in business started taking insurance also. The law had evolved taking into account that it is businessman, who are advised with people who take daily insurance and know of their business practices. So, what needs to be disclosed is not what the consumer thinks he ought to disclose, it is the perspective of the insurer which is to be seen. This is the 'Prudent Insurer' test, different from a reasonable man test, to determine what a prudent insurer would want to be disclosed.

Canning v Farquhar

Facts:

1. Canning had made a proposal for a life insurance policy and the insurer accepted it and said that the insurance will start after the proposer had paid the first premium.
2. Before the payment of the premium, Canning fell from a rock. His relation went to the insurer – a cheque was written out and that relative went to the insurer

to deposit that cheque.

3. While depositing the cheque, the relation told the insurer of the accident and the insurer refused to take the cheque.
4. After a few days Canning died and the estate claimed the money.
5. They argued that the insurer had accepted the proposer and the cheque was proffered before the death which was not accepted by the insurer. So, the payment should be deemed to have been made for the insurance policy to come into effect.

Held:

1. The Court held that the insurance was of a person who was reasonably healthy at the time when it was accepted.
2. Till the time the concerned person deposited the cheque, that state of affairs had it continued then the insurer is bound to accept that.
3. There was a material alteration in circumstances in the intervening period. The risk was completely different from the risk which the insurer had insured.
4. It was no longer a healthy person who was on a sickbed. There was a material alteration of circumstances. The insurer when he refused to take the premium – it was perfectly legitimate for it. The condition of paying the premium according to Rai was a counter offer and could be revoked.

Harrington v Pearl Life Insurance

Facts:

1. Harrington made a proposal for insurance in May which was not pursued. But for the proposal a medical examination was done in May itself.
2. No policy was taken at the time. In Oct he made another proposal with the statement that his health was the same.
3. The proposal was accepted by the insurer with the proviso that risk starts with the payment of the first premium. The policy was assigned to his creditor – Harrington paid the first premium by Cheque and after one or two days the life assured died.

4. Unlike *Canning* the insurer had taken the premium but the insurer successfully contested the liability – the grounds of it were that till the time payment has been made – i.e., the contract is final – any material change in circumstances need to be communicated to the insurer. [He fell ill before the payment of the first premium]

Looker v Law Union and Rock Insurance Co

1. The insurer specified that till the first premium is paid the insurer had a right to revoke the policy.
2. It imposed on the proposer the duty to communicate change in circumstances. The proposer also specified that risk starts after paying first premium.
3. Fell ill before payment of premium and got diagnosed with pneumonia. The cheque was filled and paid in. After the cheque was accepted the proposer died.
4. On predictable lines + addl facts: there was a contractual duty to communicate change in circumstances and reserved the right to revoke the policy if the circumstances had changed – the insurer was exonerated. [what I need to disclose is what the insurer would consider relevant – common cold: no; cigarette: disclose]

Abhimanyu Choubey v Insurance Ombudsman (Allahabad HC)

1. AC made an insurance proposal with LIC and as per the practice of LIC, deposited the first premium.
2. Now it was for the LIC to accept the policy proposal.
3. Between acceptance and giving of proposal + premium cheque, the proposer met with an accident.
4. The proposer died after the insurance policy had been sent out.

Held:

1. The question was wrt – the Court cited *Harrington & Looker*.
2. Till the time the insurance contract is final – the assured has a duty to disclose any circumstances that are material to the risk.

3. The difference from the English cases is – here the premium was already paid.
4. The insurer would either return the cheque – still there is a duty to disclose even if a premium has been paid till proposal has been accepted.
5. The Court upheld the denial based on the failure to disclose the accident. Finding that any change in health must be disclosed as it could impact the terms of the policy.
6. Utmost good faith is required.



In cases of renewal, there is duty of disclosure too. However, in cases of LI, since there is a right to renewal, there is no duty of disclosure. Further, in LI policy, if there is a reinstatement, then the duty of disclosure remains.

In LI, the duty of disclosure comes to an end when the contract has been made.

Sometimes, the insurer has to decide what the premium to be charged should be. In these cases, there is a continuing duty of disclosure.

Bank Of Nova Scotia v. Helenic Mutual War Risk Association (Good Luck Case)

Facts:

1. It was necessary to disclose whether the ship had gone into a warzone.
2. The ship went into one, but this was not communicated.

Held:

1. It is a breach of duty of disclosure.
2. There must be disclosure even if the risk enhancing circumstance ultimately does not lead to damage because it gives the insurer the chance to revoke policy or increase premium.

Black Cage Shipping Co (Litseon Pride Case)

Facts:

1. In the policy, there was a clause that stated that if the ship went into warzone, the assured had to inform the insurer as soon as possible and pay the additional premium.
2. The ship went into the Persian Gulf and was hit by a missile.
3. August 9- telegram to insurer saying that we intended to inform you but the letter was not delivered. They had a copy of the letter.
4. Turns out, the letter was never actually sent.

Held:

1. There was a continuing duty of disclosure, they had failed to uphold this duty.
2. The insurer was hence discharged.

New Hampshire Insurance Co v MGN

Facts:

1. Fidelity insurance case. The MD siphoned money from MGN.
2. MD commits suicide by jumping off his yacht.
3. MGN now claimed the money from New Hampshire insurance.
4. NHI pointed to a clause saying that you should have disclosed the breach of fidelity, as it would have given the insurers the ability to exercise the right to terminate the insurance contract.

Held:

1. *Litseaon Pride* case is limited to cases where terms of the insurance contract can be altered.
2. This cannot be applied to situations where the insurers can terminate the contract based on disclosure provided.
3. If you have a duty to disclose and the insurer can terminate the contract based on the disclosure, the very reason to form an insurance contract comes to an end.

4. In *Litseaon Pride*, the ship owner was actually in control of the situation and could pay a higher premium.
5. In this case, MGN was not in control of the situation. Merely because a contractual term designates a right to terminate based on a specific disclosure, the duty of disclosure does not arise.

What needs to be disclosed

Every material fact which the assured knows or is deemed to know.

'Deemed to know'- separate duties in commercial and non-commercial insurance.

Non-Commercial

Economides v Commercial Insurance Union Co

Facts:

1. Person had taken a burglary insurance policy.
2. The policy stated what the valuables were and the amount payable by insurer was capped and an average proportion of what he would pay.
3. The assured's parents came to live with him in London.
4. The burglary insurance limit was increased – the father does not tell the assured the true value of the jewellery which his mother had.
5. The kitchen cutlery and jewellery was valued by them under 4,000 GBP but actual value was closer to 27,000 GBP.
6. Average policy was issued.
7. Burglary happened. Assured claimed.
8. Insurer tried to avoid on the ground that the assured had not communicated the full value of the jewellery in the house.

Issue: Whether the assured could be deemed to have known the value of the jewellery in the house.

Held:

1. In cases of consumer insurance, a person can only be said to know what he really knows.
2. A deeming provision cannot be imputed on to him.
3. The Court referred to a case where
 - a. a person had taken a life insurance. He saw some boils on his groins. Ignored them. Turned out to be cancerous.
 - b. The Court observed that until and unless the person knew or had suspicion that this was something serious and was trying to avoid what it really was, until then it was fine.

Commercial Insurance

Blackburn Low and Co v. Vigors

Facts:

1. The assured was himself an insurer. He had insured a ship named 'State of Florida'. The insurer was based in Glasgow.
2. The ship was heard of for some time. Sought to reinsure.
3. Contacted a broker in London to get it reinsured.
4. The broker came to know from a different source that this ship was seen in a foreign port and was in dire straits. Was most probably lost.
5. This reinsurer did not reinsure and kept quiet.
6. The insurer, becoming desperate, contacted a different person and got it reinsured.
7. In time, the ship was lost.
8. This reinsurer sought to avoid liability.

Issue: Whether the original London broker was an agent of the insurer, because what is known to an agent is known to a principal (if they can communicate)

Held:

1. A broker is not an agent but an independent contractor.

2. He has no duty to communicate to the principal everything that he knows. But only that which is material.
3. If the first broker had reinsured, then knowledge could be imputed. But since he kept quiet, no imputation.

PCW Syndicate v PCW Reinsurers (BIG BLACK STAR*)**

Facts:

1. An underwriter founded a partnership with several prominent persons who did not participate in the business. The partnership was called a syndicate.
2. This syndicate entered into an insurance with PCW reinsurers. They wanted to limit their liability.
3. They entered into a reinsurance contract but they cheated their names.
4. These people were claiming that a substantial amount received as premium by them was given as reinsurance premium.
5. They overstated the premium of reinsurance.
6. Reinsurance claim made.
7. PCW RI (Respondents) sought to avoid liability as these underwriters had not truly stated their business. Claimed, it was their duty to disclose.

Issue:

1. whether the agent of a person who wishes to be insured is bound to disclose to the intended insurer that he has been defrauding his principal.
 - a. Or more accurately, can the insurer avoid the contract if such disclosure is not made?
 - b. One might have thought that the question was one of statutory construction, and not difficult to resolve. It has not been so treated in these proceedings.

Held:

1. The general practice was that the reinsurance company, when they got the names of the syndicate, were rarely told by the underwriters what the details of their business or day-to-day of the company were.

2. The only communication was that XYZ was collected and ABC was the profit/loss.
3. Since even this was not communicated, the underwriters would have never known that they were being cheated.
4. The assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. "It is in my view impossible to say that the dishonesty of people at P.C.W. Ltd. ought in the ordinary course of business to have been known to the P.C.W. insurers."
5. Therefore, you have to disclose your dishonesty too. No claim.

Kashish Notes: PCW Syndicate v PCW Reinsurance - The agents were cheating the syndicate and money was being pilfered. They did not reveal the full payment that they were receiving. The reinsurers sought to avoid the policy on the basis that this fact was not disclosed to them. The court rejected the argument that the syndicate should be deemed to know what the agents were cheating and held that the syndicate could only be deemed to know what the agents truthfully and honestly told them, and if the agents were cheating, then the syndicate could not be said to know about it.

Manifest Shipping Co v Unipolaris Insurance Co Ltd & Lee Reunion Europeene (StarSea Case)

Facts:

1. Part I
 - a. A company lost two ships which had already been paid for.
 - b. An investigation was completed about the loss of the second ship.
 - c. It was determined that the reason for this loss was that the fire extinguisher system in the engine room did not work.

- d. A report of this investigation was made and the solicitor of the company had a copy of the report, which he misplaced.
- e. One of the directors had heard about the report and its misplacement, but he was not directing and controlling the mind of the company.

2. Part II

- a. A father-son duo did not know that the reason for one of the fires on the ship was that the dampeners in the engine room did not work in a good condition either.
- b. A ship named StarSea caught fire. In this case also, it could not be extinguished because the dampener was not in a working condition.
- c. They claimed insurance. Insurer sought to avoid.

3. Part III

- a. Insurer sought to avoid liability for StarSea on the ground that the previous losses and their causes ought to have been disclosed.
- b. But this was not done.

Held:

1. The solicitor was given a report but he misplaced it. He did not have a reporting duty though.
2. One of the directors knew of the fact. But he did not report it to the controlling mind of the company. He did not have a duty to report either.
3. No one had duty to disclose.
4. Merely because a director hears about something does not mean the company knows it.

London General Insurance v General Marine Underwriters Association

Facts:

1. In the 19th century, Lloyd's would circulate a casualty list of ships that were suspected to have been lost.

2. The person to whom the list was given put in the drawer and forgot about it. Within a few hours, the proposal for re-insurers came up and they re-insured the ship.
3. The question was whether there was a need to reveal to the re-insurer that the ship was in the casualty list.
4. The insurer said that he did not need to tell the re-insurer that it was in the casualty list because the list was with the re-insurer as well.
5. The difference between this case and the Starsea case is that in the former, the re-insurer had a copy of the report, whereas in the latter, the brothers never received a copy. The re-insurer could not have avoided the claim on the policy.

Australia New Zealand Bankd v Colonial & Eagle Wharfs

Facts:

1. The owner of a dockyard insured goods that had been hypothecated to a bank, which required formal permission to clear or remove the goods.
2. When the goods went missing, the insurer argued that the bank's dealing clerk knew about a practice of releasing goods without bank clearance and therefore the bank ought to be presumed to have known about it.
3. The insurer claimed that the bank's knowledge constituted cheating of the bank's principal, and anyone who knew but kept quiet was complicit. The

Held:

1. The insurer could not claim that the owner knew about the clerk's actions.

Blackburn Low and Co v Aslam

Facts:

1. The Glasgow brokers were instructed to insure, and they used London agents to do so on their behalf.
2. In this case, the failure of the reinsured to disclose the non-arrival of the vessel had been the direct responsibility of the Glasgow brokers who had

been instructed to insure, and for this reason their default was deemed to be the default of the assured.

Held:

1. In favour of reinsurer, not because of attribution of knowledge to the insurer, but because it is the duty of the broker who has reinsured to disclose material facts to the reinsurer.
2. Since this did not happen, it justified the reinsurer's avoidance of contract.

Is there a duty to communicate?

In re Hampshire Land Co

Facts:

1. Money was to be invested in the Hampshire Land Company.
2. The investing company was the principal.
3. There was a common secretary between the investor and the investee companies.
4. The secretary did not convey the investment limitations to the investing company.
5. Thus, money was invested without the knowledge of the limitations on the investment terms.

Issue:

1. Whether the knowledge of the secretary, who was on the board of both companies, could be imputed to the investing company.

Held:

1. Just because a person is a board member, this does not mean that the company knows what the person knows, unless—
 - a. There is a duty or responsibility to convey
 - b. If the agent is cheating

Leonard Carrying Co v. Asiatic Petroleum Co Ltd

Facts:

1. Mr Leonard was not on the board but he was a controlling mind

Held:

1. It is immaterial if the person was director as long as he was the controlling mind of the company. His knowledge would be imputed to the company.

If the insurer's agent knows of the material fact, can that be imputed to the insurer?

News Home Brothers v. Road Transport and General Insurance Co

Facts:

1. NHB ran a city bus service. They had insurance.
2. Agent of the insurer contacted them.
3. NHB were asked a question and they truthfully answered.
4. As it happens, this agent knew of underwriting standards of his own insurance company. So he misrepresented the answers to the insurer.
5. An accident occurred. Insurer sought to avoid liability based on misrepresentation.

Held:

1. Insurer held to be liable. Imputed.

Digger v. Rocklite Assurance Co

Facts:

1. Pub owner was being pestered to take an LI policy.
2. After many requests, he took one.
3. The insurance proposer form was filled in by the agent of the insurer.
4. He met the assured at a billiards table and signed it.
5. An accident happened. Sought to avoid based on misrepresentation.

Held:

1. This refusal of claim was upheld.
2. When the agent was filling the form at the billiards table, he was doing it on the behalf of the pub owner. Thus, he was acting as the pub owner's agent.

Bowden v London Edinburgh and Glasgow Life Insurance

Facts:

1. Bowden was persuaded to take an LI policy. He was illiterate, but knew how to sign.
2. He had lost an eye in an accident. But was otherwise perfectly healthy with all working limbs.
3. The insurer's agent filled the form. Later on, this policy was claimed. It was resisted.

Held:

1. In this case, there was implied authority to fill the form when the assured was not in a position to fill it himself.
2. Here, the agent was of the assured. Therefore, the policy could be avoided.

What is material?

Every fact that would help a prudent insurer decide

1. whether he will take the risk
2. at what premium

The test is that if a prudent insurer is on his table, deciding on a policy, would he have wanted this information?

Everything which affects the rights of the insurer will always be material.

Tate v. Hyslow

Facts:

1. When the ship comes, many times it is docked a bit further from the shorelines. Goods are unloaded at the boat and those boats carry the goods to

the shoreline.

2. During this transit, there is a chance of loss which was insured. Loss might be suffered by the cargo owner and he sought to insure the cargo from the losses.
3. The question in this case was to get a better deal from the boatman.
4. The assured agreed that their liability would only be limited to loss caused by negligence while the standard was that they are liable for any loss which was caused.
5. When you exclude the loss due to factors other than negligence, the insurer's rights are affected. Once the insurer has paid you for damage, he is entitled to a right of subrogation (claim the money from the boatman). Hence, by excluding the loss from other facts, you are affecting his rights. You got a good deal but you can't also have a good insurance rate. The insurance premium ought to have been higher.

Buse v. Turner

Facts:

1. The assured took a fire insurance. The reason was that near his warehouse, a fire had occurred recently which had to be put out.
2. The very next day, he sent his employee for taking the fire insurance policy.
3. The fire returned and burned down the assured's warehouse.
4. At the time the insurance was taken, ostensibly, there was no threat of fire, as it had been put out.

Issue: Whether it was a material fact that you had taken the fire insurance policy out of threat of fire.

Held:

1. It was relevant that the assured took the insurance because a next door fire had occurred the night before.
2. If it was 8 months prior, it would not have been relevant.

Rohini Nandan Goswami v. Ocean Insurance

Facts:

1. Ground floor of a building had been burgled. The assured took insurance a year after this event.
2. It was held that this burglary was not a material fact to disclose because even if it had been in the mind of the assured that something was stolen and that he might see it as well, that does not matter for assessment of risk.

Anything that renders a person more loss prone

Needs to be disclosed.

Equitable Life Assurance Society v General Accident Insurance Corporation

1. The assured took an accident insurance policy. Gave his vocation as a gentleman.
2. However, the assured wanted thrills of life, so he participated in motor racing.
3. This was neither his vocation nor his livelihood, but he ought to have disclosed the fact that he participates in motor racing, as it makes him more prone to accidents.

Republic of Bolivia v. Indemnity Mutual Marine Insurance Co.

1. Bolivia purchased arms from the UK to use them against Amazonian rebels.
2. The Government knew that the rebels had intelligence networks.
3. The rebels planned to intercept these arms. The Government had taken insurance upon these arms.
4. The fact that the Government was aware of rebel intelligence networks and chatter about arms interception, though confidential, ought to have been disclosed to the insurer.

Demetriades v. Northern Assurance

1. Greek ship was insured. However, in the proposal form, the nationality of the ship and its owners was not revealed.

2. Since Greek tycoons had acquired a reputation as cheats, the nationality ought to have been revealed as this has a bearing on the risk.

Mayne v. Walters

Facts:

1. A cargo ship was going from Britain to Portugal.
2. The nationality of the cargo was important. During the Napoleonic wars, Napoleon had implemented a continental system.
3. There was an embargo on all British goods and sailors within continental Europe.
4. The Napoleonic Ordinance was recent, and so its importance was not known.

Held:

1. In this case, it is not relevant.
2. The Court held that if the ordinance had existed for a longer period of time, then disclosure about the ship, the sailors, and the goods' nationalities, would have been relevant.

Threats and Rumors

They need to be disclosed if they are credible.

The rumor might later on turn out to be false. Even then it needs to be disclosed.

Morison v Universal Insurance Co

1. Heard the rumour that the ship was lost.
2. So he took insurance upon the ship.
3. The rumours proved to be false.
4. However, loss did happen subsequently.
5. The fact that the assured did not reveal the rumours at the time of taking the insurance policy was relevant.

Leen v. Hall

Irish rebel threat to overtake castle case (covered elsewhere).

Duty of Disclosure upon Information received by Assured

British Equitable v Great Western Railway

1. the person concerned had swelling in his feet and had been told that this is something very serious.
2. Went to consult his own doctor who said not serious. He ignored the specialist opinion.
3. Subsequently, he took insurance. Did not disclose the specialist's opinion.
4. It was inferred that he took the policy as it was something serious.
5. His non-disclosure was a breach.

Henley v Pacific Fire Marine Insurance

Facts:

1. Henley got an insurance based on misrepresenting facts. He committed fraud.
2. Based on getting policy, he applied for a second policy without misrepresenting.
3. The second insurer relied on the fact that the first insurer must have considered him a good risk. That is why he was given the policy.
4. The fact that the first insurance was gained on the basis of misrepresented facts was not told.

Held:

1. This is breach of duty of disclosure.

Barber v Fletcher

Facts:

1. A person got a second policy on the basis of a first policy.

Issue: Whether non-disclosure/misrepresentation in the first policy would be regarded as non-disclosure/misrepresentation in the second policy.

Held:

1. Though you might have been truthful in gaining the second policy, you were parsimonious with facts in the first policy.
2. Therefore, it will be regarded that you were just as parsimonious with facts in the second case.

London Assurance v Mansel; Scottish Provident v Bott Dam

1. LI cases.
2. Both involved the assured being asked if he had applied for other insurances and if he had other insurances or not.
3. The assured did not tell the full truth.
4. The persons in these cases told how many LIs they had already secured, but did not reveal how many were rejected.
5. In the second case, the person did not reveal rejections or even pending approvals.
6. Held: this behaviour is an indication that something is wrong. That is why the assured is taking so much insurance.
7. The effect of this combination is that you are trying to get yourself over-insured.



Sometimes, LI companies, rather than outright rejecting you, informally inform you that you will be unsuccessful, so that you can withdraw your proposal.

In case where you have been informally informed, and then you approach a second insurer, these need not be revealed.

But if you know that you had to withdraw because something was wrong, you have to reveal it to the second insurer.

Issues of Moral Hazards

Moral Hazards are facts about the assured which increase the chance of the loss. It is not just moral or scruples – though that is also a part. It is something about the assured that increases the risk of loss.

Container Transport International and Reliance Group v. Oceanus Mutual Underwriting Association

Facts:

1. The assured had insured their container and the loss ratio of their containers.
2. It was revealed to the mutual indemnity association that the loss ratio of the Reliance Group's containers was lower on paper than in practice.
3. Reliance Group had concealed the real facts by factoring in the depreciation in the value of the container, and were taking a partial hit themselves.

Held:

1. Since the full loss on the containers was not revealed, it was a misrepresentation.
2. True extent of loss, not revealed.
3. This was a moral hazard even if the assured were paying for some of the losses themselves.

Mark Rich and Co v AG Portman

1. There was a tanker fleet which transported oil. The owners had to pay demurrage (when ships carried liquids for long periods of time or are port-bound for long periods of time, they require maintenance or demurrage).
2. The assured never told the full extent of the demurrage liability. Instead, took multiple policies one after another, refusing to extend them.
3. One such subsequent insurer was not told the reason for the previous non-renewals.
4. It was revealed that the reason for non-renewal was the insurer coming to know about the sheer extent of loss expected to be experienced.

5. This was held to be moral hazard.

Pan Atlantic v Pinetop Insurance

Similar to *Mark Rich*

1. There was a reinsurance policy taken by an insurance company.
2. This insurance company did not reveal the full truth about the loss incurred in prior years of business.
3. Held to be non-disclosure and a moral hazard.

Locker and Woolf v. Western Australian Insurance Co

Facts:

1. Assured took an insurance policy.
2. The loss ratio of the assured was dismal, so the insurer refused to insure the policy.
3. They originally were a partnership, but they now went into the business as a company.
4. As a company, they took a different policy with a different insurer.

Issue:

1. Was there a duty to disclose to insurer no. 2 that insurer no. 1 had refused to renew previous insurance policy?

Held:

1. If you have been refused insurance, though it was a different insurance, there is a duty to tell.

Overvaluation

A valued policy is one where the insurer and the assured agree in advance with regard to the valuation of the subject-matter of the insurance.

Hoff Trading Co v. Union Insurance Society of Canton Ltd (*)**

Facts:

1. A person had attained insurance for railway company share certificates in Russia.
2. The valuation of the policy was at the cost of acquisition of the shares.
3. Whilst travelling, this person got to know that the Communist Revolution had occurred and the railway company got nationalised.
4. Within the policy, it was contemplated that there was a probability of overthrow of regime, in which case, the valuation of the policy would revert to the face value of the shares.
5. Person claimed insurance. During travel, these shares were also stolen from the railway compartment.

Issue:

1. What was the correct valuation of the policy
2. Whether the insurer could avoid the policy on grounds of overvaluation.

Held:

1. On account of nationalisation, these shares were rendered worthless.
2. Therefore, it could not be said that the shares retained the face value.
3. Therefore, the insurer could avoid the policy on grounds of moral hazard of overvaluation.

Pender v Ionides

1. The SCF were overvalued.
2. The Court found that the valuation was 25-30% higher than the true value.
3. This was sufficient to say that the policy was overvalued and the insurer could avoid the value.

Overvaluation of the subject matter of insurance has two aspects:

1. The assured concerned might be interested in the loss if it is overvalued. There are chances of the assured trying to cheat the insurer in the case of overvaluation. The second reason it said was

2. The assured might become indifferent to the loss. So steps which he might take to prevent loss like hiring a competent crew and so on. Those steps he might not take. It is not just because it is overvalued, the court would say it's a case of moral hazard like in the

Inversioness Manna v Sphere Drake Insurance Co (the Dora Case)

Facts:

1. A yacht was bought, insurance taken at the cost of its acquisition.
2. Ships are depreciating assets. On each instance, the assured was still valuing the ship at the cost of acquisition.

Held:

1. Merely because the assured was valued it at the cost of the acquisition does not make it a moral hazard because it does not mean that the assured had any intention to cheat or become indifferent to loss.



In marine insurance, there is always some element of overvaluation. The value at which a departing ship is insured is sure to depreciate during the year.



The assured is not supposed to tell the insurer whether they have asked for other assurances on the same subject matter, unless asked. This is because the insurer might be concerned that you would become indifferent to loss or be interested in the loss if you could make a double claim and profit from it.

Also, rejections of prior insurance policies need to be disclosed only upon inquiry by the insurer.

Thames and Mercy Marine Insurance v. Gunford Shipping

Overvaluation by taking on more than one policy on the same subject matter

Facts:

1. Assured took an insurance on the hull of the ship.
2. Additional valued policies on disbursements were taken by the assured (PPI).
3. The insurances taken on the disbursement were PPI policies. Nonetheless, this was double insurance as much that was covered in the hull and freight policies was also covered by the policies of disbursement.
4. Both policies were claimed.

Held:

1. The hull and freight insurers were held to be entitled to avoid their policy on the ground of non-disclosure of a material fact.

Undervaluation

Economides v. Commercial Union Assurance Co

1. In the facts of the case, the Court held that this was not a case of non-disclosure as the assured did not know the real value.
2. In consumer insurance, the person is not deemed to know every fact.
3. But it posed a moral hazard as you are trying to cheat the insurer out by low premium.

Dishonest Conduct

Previous dishonest conduct of the assured is a moral hazard.

Insurance Co of Channel Islands v. Royal Hotel

Facts:

1. Fire insurance policy where the insurer was liable to pay the loss in earnings.
2. The assured was not claiming anything in excess. But the insurer discovered in investigations that the assured had over-represented the turnover of the company in order to get a bank loan.

Held:

1. This was dishonest conduct. Even though it was not dishonest to the insurer, if you are dishonest at one instance, you might be dishonest to the insurer in another instance.
2. Therefore, the policy could be avoided.

James v CGU Insurance Co.

Facts:

1. Assured
 - a. cheated the tax department of 40k pounds, and
 - b. had taken money from customers for the purpose of warranties and had misappropriated the money.
2. He revealed the misappropriation to the insurer but did not disclose the tax fraud.

Held:

1. This dishonest prior conduct was grounds to avoid the policy.

Prior Convictions

Need to be disclosed.

Farra v Hetherington

Facts:

1. Comprehensive motor insurance policy.
2. The assured was asked whether he had lost his car earlier or whether any theft had occurred earlier.
3. He answered, no.
4. However, his vehicle had been untraceable three times in the past and was found by the police and returned to him.

Held:

1. Technically, even though he had not lost his vehicle but the fact that three different times he had no knowledge where his car was, was indicative of the fact that he was prone to losing his vehicle.
2. Hence, the insurer could the policy.

Roberts v. Avon Insurance Co

Facts:

1. Jewellery was lost. Recovered by the police and returned.
2. This fact was not disclosed.

Held:

1. Held to be material fact.
2. Policy avoided.

Taylor v. Eagle Star Co

Facts:

1. The assured was asked whether he had been convicted for any driving offense or not.
2. He answered no.
3. But on two different occasions, he had been—
 - a. he had allowed his car to taken out without an insurance cover by someone else (offense). This person was penalised.
 - b. He was also convicted of drunken behaviour in the past, though it was not an offence relating to driving.
4. Neither was disclosed.

Held:

1. The facts which would assist insurers in assessing, such as
 - a. whether the person would cause accidents
 - b. conviction for public drunken behaviour

- c. driving without insurance
- ought to be disclosed.

Schulman v Hall

How far back is the conviction relevant

1. Property insurance
2. The person concerned had been convicted to larceny on six different occasions 14 years back, over a period of 7 years.
3. Though 14 years had lapsed, it was held that you still had to disclose it.

Roselodge Ltd v. Castle

1. There are two simultaneous cases.
2. Case I
 - a. One, person convicted of stealing apples at age 17 from an orchard.
 - b. 50 years he led a blame free life and then was making a claim upon diamonds.
 - c. As per the insurer, the fact that 50 years back, he was convicted for stealing apples was relevant—this the court rejected.
3. Case II
 - a. Two, the director of a company had led a blamefree life for 18 years.
 - b. However, at age 26, he had tried to bribe a constable (cigarette and six shillings) who had tried to charge him for a parking offense. This was regarded as a relevant fact. (as your ethics are questionable) (nature of offense + gap, together, will be taken into account).

Woolbert v Sun Alliance and London Insurance

The assured may not have been involved in crime, but the person with whom they associate might have been convicted.

1. The person concerned had been convicted of a violent crime.
2. He took a house on mortgage after release.

3. He took a fire insurance and assigned in favor of building society.
4. His previous conviction for a violent crime was a relevant crime, even for the building society. Ought to have been disclosed.

Lambert v Cooperative Insurance Society,

1. Wife took insurance of joint ownership jewelry.
2. The fact that the husband on two prior occasions had been convicted, once for bribery, was a fact that ought to have been disclosed.

Charged with an Offence

When you are charged with an offence: There are varied opinions regarding this.

March Cabaret & Casino v Thompson

1. Held that a previous charge related to the insurance ought to be disclosed
2. (AK Rai says it depends on the seriousness of offence and what it says about the risk).

Effects of Questions on the Proposal Form

Questions might indicate what the insurer is interested in.

1. Any fact for which there is indication of non-interest by the insurer-
 - a. for example if there is a question, have you been hospitalised for any time in the last three years, this question is an indication that the insurer is not interested in the hospitalisation prior to three years.
2. The mere fact that the insurer has not asked a question does not indicate that it is not interested in knowing that fact.
3. A reasonable judgment has to be made as to this.
4. If the insurer does not leave space for you to elaborate upon material facts in the form, then it can be inferred that there is no interest by insurer regarding elaboration on that question.

Manmohan Nanda v. United India Assurance (SC)

Facts:

1. Nanda was going to daughter's wedding to San Francisco before departing.
2. The doctor took a look, diagnosed him with Type 2 diabetes, but his EKG was fine.
3. In his assessment, the answer to the question, whether there is any chance of medical treatment in the US, was no.
4. Mr Nanda landed and started sweating. He got admitted immediately. Was given three stents to his heart immediately.
5. Billed after two months to pay \$210,000. Ull argued that he had not disclosed that he had been taken statins, his lipid profile, cholesterol control, and suffering from hyperlipidemia.
6. Ull rejected his claim. Went to consumer forum, where Ull won.

Held:

1. The proposer cannot be expected to answer what he is not expected to know in the circumstances.
2. Something not known to a reasonable man – though it might be material – cannot expect assured to be disclosed.
3. They did not know of the lip profile or the consumption of statins, but they knew of the Type 2 diabetes, but he was still issued policy.
4. The condition he suffered in the US is a risk factor in diabetes Type 2 patients.
5. Therefore, the risk in the present case was within the consideration of the insurer. They cannot repudiate the policy.

Filling forms:

1. There should be a fair, reasonable construction of questions and answers
 - a. The answers should be accurate in the matters of substance but misstatements or omissions in trifling matters can be ignored
 - b. **Carelessness in giving answers is not excused unless it is a case where no one would be misled**

2. A literally accurate answer does not suffice if it does not state the full facts
 - a. Where the person was asked if he was made a prior claim he cited an instance where he made a prior claim, but did not disclose 4 other such instances.
3. If a space is left blank - one has to ensure whether there was nothing of substance to answer - otherwise its an instance of non-disclosure – **[though you have left it blank but from the rest of it you have the answer]**

Canara Bank v. United insurance

Facts:

1. Cold storage operator took insurance of 35 crores. 5 crore on the storage facility, and 30 crore wrt the goods stored in the cold storage.
2. In the proposal form, the assured had left a clause blank, where it was asked whether there are any other beneficiaries/assured.
3. In Court, it was pointed out that it is the very nature of the cold storage business that the operator rarely owns the facility. Usually, it is leased.
4. The one who takes the lease pays the premium.
5. The terms said that it is the responsibility of the bank on who gets the leftover after the payment of the lease.

Held:

1. The Supreme Court made a broad-brushed comment that if the insurer while accepting the proposal form does not ask the insured to clarify any ambiguities, then the insurer after accepting the proposal cannot urge that there was a wrong declaration made by the insured.
2. In this case, the claimants were farmers who had grown byadgi chilli crop. They stored their agricultural produce in a cold storage. The farmers took loans from Canara bank.
3. The loan was advanced by the bank to each of the farmers on the security of the agricultural produce stored in the cold storage. The cold storage and the products were insured with United India Insurance.

4. The cold storage and the entire stock of agricultural produce were destroyed in a fire.
5. The insurer tried to avoid the policy on grounds that insurable interest was not disclosed.
6. The court held that to make a contract void, the non-disclosure should be of some very material fact.
7. No doubt, it would have been better if the bank and the insured had given at least one tripartite agreement to the insurer, but in the peculiar facts of this case, not disclosing the tripartite agreement or the names of the owners cannot be said to be such a material fact as to make the policy void or voidable.
8. If any space is left blank, then the insurer should have asked. Ultimately, the court directed the insurer to pay the farmers.

Criticism by AK Rai -

1. The court went by the assumption that the cold storage owner did not have an insurable interest in the produce.
2. However, bailee has an insurable interest in the product of the bailer other than the bailment charges because his reputation is at stake.
3. This is not good law. In this case, it was never discussed whether the bailee had an insurable interest or not. The counsel never pleaded the case of Tomilson.
4. The insurer's questionnaire may ask for specific information within a certain time frame, such as illnesses in the last five years. The insured only needs to disclose normal illnesses within the five-year period, but serious illnesses prior to that time



Anything which tends to decrease the risk need not be disclosed.

Unsatisfactory Responses

If the answer is unsatisfactory, the insurer is put on notice. He ought to have asked for a clarification – if not asked then cannot avoid the policy

Cohen v. Marine Insurance Co

1. A ship was being tugged - the assured took the insurance on the ship and disclosed that it was tugged
2. When the claim was made, the insurer resisted the claim on the ground that it he did not know the fact that the ship did not have its own motive power - if he had known he would not have insured it.

Held:

1. The fact that the ship was being tugged was itself an indication that it did not have motive power - here the insurer was put on notice and should have asked.



The proposer may bracket 2 or more questions and give one composite answer - because some questions may be repeated

Contra Proferentem Rule

If someone has the opportunity to draft the document, and if there is a reasonable ambiguity in the document, then the interpretation would be taken in favour of the persons who had no role in drafting the document.

If there is an ambiguity in the assured's answers, it would be read in the favour of the insurer.

Hari Om Aggrawal v. Oriental Insurance

Facts:

1. CA persuaded to take up medical insurance policy.
2. Made a claim 5-6 years later.
3. Pre-existing diseases discovered.

4. Insurer sought to avoid liability on the ground that hospitalisation because of pre-existing conditions was not covered.

Held:

1. Suffering from diabetes/hypertension etc is different from getting a heart condition due to diabetes/hypertension. Heart disease is not the pre-existing disease.
2. The assured had disclosed diabetes type 2 and the doctor had said that he had no chance of serious conditions.
3. The assured was on statins. Though, the Court found that this was a general precautionary measure for diabetics.
4. Applied contra proferentem rule and the clause was read to not include diseases/conditions caused by diabetes.

What the Assured Need not Disclose

Grounds in *Carter v Bohem*

You need not disclose what the insurer:

1. Knows,
2. ought to know, or
3. takes upon himself the knowledge of,
4. what he waives information of,
5. that which reduces risk,
6. general topics of speculation which are covered by express terms,
7. matters of opinion

Section 20, Marine Insurance Act

Lays down what need not be disclosed:

1. Common Notoreity
2. Knowledge

3. Which the insurer ought to know in ordinary course of business
4. That which reduces risk
5. That to which he waves information
6. Covered by express warranty

Pim v. Lewis

1. The insurer came to investigate the assured.
2. Found that for heating purposes, the assured was using rice chaff (more inflammable substance).
3. The agent of the insurer witnessed this. There was a duty to communicate it to the insurer.
4. In this circumstance, the insurer was presumed to have known what his agent knew.

Constructive Knowledge of the Insurer

Foley v. Tabor

Facts:

1. In this case, it was specified that the ship would transport iron rails. Both ship and cargo was insured.
2. Claim was made. Insurer said that the quantity of iron rails was not specified.

Held:

1. The insurer should have asked about the quantity before issuing the policy when they knew about the cargo (put on notice).

Canara Bank v United Assurance

Cold storage case. You knew the BG – left blank and not asked and the insurer was asked to pay.

Charging a High Premium

If the insurer was charging higher than normal premium, then it is an indication that the insurer was aware of the risk.

Leen v. Hall

Facts:

1. Insurance was taken for a castle in northern Ireland. The castle was burnt down.
2. There were threats and the assured ought to have informed about these threats, which were reasonable and known.
3. The insurer claimed that the dungeon of the castle was used for torturing the terrorists of Sinn Féin (armed wing was the IRA).
4. The fact of the torture was not revealed to the insurer.
5. However, everyone knew what the dungeon was used for. So the insurer cannot feign ignorance.
6. Similarly, if a locality is considered prone to burglary, such as inner cities, this is often common knowledge. The insurer is supposed to know about it.

Bates v. Hewitt

Facts:

1. Georgia was the name of a battleship which was refurbished.
2. The insurer did not know that it was a confederate battleship
3. This clearly affects the risk if it were in battle.
4. Insurer tried to avoid policy.
5. Resisted on the ground that though it was a confederate battle ship, it was well known. The exploits of Georgia were discussed in newspapers.

Held:

1. Once you know that it is the ship Georgia, you ought to have known that it were in battle.
2. This is only three or four years after the civil war. You cannot expect that the particular memory about the battleship would not be in public conscience.

3. After a lot of years, maybe people can forget.

Business Practices and Customs

If you have taken a method different from the general business practice, you have to disclose.

In marine insurance, if normal route for voyage is being taken, that need not be disclosed. If you take an alternate route, it needs to be disclosed.

Matters of Opinion

Aiken v Sterwarts-Wrightson

Facts:

1. The assured had prepared a table wrt what was the losses it had incurred in the previous years
2. The table made predictions of guture losses.
3. It told reinsurer of the history of losses, but not about the predictions.
4. Reinsurer said that this was a material fact.

Held:

1. This was a matter of opinion of the assured, not a fact.
2. No requirement of disclosure.

Express Warranty

When a policy is being reinstated, and the assured warrants that he is in good health, then there is no necessity to tell the insurer that he was suffering from a disease/admitted to a hospital, etc. Because there is already a warranty.

Insurer's Waiver of Information

Cohen v Standard Marine Insurance

Ship tugging case. First ground was Constructive knowledge. Secondly, when you are put on notice and you do not ask, you have waived your right to disclosure.

Insurer's Duty to Disclose

Lord Mansfield in *Carter v. Bohem* gave an example

1. There is an assured who wanted to assure a ship not heard of.
2. Reinsurer knew that the ship was in dire straits in a foreign port.
3. Issued the policy.
4. Mansfield said that this was breach of duty of good faith by the insurer as there was a need to disclose this.

Banque Financiere de Lasita v. Westgate Insurance/Banque Kaiser Pullman v. Skantia

Facts:

1. The banks sought to do an insurance on diamonds which were given to them as security by a person who was a cheat (the brokers knew of the fact).
2. Insurer suspected it but nothing was told to the banks.
3. The banks took that insurance policy, later on, when the security was sought to be enforced, it was found that diamonds were fake. Hence, security was of no value.
4. The diamonds were insured for their potential of being lost but the diamonds turned out to be fake.
5. Insurer was not liable for it but banks sought that the insurer should compensate them because they were in breach of their duty of disclosure.

Held:

1. The court accepted the claim of the banks that insurers had a duty of disclosure to the banks just like insured has a duty of disclosure.
2. The effect of this is that it makes a voidable contract. Once it is voidable, in the case of the insurer, he will return the premium and not pay you.
3. When assured says it is voidable, the effect would be that the insurer has to return the premium to the assured. The premium is a very small part of the loss incurred.



In insurance contracts, there is usually a clause that the premium paid would be forfeited if there is a breach of duty of disclosure due to fraud, misrepresentation, etc.



In express warranties, when you warrant the facts stated by you and those facts are made the basis of contract, then even if those particular facts might not be material, or have no relationship with the risk, could be used by the insurer to avoid the policy.



The legal effect of breach of express warranty is not voidability. It is that the contract becomes *void ab initio*.

Insurer's Ability to Waive the Default in the Duty of Disclosure

Insurance Corporation of Channel Islands v. Royal Hotel Corporation

Dishonesty in turnover reporting case.

The Court laid down the test for waiver:

1. The insurer should be aware of the fact that there was non disclosure and of its ability to avoid the policy
2. After this awareness, the insurer has the option of keeping the policy alive (needs to be some positive act on part of the insurer).
 - a. Merely keeping quiet doesn't mean that he has decided to waive default in disclosure.
 - b. E.g. asking for additional information after becoming aware of non disclosure.

- c. Section 35 TPA (principle of election)- there needs to be something done by the insurer that he has elected to keep the policy alive.
 - d. Positive act can be asking for premium or even accepting the premium or renewing the policy after knowing about non disclosure or the person makes the claim and you pay it or you contest his claim on grounds other than on the grounds of non disclosure.
3. Under normal circumstances, the insurer is under no duty to communicate that it wants to avoid the policy.
 4. But after it has become aware of this fact that there is non disclosure and he does not communicate and the assured is under the impression that the policy is alive and changes his position, then *promissory estoppel* comes into effect.
 - a. The assured concerned does not take another policy because you have not communicated non disclosure to the assured. Now, the insurer cannot avoid the policy.
 - b. **Applies to express warranty as well – does not depend on void/voidable but cannot be against public policy**

1. In the case of life insurance, a special problem was there.
2. The person who takes the life insurance, he might not have disclosed all the facts.
3. Whether it is non disclosure or not, it is only he or she who can controvert.
4. The person who took the life insurance is not around to contest the insurer's claim that there was non disclosure.
5. In the USA, a law was passed that so many years after the life insurance contract had been entered into, the policy cannot be avoided by the insurer on the grounds of non disclosure.
6. This was something which was incorporated by insurers into life insurance policies.
7. The legislature in India followed the USA and enacted **Section 45** of the **Indian Insurance Act 1938**. Section 45 provided that two years after the commencement of the policy, the insurer cannot contest the policy on grounds

of non disclosure unless the assured concerned stated something false or did not disclose-

- a. fact which was material; or
 - b. something which he knew to be material; and
 - c. he did it deliberately i.e. fraudulently
8. American legislature (states) intervened provided that a few years after the insurance coming into effect – the insurance shall not be called into question or can be questioned only on limited grounds as the assured who did not disclose was dead and the beneficiaries were not in a good position.
9. Some LI companies followed the American model and inc similar clauses. 1938 – legislated – no LI policy shall be called into question post 2 years on any grounds until and unless non disclosure was on a material matter.
- a. **material fact**
 - b. **made fraudulently**
 - c. **assured knew that it was a material fact**

Might lie innocently – took sick leaves and did not report it.

What is meant by policy coming into effect?

Mithoolal Nayak v LIC

Facts:

1. Policy was issued on March 13, 1945. It came to effect from January 15, 1945 (antedated).
2. The amount insured was payable after January 15, 1968 or at the death of insured, whichever earlier.
3. The LIC repudiated the claim by its letter dated October 10, 1947. Two years had already expired from the date on which the policy was affected.

Held:

1. Section 45 of the Indian Insurance Act, 1938 applied in this case. Any revival of the policy sometime after the policy was affected would not countenance

the application of Section 45.

2. Since for the purposes of Section 45, the date has to be calculated from when the policy was originally affected.
3. Therefore, LIC cannot repudiate the claim.

Amendment to Section 45 in 2015

In 2015, Section 45 was amended. After this amendment, the insurer cannot contest the insurance policy on the grounds of non-disclosure or on basis of contract clause or any grounds whatsoever three years after the issuance of the policy.

IRDA in its statement of practice (not the law, but these are statements in question and answer form) has said that even if the assured has died at the end of one and a half years, the beneficiaries of the policy make a claim after three years, even then the insurer cannot contest irrespective of the fact when the assured died

Before three years from the effect of the policy, the insurer can contest. The insurer has to tell the grounds to the assured or the beneficiaries of the assured/successors to his estate.

Two situations are delineated:

1. He can contest on fraud as defined in the ICA.
 - a. In cases of fraud, premium is forfeited.
2. Misrepresentation or suppression of material fact. The insurer has to prove:
 - a. It was a material fact
 - b. There was a misrepresentation or misstatement or suppression of it by the assured if it is not fraudulent.
 - i. In this case, he will avoid liability on the policy, but will have to return the premium.

In calculation of the three year period, it is either that which is latest in the point of time between

1. The policy coming into affect
2. Date of risk attaching

3. Date of issuance
4. Revival of policy
5. Exercise of rider

a. my policy is 50 lac rupees – I exercise rider and inc the cover to 1 cr. When I exercised the rider I make a fraudulent statement, the benefit of the cover has increased. If it is fraudulent, then within 3 years, they can repudiate the policy.

Some rights have been given, some have been taken away from the assured.

UK Insurance Act, 1945

They have amended the law regarding non-disclosure and warranties.

1. Now, the assured has to make fair representation and substantial disclosure of what he knows and what he ought to know of every material fact.
2. If it is fraudulent or reckless, then in that case, policy and premium are forfeited.
3. If it was not reckless or knowingly done, then the insurer will decide if it would have issued the policy at all, or issued on different terms.
 - a. If they would not have issued the policy, then the policy is voided, but the premium is returned.
 - b. If they would have offered the policy regardless, they can change the premium or T&C.