REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

THE INSURANCE CODE

Source: REO Live (Atty. Kris), ReSA Lecture (Atty. Nicko), and CPAR Lecture (Atty. Kid)

Topics Covered:

7. *Law on Business Organizations*
   - 7.3. *Insurance*
     - 7.3.1. *Concepts of insurance*
     - 7.3.2. *Elements of an insurance contract*
     - 7.3.3. *Characteristics and nature of insurance contracts*
     - 7.3.4. *Classes of insurance*
     - 7.3.5. *Variable contract*
     - 7.3.6. *Insurable interest*
     - 7.3.7. *Perfection of a contract of insurance*
     - 7.3.8. *Rescission of insurance contracts*
     - 7.3.9. *Claims settlement and subrogation*

Concepts, Elements, and Characteristics of an Insurance Contract

Insurance Contract – an agreement whereby one *(insurer)* undertakes for a consideration *(premium)* to indemnify another *(insured)* against loss, damage, or liability *(risk or peril)* arising from an unknown or contingent event.

PARTIES TO AN INSURANCE

Insurer	Person who *undertakes to indemnify another* ○ ***Limited to Corporations, Partnerships, or Associations*** *duly authorized to transact insurance business*
Insured	Person *with capacity to contract* and *having an insurable interest in the subject matter of the insurance* ○ ***Public enemy may not be insured*** *(A nation and its citizens with whom the Philippines is at war)*
Beneficiary	Person or entity *designated by the policy owner to receive the proceeds of a life insurance policy* upon the death of the insured

ELEMENTS OF AN INSURANCE CONTRACT "SPEAR"

- General **S**cheme to distribute actual losses among a large group of persons bearing a similar risk
- The **INSURED** pays a **P**remium
- **E**xistence of an insurable interest by the **INSURED**
- The **INSURER** **A**ssumes risk
- The **INSURED** is subject to the **R**isk of loss

GENERAL CHARACTERISTICS OF AN INSURANCE CONTRACT

- ***Uberrimae Fides***
  - An insurance contract is one of *perfect good faith* ***equally for both parties*** *(truthfulness)*
- ***Contract of Indemnity***
  - The insured is entitled to recover only the amount of total loss sustained and has the burden to prove the amount of such loss ***(not taken by the insured for profit)***
- ***Aleatory***
  - The insurer's *obligation to pay arises only upon the happening of an uncertain event*
  - What is paid by the insured is ***not necessarily equal*** to what he receives
- ***Contract of Adhesion*** *(Fine Print Rule)*
  - *Ready-made form* of contract for which the terms and conditions are only accepted or rejected by the insured without modification *(only the insurer usually prepares)*
- ***Voluntary***
  - Not compulsory
  - Parties may incorporate terms and conditions that are deemed convenient as long not against the law or public policy
- ***Synallagmatic***
  - Bilateral; *reciprocal obligation* of both parties
- ***Personal***
  - The insurer considered the ***personal qualification*** of the insured in approving the contract, thus *is not assignable without the insurer's consent* *(Also equally applicable to the Insured)*
- ***Consensual***
  - **Application AND approval** are needed as *consent* *(The insured makes the offer)*
  - **Premiums** paid are the *cause* and consideration

  General Rule:
  - ***Cash and Carry Rule*** – It is not a binding contract if there is no payment of premiums

  XPNs:
  - *Grace period* provision applies
  - Insurer granted a *credit term*, and loss occurs **before its expiration**
  - *Credit extension* of the premium due agreed upon
  - *Acknowledgment* that premium payments have been made
  - Policy is intended to be paid *in installment*
  - Parties are barred by *estoppel*

CONTINGENT VERSUS UNKNOWN EVENT

Contingent Event	○ *Not certain to take place* ○ ***May be a designated event*** in an insurance contract
Unknown Event	○ *Certain to happen* but ***the time of happening is not known*** *General Rule:* ***Only Future Unknown Event may be a designated event*** in an insurance contract *XPN:* *Past Unknown Event may also be a designated event* in an insurance contract when it ***already happened but the parties do not know about it*** *(Ex.: Prior Loss of a Ship at Sea in Marine Insurance)*

Classes of Insurance Contracts

LIFE INSURANCE

a. *Individual Life*
- Insurance on a *single (one)* human life

b. *Group Life*
- Single contract *covering many individuals*
- *Common Example:*
  Employer to its employees

c. *Industrial Life*
- Face amount is ***not more than 500 times of Manila's statutory minimum wage***, with words "*industrial policy*" printed in the policy

NON-LIFE INSURANCE

a. ***Marine Insurance*** (perils of the sea and the ship)

Perils of the Sea
- Loss or damage of ***perils of navigation, transit, or transportation*** *(vessel, aircraft, vehicles, cargoes, bottomry, respondentia interests, etc.)*
- The liability of a person or property to loss or damage from ***construction, repair, operation, and maintenance*** of a marine, inland marine, transit, or transportation *(excluding life insurance and surety bonds)*
- Loss or damage of ***precious stones, precious metals, jewels, and jewelries***, even if not in transportation
- Loss or damage of ***aids to navigation and transportation, and instrumentalities of transportation and communication*** *(bridges, tunnels, piers, checks, wharves, etc.)*

Perils of the Ship

- Insurance against legal liability for loss, damage, or expenses ***incident to ownership, operation, and related matters to any vessel***, craft, and other instrumentality, including the liability for personal injury, illness, death, and loss or damages to the property of another person

b. Fire Insurance

- Insurance against loss by ***fire, lightning, tornado, windstorm, earthquake***, or other allied risks

c. Casualty Insurance

- Insurance for loss or liability arising *from accident or mishap* not included in marine or fire insurance, as ***written by a non-life insurance company***
  - Employer's liability insurance
  - Motor vehicle insurance (mandatory, XPN to voluntary)
  - Plate glass insurance
  - Burglary and theft insurance
  - Personal accident and health insurance

MICROINSURANCE

- Insurance meeting the risk protection needs of the ***low-income (poor) sector***
- As to *contributions or premiums*:
  - Does not exceed ***7.5% of Metro Manila's statutory minimum wage*** for non-agricultural workers
- As to the *guaranteed benefits*:
  - Not more than ***1,000 times of Manila's statutory minimum wage*** for non-agricultural workers

CONTRACT OF SURETYSHIP

- An agreement whereby a party ***guarantees*** *(binds or holds himself solidarily liable)* the performance or fulfillment of another party (debtor) of an obligation or undertaking in favor of a third party (creditor).
- Considered as a contract of insurance *only if the surety is one doing an insurance business*

VARIABLE CONTRACTS

- Provides *varying benefits* or other contractual payments or values, depending on investments
- An ***insurance and an investment***

Insurable Interest

Summarized Distinctions:

	As to Life Insurance	**As to Property (Non-Life) Insurance**
Required Existence of Insurable Interest	At the time of **perfection**	At the time of **perfection AND** at the time of **loss**
Limit as to Value	**No limit** (XPN: *Creditors insuring their debtors*)	Up to the ***actual value of the interest*** therein
Expectation of Benefit	*Does not need* a legal basis	*Must have* a legal basis
*Is the **Beneficiary** Required to have an Insurable Interest over the Things or the Life of the Insured ?*	**No**, if the insured himself secured the policy (If other than the insured secured the policy, the assigned beneficiary is also required to have insurable interest over the life of the insured)	**Yes**

Insurable Interest

Interest in which a person has in the subject matter insured, where he has a relation, connection, or concern, wherein the person will either:

- ***Derive pecuniary benefit or advantage (positive)*** from the *preservation* of the subject matter insured
- ***Suffer pecuniary loss or damage (negative)*** from its *destruction*, *termination*, or *injury*

WHEN IS THERE AN INSURABLE INTEREST?

As to Life Insurance

- Every person has an insurable interest on the life and health of:
  - Himself, his spouse, and his children
  - Any person ***he depends on or support***, or has ***pecuniary interest*** with *at the time of perfection*
  - His ***debtor*** *(only up to the amount of debt)*
  - Any person wherein to ***his life depends any estate or interest*** vested in him *(executor or administrator)*

Excluded:
Those who cannot make donations to one another also does not have an insurable interest ***(XPN: Husband and Wife)***

As to Property (Non-Life) Insurance

- May consist in either of the following:
  - An **existing interest** in the property *(As owner, possessor, lessor)*
  - An **inchoate interest** founded on existing interest *(Shareholder of a corporation)*
  - Any **expectancy** *coupled with an existing interest* *(Farmer to his growing crops)*
- A *mere contingent or expectant interest in any thing*, not founded on an actual right to the thing, nor upon any valid contract for it, ***is not insurable***

  (Example: A son does not have an insurable interest over his father's property until he is alive)

As to Mortgaged Property *(Extent of Insurable Interest)*

- Mortgagor – up to the extent of the ***property's value***
- Mortgagee – up to the extent of the ***debt secured***

Change of Interest in Insured Party

General Rule:

- Insurance is ***suspended*** upon change, or
- Insurance is ***voided*** upon change *(if expressly prohibited)*

XPNs (Not suspended nor void):

- Change **AFTER** the occurrence of injury or loss
- Change by *will or succession* **upon the insured's death**
- Change in one or more of *several distinct things*, **separately** insured by one policy
- *Transfer* by one of several co-owners or partners, jointly insured, *to other co-owners or partners* ***(not to outsiders)***
  - A partner in a firm does not have an insurable interest on the firm's future profits, but has an *insurable interest to all his co-partners.*
- The policy is **so framed** to inure benefit *to whoever owns the interest*

Designation of Beneficiary

Life Insurance of One's Self	***Anyone*** *(Beneficiary does not need to have an insurable interest over the insured)*
Life Insurance of Others	*General Rule:* ***Must have insurable interest in the life of the insured*** *XPN:* ***Assignees*** of insurance contract *are not required to have insurable interest*
Property Insurance	***Must have insurable interest*** *over the property insured*

- Designation of beneficiary **can be changed anytime**, unless stipulated
  - If the insured did not change the beneficiary during his lifetime, the designation *ceases to be revocable*

Rescission of Insurance Contracts

GROUNDS FOR RESCISSION

Applying to Both Property and Life Insurance

1. ***Concealment***
   - Neglect to communicate material information, whether ***intentional or unintentional*** *(includes discovery of fraud)*

   XPNs (There is no duty to disclose):
   - Those which ***known*** by the other
   - Those which ***waived*** by the other
   - Those the other ***ought to know*** in exercise of ordinary care
   - Relates to ***immaterial risk*** expected from the policy
   - ***Immaterial proof of existence*** of risk that is excluded by a warranty

2. ***Misrepresentation***
   - Use of *inaccurate material statements* to induce the party to enter into the insurance contract
   - Oral or written, made **on or before perfection** of insurance contract

3. ***Breach of Warranty***
   - Only *material warranty breach*, except if stipulated that regardless of materiality

Applying to Property Insurance only

1. Non-payment of premium
2. Conviction of crime from ***acts increasing the hazard*** insured against
3. Discovery of ***willful or reckless acts or omissions*** increasing the hazard insured against
4. Physical changes in the property insured, resulting for the *property becoming uninsurable*
5. Discovery of ***other insurance coverage*** that makes the *total insurance in excess of the value* of the property insured

   Example:
   Insurance 1 = 10,000
   Insurance 2 = 7,000
   Total Insured Cov. = ***17,000 vs 15,000*** *Value of the Property*

Specific Rule applying to Life Insurance only

- *Incontestability Clause*
  - ***2 years after the date of policy issuance or reinstatement***, the insurer *cannot anymore prove that the policy is void or rescissible* by reason of concealment or misrepresentation of the insured

Claims Settlement and Subrogation

Period of Settlement:

Life Insurance	
With maturity (before death)	Immediately upon maturity
Matures upon death	Within **60 days** after presentation of the claim and filing the proof of death

Property Insurance	
*With ascertainment of loss (AOL)**	Within **30 days** after the AOL is made
Without ascertainment of loss (AOL)	Within **90 days** after receipt of claim and proof of loss

* *AOL is done* ***within 60 days from the receipt*** *of proof of loss*

- Notice must be given without undue delay
- The insured may give the *best evidence that he has* in his power at the time as proof

Delay of Claim Settlement

Entitles the beneficiary to:

- Interest, which is ***twice*** the legal rate
- Attorney's fees and other litigation expenses
- Appropriate damages

Prescription for Cause of Action

Accrues from the time of ***first denial****, regardless of the date of denial of reconsideration*

- Without stipulation – 10 years
- With stipulation – minimum of 1 year

Suicide Clause and Willful Act or Connivance

- If the policy has been in effect for ***AT LEAST 2 years before the suicide***, the insurer is *still liable* *(unless specified as expected risk)*
- If the policy has been in effect for ***LESS THAN 2 years before the suicide***, the insurer is *no longer liable*
- A ***willful act or connivance of the insured*** makes the insurer *no longer liable*

Subrogation

Applies only to property insurance

- Legal effect of payment, which inures to the insurer **upon the payment to the insured**
- The right of the insurer against the third party is ***limited*** only to the *amount recoverable from him by the insured*

Instances where there is No Subrogation of Rights:
- Life insurance
- Insurer pays the insured for a loss or risk ***not covered by the policy***
- By the insured's own act, he releases the third party ***(quitclaim)***
- For recover of loss *in excess of the insurance coverage* (remedy is against the insured for solutio Indebiti)