



**THE TAMIL NADU
Dr. AMBEDKAR LAW UNIVERSITY**

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LAW OF INSURANCE

STUDY MATERIAL

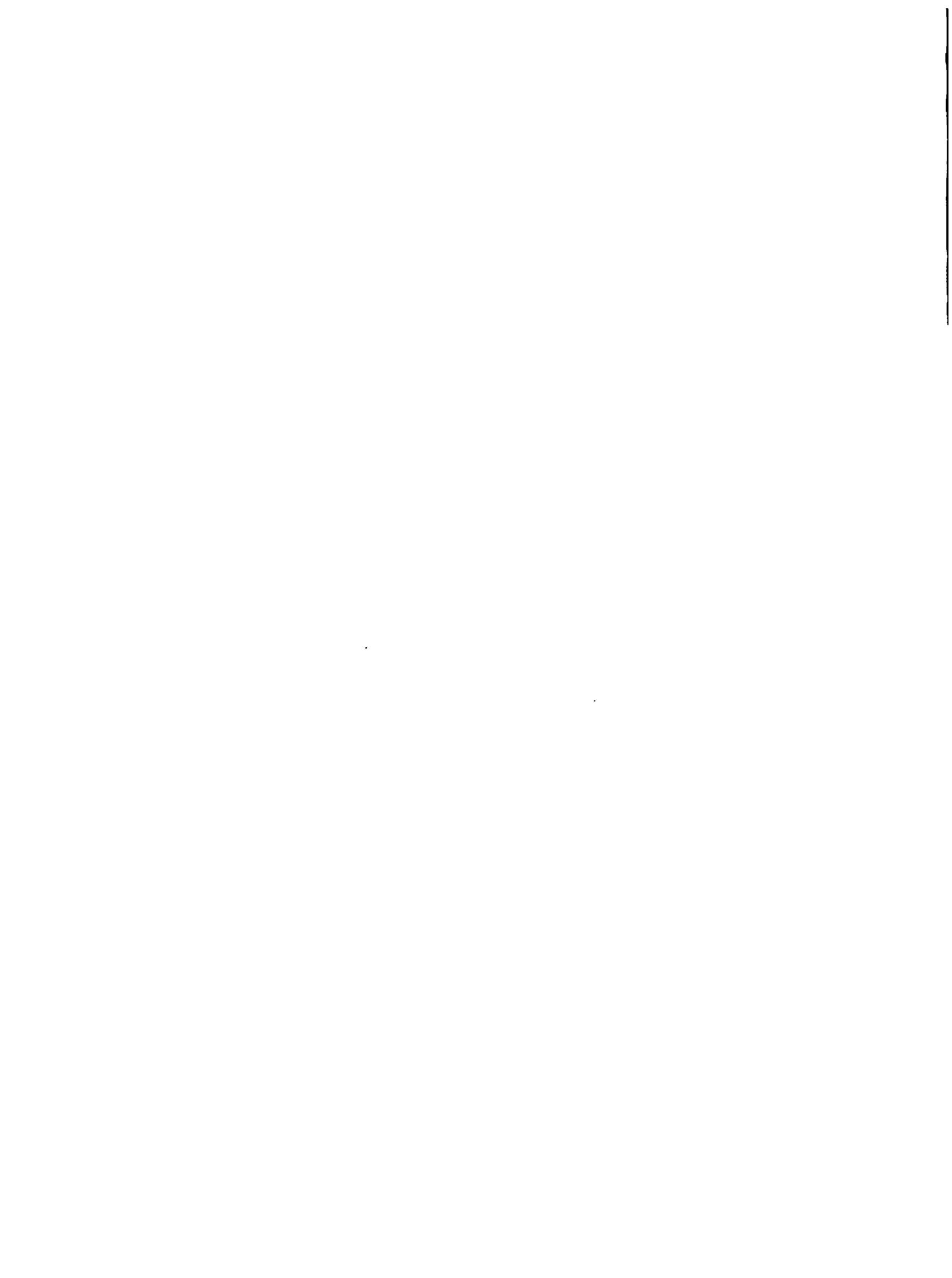
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SUBJECT : LAW OF INSURANCE (O. C. - 2)

SUBJECT CODE: HXJ

Unit – I : Introduction

Meaning of concept of Insurance – Risk Management – Kinds of risks – Insurable – Distinction between Insurance Assurance – Parties of Insurance. Insurance and contract linkage – Extent of applicability of General principles of Law of Contract viz., offer, acceptance, capacity of parties, consideration, consensus, ad-idem and lawful object – Insurance and wager – Performance of insurance contracts – Discharge of Insurance Contract. Necessity for applying special principles of contract to Law of Insurance – Extent of applicability – Special Principles: (a) Uberrimae fide: (b) Indemnity (c) Subrogation, (d) Contribution (e) Proximate cause – Cover note and slip.

Unit – II : Fire Insurance Contract

Meaning of the term 'Fire' – Fire policies – Perils insured – Fire claims – Scope of applicability of special principles to contract of fire insurance – Standard Fire Policy – 'Average' in Fire Insurance Contract.

Unit – III : Marine Insurance Contract

Significance of Marine Insurance Contract – Maritime perils – Subject – Matter covered by Marine Policy – Kinds of Marine policies – Scope of applicability of special principles to contract of marine insurance – Principle of 'change of voyage' and 'Deviation' and therein related aspects – Total loss – Partial loss – General average sacrifice and expenditure – Salvage – An over view of Marine Insurance Act, 1963 with special reference to Bill of Lading and counter party.

Unit – IV : Life Insurance Contract

Introduction – Meaning of Life Insurance and its significance - Kinds of life policies – Extent of applicability of Special Principles to Life Insurance Contract – 'Suicide' Clause in a Life Policy – Assignment and nomination – Constitution, powers and functions of L.I.C. under L.I.C. Act, 1956 – Ombudsman, IRDA.

Unit – V : Motor Vehicle Insurance

Introduction – The Motor Vehicles Act, 1939 (as amended in 1988) – Compulsory Third party Insurance of Motor Vehicles – No – fault liability – Chapter VIII A of the Act – Motor Accident Claims Tribunals.

Books Prescribed:

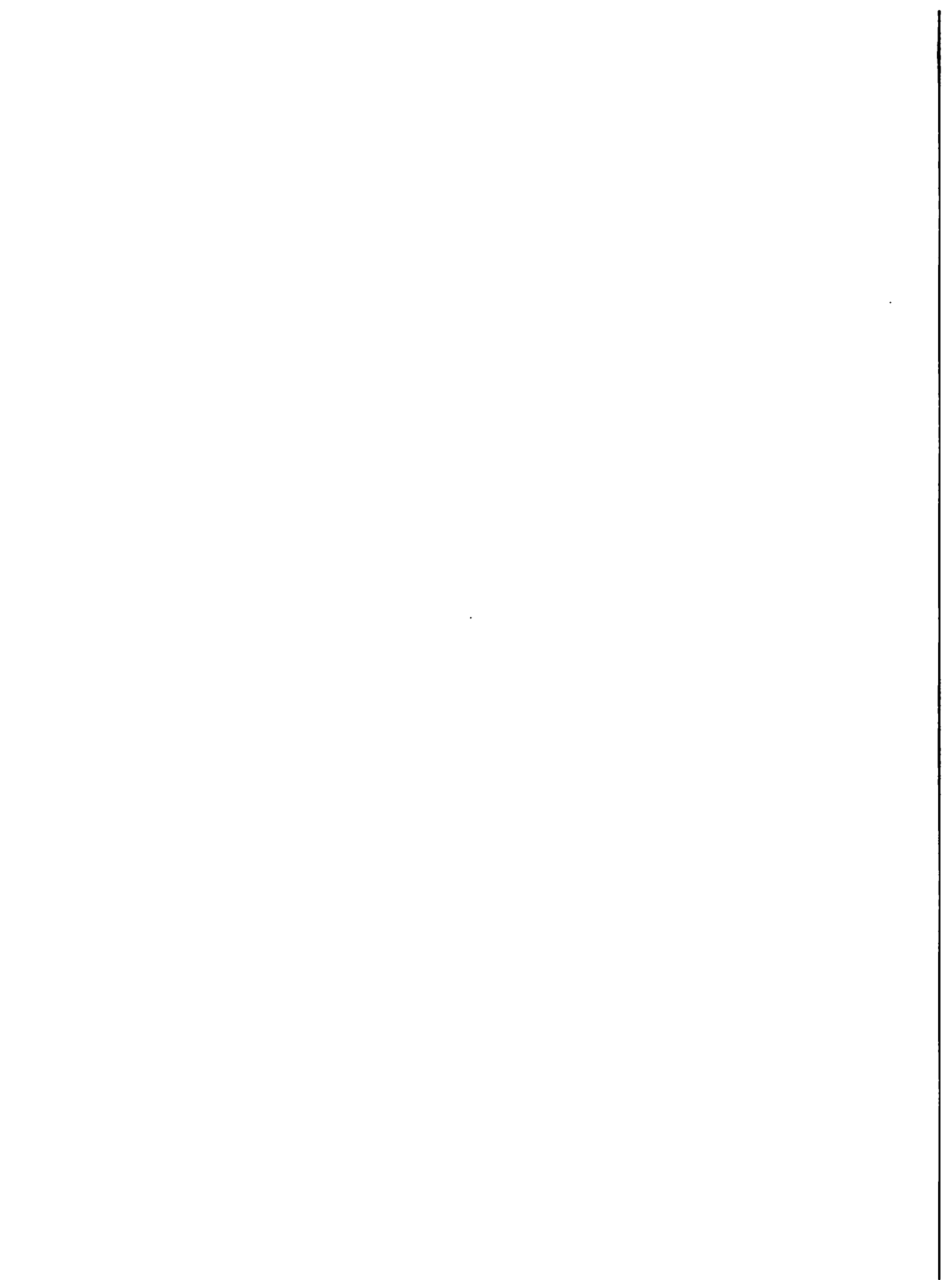
1. Raoul Colinvarx - Law of Insurance
2. M.N. Srinivasan - Law of Insurance
3. Srinivasan and Murthy - Law of Insurance

Books for Reference:

Hardy Ivany – Law of Insurance

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UNIT – I - INTRODUCTION

Meaning of concept of Insurance

Insurance is a contract, represented by a policy, in which an individual or entity receives financial protection or reimbursement against losses from an insurance company. The company pools clients' risks to make payments more affordable for the insured. Insurance is a means of protection from financial loss. It is a form of risk management primarily used to hedge against the risk of a contingent, uncertain loss.

RULES AS TO INSURANCE:

- One party assumes risk of another;
- It should be in regard to an uncertain event;
- Usually it is in relation to a future event;
- The event should be in neither parties control;
- Happening of specified event must involve some loss to assured or at least should expose him to adversity-which is in Law of insurance called risk (i.e., insurable interest).
- Former mentioned party is bound to pay to the latter-if/when event occurs.
- FAR-SIGHTED (long range) PURPOSE:
- Funds collected by Insurance Users-invested in-commerce & industry-utilized in helping form big industries-directly or through underwriting securities of co-helping commercial prosperity of nation.

LORD PETER LEVENE (Chairman-Lloyd's-2003)n -“The oil in the engine of the economy, allowing entrepreneurs to take risks, helping businesses to grow.”

PRUDENTIAL INSURANCE CO v. INLAND REVENUE COMMISSIONER-CHANNEL J. - “For consideration called premium-you secure to yourself some benefit-usually, but not necessarily the payment of a sum of money-upon happening of some event-that event involves some element of uncertainty-either-whether the event will happen or not OR uncertainty as to time at which it will happen.”

● DEPT. OF TRADE & INDUSTRY v. ST. CHRISTOPHER'S MOTORISTS' ASSOCIATION LTD - the deft undertook to provide its members with chauffeur services should they be disqualified from driving due to being convicted of having more than the permitted level of alcohol in the blood-HELD-this constituted insurance-OBSERVATION-fact that the benefits were not in money was irrelevant-there must either be the payment of a sum or some corresponding benefit-Templeman J-'In substance, there seems to me to be no difference between the defendant company paying a chauffeur on the one hand and on the other hand agreeing to pay to the individual member a sum of money which would represent the companies to him of providing himself with a chauffeur in the event of his being disabled from driving himself.'

ANSON– “All contracts of insurance are wagering contracts even thou there is an insurable interest; but they are permissible under Law”-“a wager is a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event, the consideration being either something given or promised to be given by other party in the event determining in a particular way.”

CARLILL v. CARBOLIC SMOKE BALL CO – HAWKINSURANCE J. – “Contract by which-2 persons-
holding opposite views touching the issue of a future uncertain event-agreed-dependent upon determining
of the event-that-one shall win from the other asum of money,neither contracting parties having any other
interest.”

- **TYRIE v. FLETCHER – OBSERVATION** – contract of insurance is not a wager-REASONS-(i) assured doesn’t create the risk of loss-unlike in pure wager; (ii)In pure wager (unlike in insurance contract)-interest of the contracting parties in the event is created by the fact that they have contracted to pay each other certain sum based on an event; Where as in insurance-motive for the contract-springs from the existence of something which may be lost & danger of loss to person who seeks insurance.
- **WILSON v. JONES – WILLIS J.** – “Distinction between a wagering contract and one which is not depends upon whether a person making it has or has not an interest in the subject matter of the contract.”
- **LUCENA v. CRAUFURD** – difference between wager & insurance is in the subject matter - “Wager may have any speculative chance or expectation as to subject matter; but in insurance contract a chance or expectation can’t be subject matter as it pre-supposes loss of some kind-in possession or ownership.”
- **WILLIAMS v. BALTIC INSURANCE ASSOCHN OF LONDON (1924) – ROCHE J.** – “There is nothing in the common Law of England which prohibits insurance even if no interest exists.”
- **BERESFORD v. ROYAL INSURANCE CO (1938) –OBSERVATION-** “It is a principle of public policy-that-people who enter into contractual engagements should be required to fulfil them & contracts of insurance are no exception.”
- **PATTERSON** – “A relation bet Insurance Used & event Insurance used against insurance, such that the occurrence of the event will cause substantial loss or injury of some kind to the Insurance Used.”

An entity which provides insurance is known as an insurer, insurance company, or insurance carrier. A person or entity who buys insurance is known as an insured or policyholder. The insurance transaction involves the insured assuming a guaranteed and known relatively small loss in the form of payment to the insurer in exchange for the insurer’s promise to compensate the insured in the event of a covered loss. The loss may or may not be financial, but it must be reducible to financial terms, and must involve something in which the insured has an insurable interest established by ownership, possession, or pre-existing relationship.

The insured receives a contract, called the insurance policy, which details the conditions and circumstances under which the insured will be financially compensated. The amount of money charged by the insurer to the insured for the coverage set forth in the insurance policy is called the premium. If the insured experiences a loss which is potentially covered by the insurance policy, the insured submits a claim to the insurer for processing by a claims adjuster.

Insurance involves pooling funds from many insured entities (known as exposures) to pay for the losses that some may incur. The insured entities are therefore protected from risk for a fee, with the fee being dependent upon the frequency and severity of the event occurring. In order to be an insurable risk, the risk insured against must meet certain characteristics. Insurance as a financial intermediary is a commercial enterprise and a major part of the financial services industry, but individual entities can also self-insure through saving money for possible future losses.

Risk which can be insured by private companies typically shares seven common characteristics.

1. **Large number of similar exposure units:** Since insurance operates through pooling resources, the majority of insurance policies are provided for individual members of large classes, allowing insurers to benefit from the law of large numbers in which predicted losses are similar to the actual losses. Exceptions include Lloyd's of London, which is famous for insuring the life or health of actors, sports figures, and other famous individuals. However, all exposures will have particular differences, which may lead to different premium rates.
2. **Definite loss:** The loss takes place at a known time, in a known place, and from a known cause. The classic example is death of an insured person on a life insurance policy. Fire, automobile accidents, and worker injuries may all easily meet this criterion. Other types of losses may only be definite in theory. Occupational disease, for instance, may involve prolonged exposure to injurious conditions where no specific time, place, or cause is identifiable. Ideally, the time, place, and cause of a loss should be clear enough that a reasonable person, with sufficient information, could objectively verify all three elements.
3. **Accidental loss:** The event that constitutes the trigger of a claim should be fortuitous, or at least outside the control of the beneficiary of the insurance. The loss should be pure, in the sense that it results from an event for which there is only the opportunity for cost. Events that contain speculative elements such as ordinary business risks or even purchasing a lottery ticket are generally not considered insurable.
4. **Large loss:** The size of the loss must be meaningful from the perspective of the insured. Insurance premiums need to cover both the expected cost of losses, plus the cost of issuing and administering the policy, adjusting losses, and supplying the capital needed to reasonably assure that the insurer will be able to pay claims. For small losses, these latter costs may be several times the size of the expected cost of losses. There is hardly any point in paying such costs unless the protection offered has real value to a buyer.
5. **Affordable premium:** If the likelihood of an insured event is so high, or the cost of the event so large, that the resulting premium is large relative to the amount of protection offered, then it is not likely that the insurance will be purchased, even if on offer. Furthermore, as the accounting

profession formally recognizes in financial accounting standards, the premium cannot be so large that there is not a reasonable chance of a significant loss to the insurer. If there is no such chance of loss, then the transaction may have the form of insurance, but not the substance. Calculable loss: There are two elements that must be at least estimable, if not formally calculable: the probability of loss, and the attendant cost. Probability of loss is generally an empirical exercise, while cost has more to do with the ability of a reasonable person in possession of a copy of the insurance policy and a proof of loss associated with a claim presented under that policy to make a reasonably definite and objective evaluation of the amount of the loss recoverable as a result of the claim.

6. **Limited risk of catastrophically large losses:** Insurable losses are ideally independent and non-catastrophic, meaning that the losses do not happen all at once and individual losses are not severe enough to bankrupt the insurer; insurers may prefer to limit their exposure to a loss from a single event to some small portion of their capital base. Capital constrains insurers' ability to sell earthquake insurance as well as wind insurance in hurricane zones. In the United States, flood risk is insured by the federal government. In commercial fire insurance, it is possible to find single properties whose total exposed value is well in excess of any individual insurer's capital constraint. Such properties are generally shared among several insurers, or are insured by a single insurer who syndicates the risk into the reinsurance market

Legal Principles

When a company insures an individual entity, there are basic legal requirements and regulations. Several commonly cited legal principles of insurance include:[18]

1. **Indemnity** – the insurance company indemnifies, or compensates, the insured in the case of certain losses only up to the insured's interest.
2. **Benefit insurance** – as it is stated in the study books of The Chartered Insurance Institute, the insurance company does not have the right of recovery from the party who caused the injury and is to compensate the Insured regardless of the fact that Insured had already sued the negligent party for the damages (for example, personal accident insurance)
3. **Insurable interest** – the insured typically must directly suffer from the loss. Insurable interest must exist whether property insurance or insurance on a person is involved. The concept requires that the insured have a "stake" in the loss or damage to the life or property insured. What that "stake" is will be determined by the kind of insurance involved and the nature of the property ownership or relationship between the persons. The requirement of an insurable interest is what distinguishes insurance from gambling.
4. **Utmost good faith** – (Uberrima fides) the insured and the insurer are bound by a good faith bond of honesty and fairness. Material facts must be disclosed.
5. **Contribution** – insurers which have similar obligations to the insured contribute in the indemnification, according to some method.
6. **Subrogation** – the insurance company acquires legal rights to pursue recoveries on behalf of the insured; for example, the insurer may sue those liable for the insured's loss. The Insurers can waive their subrogation rights by using the special clauses.

7. **Causa proxima, or proximate cause – the cause of loss (the peril) must be covered under the insuring agreement of the policy, and the dominant cause must not be excluded**
8. **Mitigation – In case of any loss or casualty, the asset owner must attempt to keep loss to a minimum, as if the asset was not insured.**

Risk management

Risk management is the identification, assessment, and prioritization of risks (defined in ISO 31000 as the effect of uncertainty on objectives) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities. Risk management's objective is to assure uncertainty does not deflect the endeavor from the business goals.

Risks can come from various sources including uncertainty in financial markets, threats from project failures (at any phase in design, development, production, or sustainment life-cycles), legal liabilities, credit risk, accidents, natural causes and disasters, deliberate attack from an adversary, or events of uncertain or unpredictable root-cause. There are two types of events i.e. negative events can be classified as risks while positive events are classified as opportunities. Several risk management standards have been developed including the Project Management Institute, the National Institute of Standards and Technology, actuarial societies, and ISO standards. Methods, definitions and goals vary widely according to whether the risk management method is in the context of project management, security, engineering, industrial processes, financial portfolios, actuarial assessments, or public health and safety.

Strategies to manage threats (uncertainties with negative consequences) typically include avoiding the threat, reducing the negative effect or probability of the threat, transferring all or part of the threat to another party, and even retaining some or all of the potential or actual consequences of a particular threat, and the opposites for opportunities (uncertain future states with benefits).

Certain aspects of many of the risk management standards have come under criticism for having no measurable improvement on risk; whereas the confidence in estimates and decisions seem to increase. For example, it has been shown that one in six IT projects experience cost overruns of 200% on average, and schedule overruns of 70%.

Principles of risk management[

The International Organization for Standardization (ISO) identifies the following principles of risk management:

Risk management should:

- **create value – resources expended to mitigate risk should be less than the consequence of inaction**
- **be an integral part of organizational processes**
- **be part of decision making process**
- **explicitly address uncertainty and assumptions**
- **be a systematic and structured process**

- be based on the best available information
- be tailorable
- take human factors into account
- be transparent and inclusive
- be dynamic, iterative and responsive to change
- be capable of continual improvement and enhancement
- be continually or periodically re-assessed

Life Assurance and Life Insurance

Most people do not understand the important difference between Life Assurance and Life Insurance but it's quite simple. Life Insurance insures you for a specific period of time. Then if you die whilst the policy is in force, the insurance company pays the claim.

The terms insurance and assurance are used frequently in the financial industry. Insurance provides financial coverage for unforeseen circumstances surrounding an event, such as fire, theft, or flooding. Assurance provides coverage for events that will occur, such as death. A life insurance policy, for example, provides coverage to an individual for a specified period of time. If the individual dies during that specific period, the insurance carrier will pay the amount of money agreed upon in the contract. If the insured individual lives past the specified time period, the insurance policy becomes void, and the provider is not obligated to make any payment.

A life assurance policy will always result in a payment being made because the investment is combined with the sum insured. The value of the policy also increases with time because the investment bonus is added to the policy. Therefore, in the event of the insured dying, the policy would pay out the agreed upon amount plus any bonuses that have accumulated since the policy took effect. If the policy is cancelled before the end of the specified period, the policy will retain some cash value, which relates to the investment portion bonuses. Most companies will issue penalties for cashing out on the policy before the specified time has ended.

Insurance companies usually offer both insurance and assurance policies, which tends to confuse most. Many life insurance companies offer a wide range of insurance and investment policies. These include investment funds, car insurance, pensions, investment bonds, life assurance, home insurance, and loans. Sometimes a life insurance company will brand itself a life 'assurance' company, but in this case, the two terms are used interchangeably.

Most companies in the financial service industry are aware of the confusion these two words are causing their customers. To counter this, companies now offer detailed guides to their customers containing information that satisfies customer needs and answers frequently asked questions. This has also led to an increase in the number of online guides and glossaries that offer specific information and comparisons between financial products. This information helps customers make more informed decisions when it comes to purchasing such financial products.

Key Differences Between Insurance and Assurance

The following points describe the differences between insurance and assurance:

- 1. A contract, which provides cover for an event that can happen but not necessarily, like flood, theft, fire, etc. is known as insurance. A provision for coverage of an event, whose happening is certain, such as death, is called assurance.**
- 2. While insurance is based on the principle of indemnity, assurance is a bit different, which relies on the principle of certainty.**
- 3. Insurance provides protection against an anticipated event. On the other hand, Assurance tends to provide protection against a definite event.**
- 4. In the case of insurance, the reimbursement of the loss or damage will be paid only on the occurrence of the uncertain event. Conversely, in assurance, the insurable amount is paid either on the death of insured or at the maturity of the policy.**
- 5. The duration of insurance is only one year, in essence, the policy is renewed on the expiry of the term. On the flip side, assurance is for the long term, which operates over a number of years.**
- 6. Insurance, covers general insurance, i.e. fire insurance, marine insurance or miscellaneous insurance. Assurance covers life insurance, such as whole life insurance, term life insurance and annuity.**
- 7. Insurance aims at identifying the insured against any risk. On the contrary, the main purpose of assurance is to assure payment, on the happening of the specified event.**
- 8. Insurance policy prevents the specified risk or provides protection against it. Unlike assurance, wherein the policy is taken against a definite event.**
- 9. In insurance, the insurer commits to reinstate the insured to his/her previous position; that was occupied before the event took place. In contrast, assurance commits to pay the sum assured, when the event takes place.**
- 10. In insurance, it is the duty of the insured to pay premiums at regular intervals so as to receive indemnity against risk. As opposed to assurance, in which the insured undertakes timely payment of premium, in return for the benefit, on the happening of the event covered.**

Insurance and assurance are quite similar, but there is thin lines of difference between them, as in insurance provide protection to the holder to policy, from the incidents that are likely to happen, and they are compensated when the event occurs. On the other hand, assurance covers those incidents whose happening is unquestionable, but their time of occurrence is uncertain.

Insurance and contract linkage

The following principles generally apply in all insurance:

- **Insurable interest:** a principle of insurance stating that the insurance proposer has to have a legal and financial relationship with the subject matter of insurance. Insurable interest is a fundamental principle of insurance requiring that the person wishing to take out insurance must be legally entitled to insure the article, or the event, or the life.
- **Utmost good faith:** In the insurance market, the doctrine of utmost good faith requires that the party seeking insurance discloses all relevant personal information. **Proximate cause:** Proximate cause is the initial act which sets off a natural and continuous sequence of events that produces injury. In the absence of the initial act which produces injury, no injury would have resulted. Any time a person acts, it causes a series of natural and continuous events to occur.
- **Indemnity:** a principle of insurance promising to place one who has suffered loss in almost the same financial position as before the loss. Indemnity signifies protection against loss, and it therefore reflects the intention of the insured to secure against such loss without seeking any profit from it.
- **Contribution clause:** the basis: if any loss or damage is insured by any other policy or policies, whether effected by the insured or any other persons, the insurer will only pay the amount in excess of the amount payable under any other policies.
- **Subrogation:** a principle of insurance stating that that in case of a third party causing damage to the subject matter insured then it is the right of the insurance company to step in the shoes of insured and claim recovery from the third party after having compensated the insured.
- **The Making of the contract:** It is necessary to have a clear agreement incorporating the main features of the contract.
- **The Extent of the insured's duty:** The insured must disclose all facts which are known to the insured and must not make any misrepresentation with regard to any known facts. • **The Policy:** Policies can be classified on the basis of the description of the subject matter or the sum payable on loss. The rights of the parties are determined by the terms of the policy formulated by insurer.
- **Burden of the proof:** It is the duty of the insured to prove that a loss is caused by the peril insured against but the insured is not required to prove the cause of the loss with absolute certainty. The insured's duty is only to establish a prima facie case.
- **Process of Conventional Insurance**
- **Conventional insurance companies** are generally organized as either a stock company or a mutual insurer. The stock company is a corporation owned by shareholders. The objective of the stock insurer is to produce a profit for the holders of the capital stock. Management of the stock company rests with the shareholders, who elect a board of directors that then elects the company's executive officers.

Mutual Insurers in contrast, are owned by the policyholders. The objective of this type of organization is to minimize the cost of the insurance product to the policyholders. Mutual's pay their policyholders dividends based on the company's performance, so their policies are participating in nature. This implies that if the cost of providing insurance declines, policyholder dividends will increase. The process of conventional insurance may be described in the following steps:

Identify insurable risks:

There must be a large number of similar risks so that the likelihood of a claim can be spread among other policyholders. It must be possible for insurers to calculate the chance of loss so that a premium can be set which matches the risk. Conventionally insurance companies insure pure risks. They do not insure speculative risks. Further there are some pure risks that private insurers do not insure. A loss exposure must meet certain criteria in order to be considered insurable; these may be summarized as below:

There must be a large number of homogeneous exposure units so that losses can be predicted based on the Law of Large Numbers.

The losses that occur should happen accidentally and unintentionally. Since the Law of Large Numbers is based on random events, this is an important requirement.

The circumstances of the loss should be easily identifiable.

The probability of a loss must be calculable.

The loss should not be catastrophic to the insurer.

Compensation must relate to actual loss; it cannot cover the loss of sentimental value, for example.

The company must be able to develop a premium that is economically feasible.

Estimate expected losses:

It is important for the profitability of insurance companies that actual losses paid are close to expected losses. The goal of the insurer when developing an insurance premium rate (price of the insurance product) is to charge enough to cover claims and administrative expenses and still make a profit. It seeks to estimate expected or probable losses with the help of actuarial tables and statistics.

Affordable Premium:

If the likelihood of an insured event is so high, or the cost of the event so large, that the resulting premium is large relative to the amount of protection offered, it is not likely that anyone will buy insurance, even if on offer. Further, as the accounting profession formally recognizes in financial accounting standards, the premium cannot be so large that there is not a reasonable chance of a significant loss to the insurer. If there is no such chance of loss, the transaction may have the form of insurance, but not the substance.

Estimate investment income:

When pricing insurance, the insurer also takes into consideration the investment income that will be earned on the premium paid, Thus if interest rates are expected to be high and investment income is expected to be large, a lower insurance rate will be charged. If interest rates are expected to drop, investment income is expected to be less and rates will be higher.

Cover note and slip

Insurance companies issue a cover note in order to provide an individual with proof of insurance before all the insurance paperwork has been processed. During this time the insurer may continue to evaluate the risks associated with insuring the holder of the cover note, and the cover note will continue to serve as the insurer's proof that he or she has purchased coverage until the insurer issues the policy document and certificate of insurance. In general, the cover note provides the same level of coverage as the full insurance policy, though insurers may place some restrictions while they make any final determinations on the risks associated with the insurance policy.

How long the cover note lasts depends on how quickly the insurance company can process the creation of a new policy, and whether the insurer has any problems with the policy coverage in between selling the policy and issuing the policy document. If the cover note expires before the permanent policy documentation has been received, the individual will either be issued an extension of the cover note automatically or can request that one be sent.

Insurance companies may allow someone who has recently purchased an insurance policy but who does not have a formal policy to cancel the purchase. This allows someone who only holds a cover note to receive a refund, provided that a claim on the policy has not been made during the cancelation period.

Some insurance companies do not issue cover notes, and instead issue a certificate of insurance when the policy is purchased and accepted.

Slip - The piece of paper containing all the pertinent information regarding the risk and the insurance terms and conditions that the broker submits to the underwriter at Lloyd's of London. Should the underwriter decide to participate on the risk, the percentage and pricing are recorded in addition to the underwriter's signature. The process is then repeated until the slip is completely filled. The slip forms the basis for the insurance coverage contract and, in the event of a difference in wording between the slip and the policy issued from it, the slip supersedes the policy as the binding insurance document.

UNIT – II

FIRE INSURANCE CONTRACT

Meaning of the term 'Fire'

Fire insurance covers damage or loss to a property because of fire. It is a specific form of insurance in addition to homeowner's or property insurance, and it covers the cost of replacement and repair or reconstruction above what the property insurance policy covers. Fire insurance policies cover damage to the property, and may also cover damage to nearby structures, personal property and costs because of not having the capacity to live in or use the property if damages occur.

!—break—Homeowners should document the property and its contents, which makes it easier to determine the value of items damaged or lost due to a fire. A fire insurance policy may contain exclusions based on the cause of the fire, such as not covering a fire caused by war.

The policy typically includes additional coverage against smoke or water damage due to a fire. A fire insurance policy is usually set up for one year. The policyholder may renew the policy according to the terms of the policy.

Some standard homeowner's insurance policies include fire coverage, but others may not. This coverage may need to be purchased separately, particularly if the property contains valuable items that are excluded from coverage. The insurance company's liability is limited by the policy value and not by the extent of damage or loss sustained by the property owner.

Fire insurance covers a policyholder against fire loss or damage brought about by the ignition of fire, electricity, lightning or explosion of gas, natural disasters, and bursting and overflowing of a water tank or pipes.

Most policies cover a home regardless of whether the fire originates from within the home or from outside the home. Coverage limits are dependent on the cause of the fire. The policy reimburses the policyholder on a replacement-cost basis in the event the property is lost, or on an actual cash value basis for damages.

If the home is considered a total loss, the insurance company may reimburse the owner for the current market value. If most of the possessions were destroyed in the fire, typically the insurance company offers a market value compensation for each item. For example, if a policy insures a home for \$350,000, the contents are usually covered for at least 50-70% of the policy value, or \$175,000 to \$245,000. Many policies limit how much insurance companies pay for items such as luxury paintings, diamond rings or fur coats.

A policyholder should check his home's value every year to determine if there is a need to increase coverage. He can set coverage limits using factors such as the value of the home and its contents. However, a policy may offer lower coverage limits for certain items, in which case it helps to purchase additional coverage for luxury items such as jewellery, art and other assets.

Most successful fire insurance business-only thru brokers and branches of foreign co of Britain, America and Japan-Alliance British and Foreign Fire Insurance Co 1st established agency office at Madras-probably this agency office was 1st to issue a fire policy in India-later other offices like Royal Insurance co. Liverpool and London and Globe, North British and Commercial Union-started many branches at Bombay, Calcutta and other presidency towns-slowly business spread to moffusal areas too-during last century-many fire offices opened-but-closed down shortly thereafter.

Fire insurance being a contract to indemnify Insurance Used against insurance loss by fire-doesn't extend to loss companies by any companies other than fire.

Fire-usual-meaning (i.e.) to constitute fire-there must be ignition/combustion (i.e., burning-developing of light and heat from the chemical combination of a substance with oxygen).

Illus: (a) Chemical actions-which don't result in ignition-thou their effects correspond to fire-not loss by fire;

(b)Lightning may be a form of fire-but loss by lightning unaccompanied by ignition-not loss by fire;

(c)Damage by excessive heat (of sun) unaccompanied by ignition-not covered by fire policy.

American case: Distinguishes bet-Hostile fire and Friendly fire-

a) Friendly fire – contained in the usual receptacle or ordinary circumstances (Eg: Fire in a stove; fire place)-then Insurance User won't be liable for damage companies;

b) Hostile fire – when friendly fire transgresses its limits-treated as hostile-insurance co will be liable.

CASE: HARRIS v. POLAND –Plaintiff took a comprehensive policy-insurance for her jewels inter alia against insurance loss by fire-during summer she kept jewels and currency in a newspaper and placed them for safety in the fire place to prevent burglars from noticing them-later forgetting to remove them she lighted fire-consequences they were burnt/damaged/insurance repudiated their liability-contended that loss wasn't covered companies damage done by fire contained in the place where it was intended to be – HELD-Underwriter liable-ATKIN J.-'Risk Insurance Used against insurance included risk of Insurance Used part coming unintentionally in contact with fire and being thereby damaged/destroyed-made no difference whether fire came to Insurance Used party or the Insurance Used party came to fire'.

If fire companies deliberately by Insurance Used or at his instigation or with his connivance then insurance User not liable.

LOSS BY EXPLOSION: Not include in ordinary policy; In considering how far loss by explosion covered by insurance contract-2 kinds (explosions) distinguished:-

i. Explosive substance-containing explosions (Eg: Gunpowder/gas contact fire);

ii. Explosions contained by application of fire to substance not itself explosive (Eg: Boiler).

EXPLOSION OF GUNPOWDER/GAS: Explosion contained by explosive substance coming into contact with fire is a fire of inconceivable rapidity-hardly can be considered as 'Fire' in the popular sense of the term.

CASE: EVEREST v. LONDON ASSURANCE CO –Plaintiff took out a fire policy on buildings-a quantity of gunpowder belonging to a gunpowder factory of 3rd person ½ mile away from Insurance Used pty ignited & exploded-consequences windows & window frames shattered & structure was damaged generally due to atmospheric pressure companies by explosion –HELD-Insurance co not liable-BYLES J.-'Loss wasn't companies by fire within meaning of policy-house itself wasn't burnt-was damageand due to concussion of atmosphere.'

So-became a practice amongst Insurance Users-to deal especially in their contracts with-losses by explosions-expressing with precision extent of their liability.

EXPLOSION OF BOILERS: Explosion companies by application of fire-in ordinary course-to a substance not of itself explosive (Eg: Boiler used to generate steam) not loss by fire.

If explosion contained by fire within contractual meaning-loss of boiler'd be loss by fire-i.e.-if in course of fire boiler is companiesd to burst-loss of boiler is loss by fire-also-loss companiesd by that explosion in premises would be equally covered.

4. Floating Policy:

A floating policy is taken up to cover the risk of goods lying at different places. The goods should belong to the same person and one policy will cover the risk of all these goods. This policy is useful to those businessmen who are engaged in import and export of goods and the goods lie in warehouses at different places. The premium charged is generally the average of the premium that would have been paid, if specific policies would have been taken for all these goods. Average clause always applies to these policies.

5. Comprehensive Policy:

A policy may be taken up to cover up all types of risks, including fire. A policy may be issued to cover risk like fire, explosion, lightening, burglary, riots, labour disturbances etc. This is called a comprehensive policy or all risk policy.

6. Consequential Loss Policy:

Fire may dislocate work in the factory. Production may go down while the fixed expenses continue at the same rate. A policy may be taken up to cover up consequential loss or loss of profits. The loss of profits is calculated on the basis of loss of sales. A separate policy may be taken up for standing charges also.

7. Replacement Policy:

The underwriter provides compensation on the basis of market price of the property. The amount of compensation is calculated after taking into account the amount of depreciation. A replacement policy provides that compensation will be according to the replacement price. The new asset should be similar to the one which has been lost. The amount of compensation will depend upon the market price of the new assets so that it is replaced without additional cost to the insured.

Perils [Insured in Fire insurance - . A specific risk or cause of loss covered by an insurance policy, such as a fire, windstorm, flood, or theft. A named-peril policy covers the policyholder only for the risks named in the policy in contrast to an all-risk policy, which covers all causes of loss except those specifically excluded. Fire and special perils policy is an insurance contract that safeguards the insured against unforeseen contingency caused by accidental fire, lightning, explosion/implosion, destruction or damage caused by aerial devices, man made perils in the form of riots, strike etc, natural calamities like storm, cyclone, flood etc, damage caused by impact by a rail or a road vehicle, damage caused by landslide or subsidence, peril caused by pollution and contamination, bursting and/or overflowing of water tanks, apparatus and pipes, missile testing operations, leakage from automatic sprinkler installations and bush fire. It is a contract wherein the insurer guarantees to pay for the loss and damage happen to the property for the specified

period of time (normally the fire policy is a one year policy and renewable annually). The valuation of assets is made according to the market value. The value factors in both the depreciation as well as the appreciation of assets due to inflation.

What does the Standard Fire and Special Perils Insurance cover

- **Fire**
- **Lightning**
- **Explosion / implosion**
- **Aircraft damage**
- **Riot, strike and malicious damage (RSMD)**
- **Storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation (STFI)**
- **Impact damage**
- **Subsidence and landslide including rockslide**
- **Bursting and/or overflowing of water tanks, apparatus and pipes**
- **Missile testing operations**
- **Leakage from automatic sprinkler installations**
- **Bush fire**

What does the Standard Fire and Special Perils Insurance not cover?

- **Terrorism (unless add on cover is chosen)**
- **Earthquake (Fire & Shock) (unless add on cover is chosen)**
- **Spontaneous combustion (unless add on cover is chosen)**
- **Burning of property by order of any Public Authority**
- **Property undergoing any heating or drying process**
- **Explosion of boilers (other than domestic boilers)**
- **Total or partial cessation of work**
- **Permanent or temporary dispossession by order of Government**
- **Burglary, House breaking, theft, etc**
- **Normal cracking or settlement or bedding down of new structures**
- **War or war like operations, Nuclear perils**
- **Pollution or contamination**
- **Over-running, excessive pressure, short circuiting etc**

What are the add-on covers under Standard Fire and Special Perils Insurance?

- Terrorism
- Earthquake Fire and Shock
- Spontaneous combustion
- Removal Of Debris (exceeding 1% of claim amount)
- Architects, Surveyors, Consulting Engineers fees (exceeding 3% of claim amount)
- Spoilage Material Damage Cover
- Leakage and Contamination Cover
- Deterioration of stock in cold storage premises
- Molten metal spillage Cover
- Forest fire
- Impact damage due to Insured's own Rail/Road vehicles
- Omissions to insure additions, alterations or extensions.
- Temporary removal of stock
- Loss of rent
- Start-up expenses

What are the key advantages of Standard Fire and Special Perils Insurance?

- A comprehensive policy which covers all tangible assets normally exposed to the risk of fire and natural perils.
- Wide scope of cover at reasonable cost
- A host of add-on covers to opt from depending on the individual requirement.
- Optional deletion of STFI & RSMD group of perils.
- Multiple options for stocks to cover fluctuations and/or multiple locations – floater policy, declaration policy and floater declaration policy

Scope of applicability of special principles to contract of fire insurance

FUNDAMENTAL PRINCIPLES OF FIRE INSURANCE

The following are the fundamental principles essential for a valid contract of fire insurance.

A contract of indemnity : Its object is to place insured as far as possible in the same financial position after a loss as that occupied immediately before the loss. The insured can recover only the amount of actual loss subject to the sum assured.

Insurable Interest : In fire insurance the insurable interest must exist at the time of effecting the insurance as well as at the time of the loss. The interest, however, may be legal or equitable or may arise under a contract of purchase or sale. The following have been held to have insurable interest in the subject matter :

Owner

Mortgagee

Trustee

Executor

Warehouseman

Common

Bailee

Pledgee

Person in lawful possession

Finder

Insurer

Commission Agent where the agency is coupled with interest and

Tenants who are liable to pay rent after a fire. It should however, be noted that persons can insure only to the extent of such limited interest.

Contract of Good Faith : The contract of fire insurance is a contract of *Uberrimae fidei* i.e., a contract based upon absolute good faith, and therefore, the insured must make full and detailed disclosure of all material facts likely to affect the judgement of fire officials in determining the rates of premium or deciding whether the proposal should be accepted. The description of the property, when asked for, should be correctly give, and all information that may be required as to the class of goods and articles that are kept on the premises or in the surrounding neighbourhood, should be accurately supplied.

Loss Through Fire : Loss resulting from fire of some other cause which is the proximate cause is the risk covered under a fire insurance contract. But where the fire is caused by the insured himself or with his connivance or by the operation of a peril specifically excluded under the policy like earthquake, the loss will not be covered.

A Contract from Year to Year : A fire insurance policy is usually for one year only and can be renewed after that.

Principles of Subrogation and Contribution : Subrogation is a doctrine applicable to both fire and marine insurance by which the insurer or underwriter, becomes entitled to on his paying compensation to the insure, to claim the advantage of every right of the insured against third parties who may be proved to be responsible for that loss, owing to such third parties negligence, default etc.

Where the subject matter has been insured with more than one insurer, each insurer has to meet the loss only rateably. If he has paid more than his share of loss, he is entitled to recover the excess paid from his co insurers. Thus, the principle of contribution applies in the case of fire insurance.

Standard Fire Policy

STANDARD FIRE AND SPECIAL PERILS POLICY (MATERIAL DAMAGE) IN CONSIDERATION OF the Insured named in the Schedule hereto having paid to the Liberty Videocon General Insurance Company Limited (hereinafter called the Company) the full premium mentioned in the said schedule, **THE COMPANY AGREES,** (Subject to the Conditions and Exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the Property insured described in the said Schedule or any part of such Property be destroyed or damaged by any of the perils specified hereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the premium required for the renewal of the policy, the Company shall pay to the Insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof: **I Fire** Excluding destruction or damage caused to the property insured by a) i) its own fermentation, natural heating or spontaneous combustion. ii) its undergoing any heating or drying process. b) burning of property insured by order of any Public Authority. **II Lightning** **III Explosion/Implosion** Excluding loss, destruction of or damage a) to boilers (other than domestic boilers), economizers or other vessels, machinery or apparatus(in which steam is generated) or their contents resulting from their own explosion/implosion, b) caused by centrifugal forces. **IV Aircraft Damage Loss,** Destruction or damage caused by Aircraft, other aerial or space devices and articles dropped therefrom excluding those caused by pressure waves.

V Riot, Strike and Malicious Damage Loss of or visible physical damage or destruction by external violent means directly caused to the property insured but excluding those caused by a) total or partial cessation of work or the retardation or interruption or cessation of any process or operations or omissions of any kind. b) Permanent or temporary dispossession resulting from confiscation, commandeering, requisition or destruction by order of the Government or any lawfully constituted Authority. c) Permanent or temporary dispossession of any building or plant or unit or machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery or prevention of access to the same. d) Burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of public peace) in any malicious act. **Terrorism Damage Exclusion Warranty** This Policy excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this exclusion, an act of terrorism means an act or series of acts, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), or unlawful associations, recognized under Unlawful Activities (Prevention) Amendment Act, 2008 or any other related and applicable national or state legislation formulated to combat unlawful and terrorist activities in the nation for the time being in force, committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear for such purposes. This exclusion also includes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting

from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above. VI Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation Loss, destruction or damage directly caused by Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood or Inundation excluding those resulting from earthquake, Volcanic eruption or other convulsions of nature. (Wherever earthquake cover is given as an "add on cover" the words "excluding those resulting from earthquake, volcanic eruption or other convulsions of nature" shall stand deleted.) VII Impact Damage Loss of or visible physical damage or destruction caused to the property insured due to impact by any Rail/Road vehicle or animal by direct contact not belonging to or owned by a) the Insured or any occupier of the premises or b) their employees while acting in the course of their employment. VIII Subsidence and Landslide including Rock slide Loss, destruction or damage directly caused by Subsidence of part of the site on which the property stands or Land slide/Rock slide excluding: a) the normal cracking, settlement or bedding down of new structures b) the settlement or movement of made up ground c) coastal or river erosion d) defective design or workmanship or use of defective materials e) demolition, construction, structural alterations or repair of any property or groundworks or excavations. IX Bursting and/or overflowing of Water Tanks, Apparatus and Pipes X Missile Testing operations XI Leakage from Automatic Sprinkler Installations Excluding loss, destruction or damage caused by a) Repairs or alterations to the buildings or premises b) Repairs, Removal or Extension of the Sprinkler Installation c) Defects in construction known to the Insured. XII Bush Fire Excluding loss, destruction or damage caused by Forest Fire.

PROVIDED that the liability of the Company shall in no case exceed in respect of each item the sum expressed in the said Schedule to be insured thereon or in the whole the total Sum Insured hereby or such other sum or sums as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Company. (A) GENERAL EXCLUSIONS 1. This Policy does not cover (not applicable to policies covering dwellings) Excess applicable will be as mentioned in the policy schedule. The Excess shall apply per event per insured. 2. Loss, destruction or damage caused by war, invasion, act of foreign enemy hostilities or war like operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, rebellion, revolution, insurrection or military or usurped power. 3. Loss, destruction or damage directly or indirectly caused to the property insured by a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel b) the radio active toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof 4. Loss, destruction or damage caused to the insured property by pollution or contamination excluding a) pollution or contamination which itself results from a peril hereby insured against. b) any peril hereby insured against which itself results from pollution or contamination 5. Loss, destruction or damage to bullion or unset precious stones, any curios or works of art for an amount exceeding Rs.10000/-, goods held in trust or on commission, manuscripts, plans, drawings, securities, obligations or documents of any kind, stamps, coins or paper money, cheques, books of accounts or other business books, computer systems records, explosives unless otherwise expressly stated in the policy. 6. Loss, destruction or damage to the stocks in Cold Storage premises caused by change of temperature. 7. Loss, destruction or damage to any electrical machine, apparatus, fixture, or fitting arising from or occasioned by over-running, excessive pressure, short circuiting, arcing, self heating or leakage of electricity from whatever cause (lightning included)

provided that this exclusion shall apply only to the particular electrical machine, apparatus, fixture or fitting so affected and not to other machines, apparatus, fixtures or fittings which may be destroyed or

damaged by fire so set up. 8. Expenses necessarily incurred on (i) Architects, Surveyors and Consulting Engineer's Fees and (ii) Debris Removal by the Insured following a loss, destruction or damage to the Property insured by an insured peril in excess of 3% and 1% of the claim amount respectively. 9. Loss of earnings, loss by delay, loss of market or other consequential or indirect loss or damage of any kind or description whatsoever. 10. Loss, or damage by spoilage resulting from the retardation or interruption or cessation of any process or operation caused by operation of any of the perils covered. 11. Loss by theft during or after the occurrence of any insured peril except as provided under Riot, Strike, Malicious and Terrorism Damage cover. 12. Any Loss or damage occasioned by or through or in consequence directly or indirectly due to earthquake, volcanic eruption or other convulsions of nature. 13. Loss or damage to property insured if removed to any building or place other than in which it is herein stated to be insured, except machinery and equipment temporarily removed for repairs, cleaning, renovation or other similar purposes for a period not exceeding 60 days. (B) GENERAL CONDITIONS 1. THIS POLICY shall be voidable in the event of mis-representation, mis-description or non-disclosure of any material particular. 2. All insurances under this policy shall cease on expiry of seven days from the date of fall or displacement of any building or part thereof or of the whole or any part of any range of buildings or of any structure of which such building forms part. PROVIDED such a fall or displacement is not caused by insured perils, loss or damage which is covered by this policy or would be covered if such building, range of buildings or structure were insured under this policy. Notwithstanding the above, the Company subject to an express notice being given as soon as possible but not later than seven days of any such fall or displacement may agree to continue the insurance subject to revised rates, terms and conditions as may be decided by it and confirmed in writing to this effect. 3. Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the Insured, before the occurrence of any loss or damage, obtains the sanction of the Company signified by endorsement upon the policy by or on behalf of the Company :- a) If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by Insured Perils. b) If the building insured or containing the insured property becomes unoccupied and so remains for a period of more than 30 days (Not applicable for Dwellings). c) If the interest in the property passes from the insured otherwise than by will or operation of law. 4. This insurance does not cover any loss or damage to property which, at the time of the happening of such loss or damage, is insured by or would, but for the existence of this policy, be insured by any marine policy or policies except in respect of any excess beyond the amount which would have been payable under the marine policy or policies had this insurance not been effected. 5. This insurance may be terminated at any time at the request of the Insured, in which case the Company will retain the premium at customary short period rate for the time the policy has been in force. This insurance may also at any time be terminated at the option of the Company, on 15 days' notice to that effect being given to the Insured, in which case the Company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation. 6. (i) On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company a) A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items or property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind. b) Particulars of all other insurances, if any The Insured shall also at all times at his own expense produce,

procure and give to the Company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents, investigation reports (internal/external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together

with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith. No claim under this policy shall be payable unless the terms of this condition have been complied with (ii) In no case whatsoever shall the Company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration; it being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder. 7. On the happening of loss or damage to any of the property insured by this policy, the Company may a) enter and take and keep possession of the building or premises where the loss or damage has happened. b) take possession of or require to be delivered to it any property of the Insured in the building or on the premises at the time of the loss or damage. c) keep possession of any such property and examine, sort, arrange, remove or otherwise deal with the same. d) sell any such property or dispose of the same for account of whom it may Concern. The powers conferred by this condition shall be exercisable by the Company at any time until notice in writing is given by the insured that he makes no claim under the policy, or if any claim is made, until such claim is finally determined or withdrawn, and the Company shall not by any act done in the exercise or purported exercise of its powers hereunder, incur any liability to the Insured or diminish its rights to rely upon any of the conditions of this policy in answer to any claim. If the insured or any person on his behalf shall not comply with the requirements of the Company or shall hinder or obstruct the Company, in the exercise of its powers hereunder, all benefits under this policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Company whether taken possession of by the Company or not. 8. If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the Insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage be occasioned by the willful act, or with the connivance of the Insured, all benefits under this policy shall be forfeited. 9. If the Company at its option, reinstate or replace the property damaged or destroyed, or any part thereof, instead of paying the amount of the loss or damage, or join with any other Company or Insurer(s) in so doing, the Company shall not be bound to reinstate exactly or completely but only as circumstances permit and in reasonably sufficient manner, and in no case shall the Company be bound to expend more in reinstatement than it would have cost to reinstate such property as it was at the time of the occurrence of such loss or damage nor more than the sum insured by the Company thereon. If the Company so elect to reinstate or replace any property the insured shall at his own expense furnish the Company with such plans, specifications, measurements, quantities and such other particulars as the Company may require, and no acts done, or caused to be done, by the Company with a view to reinstate or replace shall be deemed an election by the Company to reinstate or replace. If in any case the Company shall be unable to reinstate or repair the property hereby insured, because of any municipal or other regulations in force affecting the alignment of streets or the construction of buildings or otherwise, the Company shall, in every such case, only be liable to pay such sum as would be requisite

to reinstate or repair such property if the same could lawfully be reinstated to its former condition. 10. If the property hereby insured shall at the breaking out of any fire or at the commencement of any destruction of or damage to the property by any other peril hereby insured against be collectively of greater value than the sum insured thereon, then the Insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition. 11. If at the time of any loss or damage happening to any property hereby insured there be any other subsisting insurance or insurances, whether effected by the Insured or by any other person or persons covering the same property, this Company shall not be liable to pay or contribute more than its rateable proportion of such loss or damage. 12. The Insured shall at the expense of the Company do and concur in doing, and permit to be done, all such acts and things as may be necessary or reasonably required by the Company for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Company shall be or would become entitled or subrogated, upon its paying for or making good any loss or damage under this policy, whether such acts and things shall be or become necessary or required before or after his indemnification by the Company. 13. If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing.

by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy. It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained. 14. Every notice and other communication to the Company required by these conditions must be written or printed. 15. At all times during the period of insurance of this policy the insurance cover will be maintained to the full extent of the respective sum insured in consideration of which upon the settlement of any loss under this policy, pro-rata premium for the unexpired period from the date of such loss to the expiry of period of insurance for the amount of such loss shall be payable by the insured to the Company. The additional premium referred above shall be deducted from the net claim amount payable under the policy. This continuous cover to the full extent will be available notwithstanding any previous loss for which the company may have paid hereunder and irrespective of the fact whether the additional premium as mentioned above has been actually paid or not following such loss. The intention of this condition is to ensure continuity of the cover to the insured subject only to the right of the company for deduction from the claim amount, when settled, of pro-rata premium to be calculated from the date of loss till expiry of the policy. Notwithstanding what is stated above, the Sum Insured shall stand reduced by the amount of loss in case the insured immediately on occurrence of the loss exercises his option not to reinstate the sum insured as above.

'Average' in Fire Insurance Contract.

The standard Average Clause The customary definition reads as follows: "If the property insured is, at the commencement of any damage to such property by any peril insured against, collectively of greater value than the sum insured thereon, then the insured shall be considered as being their own insurer for the difference and shall bear a rateable (proportional) share of the loss accordingly. Every item, if more than one, shall be separately subject to this condition". This clause is one of the Specific Conditions of all Fire and associated perils class of policies, for example:

* Fire Policy

* Buildings Combined

* Office Contents

* Business Interruption

* Domestic House Owners

* Domestic House Contents Some Accident class policies may also contain the average clause, such as:

* Business All Risks, applicable to general unspecified items with a collective sum insured *Personal All Risks, applicable to general unspecified items with a collective sum insured *Electronic Equipment, applicable to general unspecified items with a collective sum insured.

This condition would normally not apply to policies written on a "first loss" basis, like Theft/ Burglary, Money and Deterioration of Stock. Glass policies will, however, definitely have the average clause. When insurance is arranged on an "agreed value" basis, the average condition will not apply to such items. In the light of the very onerous duty to give proper advice to clients in regard to the dangers of under-insurance, it is recommended that an explanatory note and a simple example calculation be incorporated in all new business covering letters and in every amendment covering letter (see below).

MACAURA v. NORTHERN ASSURANCE CO LTD. – LORD SIMMONS –HELD-fire insurance policy not aleatory contract-it is a contract of indemnity-REASON-assured must prove interest (in party) at time of loss.

ASSIGNMENT OF FIRE INSURANCE POLICIES:

Assignment of fire insurance policies was first governed by S.15 of The Policies of Insurance (Marine & Fire) Assignment Act, 1866-re-enacted with modifications as-S.135 TP Act, 1882-amended by TP (Amendment) Act, 1900.

This section repealed & replaced by S.3 TP (Amendment) Act, 1944.

Assignee to claim under a fire insurance policy must prove two conditions:-that

1. There is a valid assignment of policy in his favour;
2. Party in subject-matter Insurance Used has been vested in him on date of assignment.

When neither assured nor assignee can claim: If loss occurs after assignment of policy sans transfer of subject matter or vice versa. Insurance contracts being contracts of indemnity-i.e. compensation based on loss suffered neither assignee nor assured can claim from insurance company. As without interest in subject matter having merely the policy or only partly without policy. No loss can be suffered without loss as nothing to be indemnified.

When the property is transferred to a person along with assignment of policy-in such transferee, assignee becomes vested-all rights of suing insurance company as he will get all the claim and rights which assignor had on date of assignment.

English Law:

CASE: RAYNER v. PRESTON - House was Insurance Used by vendor-after date of contract for sale, but before completion of sale-house burnt down-vendor received insurance amount-vendee sued vendor to recover the insurance amount-HELD-(BY MAJ)-fire insurance policy doesn't run with the land-so-purchaser can't recover from vendor-

Insurance company can compel assured (vendor) to refund amount on principle of indemnity-

JAMES L.J. (DISSENTING VIEW)-Fire insurance policy runs with land & annures to the benefit of the purchaser-relationship between vendor & vendee is truly that of trustee & beneficiary. So vendor should keep the insurance amount as trustee for purchaser. This is a universal rule of equity.

S.47 of English TP Act, 1925-gives statutory recognition to the afore said dissenting opinion of James L.J.- as per section-'Vendor is liable to pay insurance amount to purchaser-if loss occurs after contract for sale.'

India: S.54-TP Act, 1882-'A contract of sale by itself doesn't create any interest/charge with reference to property'- in this sense it makes a departure from Eng Law (according to which vendee acquires an equitable estate);

Therefore S.49: Where immovable property transferred for consideration & such property or part thereof is Insurance Used on date of transfer-against insurance loss/damage by fire-in case of loss/damage (in the absence of contract to contrary) transferee may require any money which transferor received under policy OR so much thereof as may be

Rules:

- a) Absolute transfer of property + assignment of policy-then-transferee alone can claim;
- b) Where no assignment of policy-only transfer of pty-neither party can claim;
- c) Where transfer is of property (sans consideration)-without assignment of policy-&-transferor still has interest in the property-transferor alone can claim benefit of policy-eg: where transfer is by way of mortgage or lease-transferor still has interest in property-if policy unassigned-transferor alone can claim under policy.

Transferee without remedy: S.49 won't apply in the following circumstances:-

- i. Where transferor doesn't actually receive money under policy;
- ii. Gratuitous transfer;
- iii. There is a contract to the contrary.

Transferor: (a) If total assignment of property Insurance Used against insurance fire-assignor or transferor can't recover on the policy for himself-cause-his interest in the property has ceased (on transfer/assignment of property);

(b) If assignment of property is partial-transferor can recover from Insurance User-for his own benefit ONLY to the extent of his (remaining) interest in the property.

UNIT - III

MARINE INSURANCE

Marine insurance covers the loss or damage of ships, cargo, terminals, and any transport or cargo by which property is transferred, acquired, or held between the points of origin and final destination. Cargo insurance is a sub-branch of marine insurance, though Marine also includes Onshore and Offshore exposed property, (container terminals, ports, oil platforms, pipelines), Hull, Marine Casualty, and Marine Liability. When goods are transported by mail or courier, shipping insurance is used instead.

Maritime insurance was the earliest well-developed kind of insurance, with origins in the Greek and Roman maritime loan. Separate marine insurance contracts were developed in Genoa and other Italian cities in the fourteenth century and spread to northern Europe. Premiums varied with intuitive estimates of the variable risk from seasons and pirates. Modern marine insurance law originated in the *Lex mercatoria* (law merchant). In 1601, a specialized chamber of assurance separate from the other Courts was established in England. By the end of the seventeenth century, London's growing importance as a centre for trade was increasing demand for marine insurance. In the late 1680s, Edward Lloyd opened a coffee house on Tower Street in London. It soon became a popular haunt for ship owners, merchants, and ships' captains, and thereby a reliable source of the latest shipping news.

Lloyd's Coffee House was the first marine insurance market. It became the meeting place for parties in the shipping industry wishing to insure cargoes and ships, and those willing to underwrite such ventures. These informal beginnings led to the establishment of the insurance market Lloyd's of London and several related shipping and insurance businesses. The participating members of the insurance arrangement eventually formed a committee and moved to the Royal Exchange on Cornhill as the Society of Lloyd's. The establishment of insurance companies, a developing infrastructure of specialists (such as shipbrokers, admiralty lawyers, bankers, surveyors, loss adjusters, general average adjusters, et al.), and the growth of the British Empire gave English law a prominence in this area which it largely maintains and forms the basis of almost all modern practice. Lord Mansfield, Lord Chief Justice in the mid-eighteenth century, began the merging of law merchant and common law principles. The growth of the London insurance market led to the standardization of policies and judicial precedent further developed marine insurance law. In 1906 the Marine Insurance Act codified the previous common law; it is both an extremely thorough and concise piece of work. Although the title of the Act refers to marine insurance, the general principles have been applied to all non-life insurance. In the 19th century, Lloyd's and the Institute of London Underwriters (a grouping of London company insurers) developed between them standardized clauses for the use of marine insurance, and these have been maintained since. These are known as the Institute Clauses because the Institute covered the cost of their publication. Out of marine insurance, grew non-marine insurance and reinsurance. Marine insurance traditionally formed the majority of business underwritten at Lloyd's. Nowadays, Marine insurance is often grouped with Aviation and Transit (cargo) risks, and in this form is known by the acronym 'MAT'.

The Marine Insurance Act includes, as a schedule, a standard policy (known as the "SG form"), which parties were at liberty to use if they wished. Because each term in the policy had been tested through at least two centuries of judicial precedent, the policy was extremely thorough. However, it was also expressed in rather archaic terms. In 1991, the London market produced a new standard policy wording known as the

MAR 91 form using the Institute Clauses. The MAR form is simply a general statement of insurance; the Institute Clauses are used to set out the detail of the insurance cover. In practice, the policy document usually consists of the MAR form used as a cover, with the Clauses stapled to the inside. Typically, each clause will be stamped, with the stamp overlapping both onto the inside cover and to other clauses; this practice is used to avoid the substitution or removal of clauses. Because marine insurance is typically underwritten on a subscription basis, the MAR form begins: We, the Underwriters, agree to bind ourselves each for his own part and not one for another [...]. In legal terms, liability under the policy is several and not joint, i.e., the underwriters are all liable together, but only for their share or proportion of the risk. If one underwriter should default, the remainder are not liable to pick his share of the claim. Typically, marine insurance is split between the vessels and the cargo. Insurance of the vessels is generally known as "Hull and Machinery" (H&M). A more restricted form of cover is "Total Loss Only" (TLO), generally used as a reinsurance, which only covers the total loss of the vessel and not any partial loss. Cover may be on either a "voyage" or "time" basis. The "voyage" basis covers transit between the ports set out in the policy; the "time" basis covers a period, typically one year, and is more common.

A marine policy typically covered only three-quarter of the insured's liabilities towards third parties. The typical liabilities arise in respect of collision with another ship, known as "running down" (collision with a fixed object is a "allision"), and wreck removal (a wreck may serve to block a harbour, for example). In the 19th century, shipowners banded together in mutual underwriting clubs known as Protection and Indemnity Clubs (P&I), to insure the remaining one-quarter liability amongst themselves. These Clubs are still in existence today and have become the model for other specialized and noncommercial marine and non-marine mutuals, for example in relation to oil pollution and nuclear risks. Clubs work on the basis of agreeing to accept a shipowner as a member and levying an initial "call" (premium). With the fund accumulated, reinsurance will be purchased; however, if the loss experience is unfavourable one or more "supplementary calls" may be made. Clubs also typically try to build up reserves, but this puts them at odds with their mutual status. Because liability regimes vary throughout the world, insurers are usually careful to limit or exclude American Jones Act liability.

These two terms are used to differentiate the degree of proof where a vessel or cargo has been lost. An actual total loss occurs where the damages or cost of repair clearly equal or exceed the value of the property. A constructive total loss is a situation where the cost of repairs plus the cost of salvage equal or exceed the value. The use of these terms is contingent on there being property remaining to assess damages, which is not always possible in losses to ships at sea or in total theft situations. In this respect, marine insurance differs from non-marine insurance, where the insured is required to prove his loss. Traditionally, in law, marine insurance was seen as an insurance of "the adventure", with insurers having a stake and an interest in the vessel and/or the cargo rather than simply an interest in the financial consequences of the subject-matter's survival.

Average in Marine Insurance Terms is "an equitable apportionment among all the interested parties of an such an expense or loss."

General Average stands apart for Marine Insurance. In order for General Average to be properly declared, 1) there must be an event which is beyond the shipowners control, which imperils the entire adventure; 2) there must be a voluntary sacrifice, 3) there must be something saved. The voluntary sacrifice might be the jettison of certain cargo, the use of tugs, or salvors, or damage to the ship, be it, voluntary grounding,

knowingly working the engines that will result in damages. “General Average” requires all parties concerned in the maritime venture (Hull/Cargo/Freight/Bunkers) to contribute to make good the voluntary sacrifice. They share the expense in proportion to the ‘value at risk’ in the adventure. “Particular Average” is the term applied to partial loss be it hull or cargo.

Average – is the situation where an insured has under-insured, i.e., insured an item for less than it is worth, average will apply to reduce the claim amount payable. An average adjuster is a marine claims specialist responsible for adjusting and providing the general average statement. An Average Adjuster in North America is a ‘member of the association of Average Adjusters’ To insure the fairness of the adjustment a General Average adjuster is appointed by the shipowner and paid by the insurer.

An excess is the amount payable by the insured and is usually expressed as the first amount falling due, up to a ceiling, in the event of a loss. An excess may or may not be applied. It may be expressed in either monetary or percentage terms. An excess is typically used to discourage moral hazard and to remove small claims, which are disproportionately expensive to handle. The term “excess” signifies the “deductible” or “retention”.

A co-insurance, which typically governs non-proportional treaty reinsurance, is an excess expressed as a proportion of a claim in percentage terms and applied to the entirety of a claim. Co-insurance is a penalty imposed on the insured by the insurance carrier for under reporting/declaring/insuring the value of tangible property or business income. The penalty is based on a percentage stated within the policy and the amount under reported. As an example: a vessel actually valued at \$1,000,000 has an 80% co-insurance clause but is insured for only \$750,000. Since its insured value is less than 80% of its actual value, when it suffers a loss, the insurance payout will be subject to the under-reporting penalty, the insured will receive 750000/1000000th (75%) of the claim made less the deductible.

Various specialist policies exist, including:

- **Newbuilding risks:** This covers the risk of damage to the hull while it is under construction.
- **Open Cargo or Shipper’s Interest Insurance:** This policy may be purchased by a carrier, freight broker, or shipper, as coverage for the shipper’s goods. In the event of loss or damage, this type of insurance^[3] will pay for the true value of the shipment, rather than only the legal amount that the carrier is liable for.
- **Yacht Insurance:** Insurance of pleasure craft is generally known as “yacht insurance” and includes liability coverage. Smaller vessels such as yachts and fishing vessels are typically underwritten on a “binding authority” or “lineslip” basis.
- **War risks:** General hull insurance does not cover the risks of a vessel sailing into a war zone. A typical example is the risk to a tanker sailing in the Persian Gulf during the Gulf War. The war risks areas are established by the London-based Joint War Committee, which has recently moved to include the Malacca Straits as a war risks area due to piracy. If an attack is classified as a “riot” then it would be covered by war-risk insurers.
- **Increased Value (IV):** Increased Value cover protects the shipowner against any difference between the insured value of the vessel and the market value of the vessel.

- **Overdue insurance:** This is a form of insurance now largely obsolete due to advances in communications. It was an early form of reinsurance and was bought by an insurer when a ship was late at arriving at her destination port and there was a risk that she might have been lost (but, equally, might simply have been delayed). The overdue insurance of the Titanic was famously underwritten on the doorstep of Lloyd's.
- **Cargo insurance:** Cargo insurance is underwritten on the Institute Cargo Clauses, with coverage on an A, B, or C basis, A having the widest cover and C the most restricted. Valuable cargo is known as specie. Institute Clauses also exist for the insurance of specific types of cargo, such as frozen food, frozen meat, and particular commodities such as bulk oil, coal, and jute. Often these insurance conditions are developed for a specific group as is the case with the Institute Federation of Oils, Seeds and Fats Associations (FOFSA) Trades Clauses which have been agreed with the Federation of Oils, Seeds and Fats Associations and Institute Commodity Trades Clauses which are used for the insurance of shipments of cocoa, coffee, cotton, fats and oils, hides and skins, metals, oil seeds, refined sugar, and tea and have been agreed with the Federation of Commodity Associations.
- The term "salvage" refers to the practice of rendering aid to a vessel in distress. Apart from the consideration that the sea is traditionally "a place of safety", with sailors honour-bound to render assistance as required, it is obviously in underwriters' interests to encourage assistance to vessels in danger of being wrecked. A policy will usually include a "sue and labour" clause which will cover the reasonable costs incurred by a shipowner in his avoiding a greater loss.
- At sea, a ship in distress will typically agree to "Lloyd's Open Form" with any potential salvor. The Lloyd's Open Form (LOF) is the standard contract, although other forms exist. The Lloyd's Open Form is headed "No cure — no pay"; the intention being that if the attempted salvage is unsuccessful, no award will be made. However, this principle has been weakened in recent years, and awards are now permitted in cases where, although the ship might have sunk, pollution has been avoided or mitigated.
- In other circumstances the "salvor" may invoke the SCOPIC terms (most recent and commonly used rendition is SCOPIC 2000) in contrast to the LOF these terms mean that the salvor will be paid even if the salvage attempt is unsuccessful. The amount the salvor receives is limited to cover the costs of the salvage attempt and 25% above it. One of the main negative factors in invoking SCOPIC (on the salvor's behalf) is if the salvage attempt is successful the amount at which the salvor can claim under article 13 of LOF is discounted.
- The Lloyd's Open Form, once agreed, allows salvage attempts to begin immediately. The extent of any award is determined later; although the standard wording refers to the Chairman of Lloyd's arbitrating any award, in practice the role of arbitrator is passed to specialist admiralty QCs. A ship captured in war is referred to as a prize, and the captors entitled to prize money. Again, this risk is covered by standard policies.

UNIT - IV

LIFE INSURANCE

NATURE & SCOPE OF LIFE INSURANCE:

DEFINITION:

No Statutory definition.

CASE: DALBY v. LONDON & INDIA LIFE ASSURANCE CO –defined “Contract to pay a certain sum of money on death of a person in consideration of due payment of a certain annuity for his life calculated according to probable duration of life.”

II ESSENTIAL FEATURES (of life insurance):

- Contract relating to human life;
- Contract provides for payment of lump sum;
- Amount paid on expiration of certain period or death of person.

III DIFFERENCE BETWEEN LIFE INSURANCE & OTHER INSURANCES:

(1) **Proof of loss:** Life insurance no proof of loss required (sum payable sans proof);

Other insurance - Insurance Used can't recover more than loss suffered (contract of indemnity);

(2) **Event:** Life insurance event assured against insurance death (a certain event);

Other insurance event Insurance Used against insurance may not happen at all;

(3) **Insurable interest time:** Life insurance insurable interest need exist only at time (inception) of contract;

Other insurance assured must have insurable interest at time of loss;

(4) **Over valuation:** Life insurance incapable of being over valued/valued in terms of money (cause value of life immeasurable);

Other insurance (gross) over valuation possible (then it'll be void as wager);

(5) **Period of insurance:** Life insurance for entire life or long time;

Other insurance are usually year to year only.

IV KINDS OF LIFE INSURANCE:

(1) **WHOLE LIFE INSURANCE:** This is the original & normal form of life insurance.

Assured agrees to pay fixed premiums periodically throughout his life time policy amount to be paid on his death to legal reps/assigns/nominees.

Object intended for benefit of his family after his death.

(2) ENDOWMENT INSURANCE: Assured agrees to pay fixed premium for (i) certain years OR (ii) until he attains certain age (eg: 50/55).

If he survives amt paid to him;

If he dies before end of stipulated time amt goes to legal reps/assigns/nominees.

Object intended for benefit of assured (if he survives) in his old age OR for benefit of his family should he die.

(3) CHILD'S ENDOWMENT or DEFERRED LIFE INSURANCE: Insurance is taken on child's life much difficulty experienced in such policies cause parents aren't deemed to be having insurable interest in life of child (except when income through child).

CASE: BARCLAYS BANK LTD v. WEBB.

HELD proposer (parent) regarded to be holding policy in trust for the child.

(5) ANNUITY INSURANCE: Insurance User undertakes to pay to assured fixed sum as annuity by monthly payments after expiration of certain period or earlier if death should occur to assured.

Object provides pension or family pension to assured.

(6) TERM INSURANCE: May provide for continuing from term to term on payment of required premium.

Eg: Medical Insurance.

Premium amount starts as low in the beginning but gradually increases as duration of policy increases so also called as **ASCENDING SCALE POLICY**.

May provide for conversion of the policy into whole life policy so may be called as **CONVERTIBLE TERM POLICY**.

These policies are usually for a short period so also called as **SHORT TERM POLICY**.

(6) JOINT LIFE INSURANCE: Insurance taken jointly on lives eg: spouses.

(7) SURVIVAL INSURANCE: Money becomes payable on death of all but 1 so called as **LAST SURVIVOR ENDOWMENT POLICY**.

(8) CONTINGENT SURVIVORSHIP ASSURANCE: **SURGEON** Simplest form of contingent assurance sum assured payable on death of person (X) known as 'falling life' provided another person (Y) known as 'counter life' survives him (X). If counter life ends before falling life ends Insurance User forfeits premiums.

(9) ADVANCE INSURANCE: Modern form of insurance. Provides for (a) payment of lump sum amt to assured; (b) in consideration of his agreeing to pay premiums for (i) specified period or (ii) for life of assured if assured dies before end of that period.

Eg: This type of insurance for contracts to furnish funds for building house etc to be repaid by monthly or 1/4ly instalments which shall cease on death.

(10)GROUP INSURANCE: Insurance on lives of a group of persons (usually employees under same employer assured are the employer).

Eg: Employees State Insurance Corporation; Industrial insurance.

Recently Chairman of LIC expressed his view that corporation group policy should be extended to bank depositors in nationalised banks. (eg: Insurance connected with online Rly ticket booking).

LIC has announced introduction of 'Deposit linked life insurance scheme' in 10 banks this was 1st of its kind in the world.

V THE POLICY:

Life insurance policies of two kinds

(a) Narrative type Expressed in long narration containing continuous details not used presently.

(b) Schedule type modern form contents as follows:

(i)Date: Insurance date may not be the (though generally is) date on which deed was executed or date on which policy became operative;

(ii)Parties: Names of parties they are presumed to be competent to contract unless/until contrary proved.

(iii)Preamble/Recitals: Explanations as to circumstances in which deed executed & it's objects; Starts as 'Whereas the proposal for assurance has been made...'

(iv)Operative clause/consideration: Runs as follows 'If premium as mentioned in schedule should be paid company will pay to payee sum assured within 1 month of receipt of satisfactory evidence as to happening of event & title to payee...

(v)Covenants of title & conditions: Other than usual implied covenants such as right to convey/quiet enjoyment/free from encumbrances may contain other conditions (i)limiting operation of policy OR (ii)granting privileges for the assured OR (iii)declaration that answers given in the proposal, medical reports etc should be considered to be basis of insurance contract eg:

- a. Proposal & declaration therein shall form basis of contract;
- b. Age of life assured should be proved to satisfaction of directors (insurance co);
- c. Policy will be void if assured dies by suicide before expiry of 2 years from policy date.

(vi) Schedule/Parcels: (Accurate) description of property usually given in form of schedule Eg: In life policy generally description in 2 schedules:

- a. Benefit Schedule: Details of assured event Insurance Used sum assured payees;
- b. Payable Schedule: Regarding payments (eg: date on which 1st premium payable).

(vii) States quantity of estate/interest which assignee is to get.

(viii)Execution: LIC executes a deed under common seal in presence of such officers & with such formalities as may be prescribed by its articles or constitution.

(ix) Attestation & signatures:

(x) Delivery: Only if deed is delivered it becomes operative.

Standard form contracts variations in the printed policy are usually typed if contradiction bet printed words & typed/written words latter prevails.

No alterations should be made by assured (or Insurance Used unilaterally, sans the other's knowledge & consent).

If terms of contract not properly represented/stated in the policy assured may approach Court for rectification of policy under Specific Relief Act.

Terms in other docs may be incorporated into policy by doctrine of incorporation (eg: terms of prospectus, answers given by assured in proposal form, contents of medical/friend's report may be incorporated into policy by express reference).

VI FORMATION OF LIFE INSURANCE CONTRACT:

According to S.10 of Contract Act for a transaction to become a contract certain essential ingredients should be present as insurance policy is a contract should fulfil the following:

(1)Agreement;

(2)Competent parties;

(3)Free consent;

(4)Consideration;

(5)Lawful object.

(1)AGREEMENT:

Proposal form filed in & submitted by proponent (prospective assured);

Acceptance on receipt of the proposal form & related papers (eg: medical report) scrutinizes them if satisfied that they are in order Insurance User signifies his acceptance by giving a letter called letter of acceptance (usually in printed form) OR may be signified by issuance of insurance policy.

Until letter of acceptance or insurance policy issued no contract arises (for there is no acceptance till then) so payment of any money (by cheque etc) & receipt & acceptance of it by Insurance User (even till after death of proponent) is not acceptance.

The letter of acceptance generally contains four clauses

(a) Accepted at ordinary rates on terms proposed;

(b) Accepted with extra premium;

(c) Accepted subject to satisfactory assessment by further examination;

(d) Not accepted.

Until contract concluded either party may revoke their offer/acceptance.

(2)COMPETENCY OF PARTIES:

INSURANCE USED:

(I)Minor: Should be a major (Completed 18 yrs OR 21 yrs if guardian appointed under Court of Wards).

Proof of age relevant in insurance contracts for 2 purposes:

- 1) To determine validity of contract;**
- 2) To determine rate of premium.**

After PC's ruling in Mohoribibi V. Dharmodas Ghose where HELD contract by minor void he can't personally make contract but may through the guardian (parents).

Children's Deferred Assurance (Assured Child; Guarantee guardian); Child Endowment policy; Child's Education policy; Child's Marriage policy.

In all the above amount is paid on child attaining a certain age (on majority) further premiums needn't be paid if parent (guardian) dies before policy matures.

(ii)Person of unsound mind;

(iii)Alien enemy;

(iv)Undischarged insolvent;

All above incompetent to contract hence incapable of effecting policies.

(v) Artificial (Juristic) person has no life to be Insurance Used (eg: Corporate body).

(vi) Coparcener in Hindu joint family: Property of Hindu joint family vests in the Karta other members are coparceners (have only a right to be maintained by Karta).

If Karta/coparcener acquires property using JFP newly got property will form part of JFP.

If property is acquired without the aid of JFP new property is treated as self acquired property & owner has choice of adding it to the JFP pool (expressly/implicitly).

If mitakshara coparcener takes a life insurance following possibilities:

- (i) Policy taken with JF funds no nomination made assumption is policy belongs to JF pool (cause rule is property is joint until contrary is proved);**
- (ii) Policy taken with self acknowledged funds depends on intention of assured whether it's to be regarded as part of JFP or otherwise;**
- (iii) Policy taken nomination favouring spouse+child policy doesn't form part of JFP cause it's a statutory trust in favour of spouse & child but if policy taken with JFP members of family have a right to refund of amt utilized from JFP from the amt gotten under the policy.**

Insurable interest: A Coparcener to take out insurance on another coparcener mere membership in family insurance some dependence must be shown.

INSURANCE USER:

Before 1956 any person co/provident society/co op society/firm/individual could be Insurance User.

Since 1938 As per s.2C of Insurance Act, 1938 insurance business could be done in India only by (I) Public co; (ii) Society registered under Co op Societies Act; (iii) Foreign public co.

No person could do insurance business sans certificate of reg (even if certificate granted Controller of Insurance may at any time cancel reg if he opines that conditions as to reg aren't continued to be followed eg: Minimum working cap to be calculated excluding preliminary expenses & deposits reqd to be made with RBI should've been actually made).

From 1956 Life insurance business nationalised in India LIC alone except those sanctioned by C.Govt can enter do life insurance business. Life insurance business carried on then on exclusively by Govt through statutory corporations like LIC, Post Office Life Insurance Departments& some State Insurance Depts in States like AP, Kerala, Karnataka etc.

Post Office Life Insurance Dept not all people can insure only temp/permanent officials of Govt/Rly/Uni/Military/Govt. aided Educational institutions & various Councils of research min amt assured is Rs.100/ &max is Rs.30k.

S.31(1) of LIC Act: Any person who has obtained permission from C.Govt to do LI business in India in respect of lives of persons ordinarily resident outside India may do so.

But he shouldn't issue policy to any person ordinarily resident outside India (NRI) during the period he is temporarily residing in India.

Such Insurance User needn't obtain registration from Controller of Insurance under Insurance Act, 1938.

(3)FREE CONSENT:

S.14 of Contract Act consent not free if caused by coercion, undue influence, fraud, misrepresentation, mistake.

S.19 renders a contract caused by faulty consent only voidable contract valid until avoided.

Operative mistake (ie both parties under a mistake of fact essential to the ag) negatives consent void.

Mistake of Law no excuse.

Mistake of foreign Law& mistake regarding private rights are mistake of facts.

Unilateral mistake (unless it amts to non est factum) contract not void.

Coercion & undue influence called under Eng Law as Duress.

Coercion physical; Undue influence moral.

Undue influence rare in insurance cause it requires pre existing relationship between parties.

Assured not knowing the Language: If proposal form is in English & the proponent knows English there isn't any difficulty in proving that the statements contained in the proposal form (ans to ?s) are his reps BUT if proposal form being in Eng & proponent doesn't know the lang & signs in his vernacular or affixes his thumb impression difficulty arises whether contents understood by him before signing whether translation in his lang of contents of proposal done to him properly whether he fully appreciated the facts & their conseq/effects on his interests.

CASES:

BERNARASI DEVI v. NEW INDIA ASSURANCE CO LTD –proposal form & ans were in Eng proponent didn't know Eng he'd signed in Hindi accompanied by a declaration in Hindi as 'Samaj Kar Sahi Kiya' HELD endorsement proved that portions in proposal form were written in the pen of the assured NOT that they written after he fully understood their contents.

KULTA AMMAL v. ORIENTAL GOVT SECURITY LIFE ASSURANCE CO LTD –HELD in such cases independent evidence should be adduced to prove that assured understood fully the contents.

If agent (of Insurance User) filling up proposal form for assured & getting his signature acting as who's agent at the time of explaining 2 VIEWS:

(1)Agent of Insurance User: If agent fills out proposal form Insurance User can't avoid/rescind contract on ground that some answers not accurately stated REASON agent of Insurance User so agent's knowledge imputed to Insurance User so disabled from avoiding contract.

This view severely criticized so not followed in other countries;

(2)Agent of proponent: While filling up the proposal form (for the proponent) he is acting as agent of proposer (not of Insurance User) if any false statement Insurance User may avoid contract.

CASE: NEW SHOLME BROS v. ROAD TRANSPORT & GENERAL INSURANCE CO –HELD 2nd view accepted.

Law Reform Committee 5th Report: recommended 'Any person who solicits/negotiates a contract of insurance shall be deemed for purposes of formation of such contract to be agent of Insurance Users knowledge of such person shall be deemed to be knowledge of Insurance Users.'

No single view can be preferred apply that view which is applicable to the facts of the case in hand.

Policy by illiterate discouraged by LIC.

These reps of proposer in proposal form operate as inducing causes for obtaining consent of Insurance User in issuing the policy when they form part of & basis of the contract termed as WARRANTIES.

Reps may be made by party with following different states of mind:

- i. Reps made believing to be true based on reasonable/suff grounds;
- ii. Reps made believing them to be true not based on reasonable/suff grounds;
- iii. Reps made knowing them to be false or not believing them to be true or without caring either way;

- iv. Reps made knowing them to be false but without intention to deceive;**
- v. Reps made knowing them to be false with intention to deceive.**

CASE: WIER v. BELL –LORD BRAMWELL criticized doctrine of legal fraud holding that whether a representation is fraudulent or not there can't be legal fraud as much as there can't be 'legal light' or 'legal shade' or 'legal heat' or 'legal cold' This view approved in DERRY v. PEEK.

Def: REP: Assertion or statement of fact intended by neither party to form part of terms of contract but nevertheless must affect the inclination of other party in giving his consent.

Representation to be operative must satisfy following conditions:

- a. Must be of fact not mere expression of opinion;**
- b. Rep must be made with intention that it must be acted on by other party;**
- c. Mere commendatory expressions not to be treated as reps;**
- d. Rep must induce the contract;**
- e. Rep must relate to material fact(s).**

Def: MISREP: S.18 of Contract Act means & includes:

(1) positive assertion in a manner not warranted by info of person making it of that which isn't true thou he believes it to be true;

(2) Any breach of duty without intent to deceive gain insurance an advantage to the person committing it or any1 claiming under him misleading another to his prejudice or to prejudice of any1 claiming under him;

(3) Causing thou innocently a party to ag to make a mistake as to substance of the thing which is subject of ag.

Def: FRAUD: S.17 (1) Suggestion as fact that which isn't true by 1 who doesn't believe it to be true;

(2)Active concealment of a fact;

(3)Promise made without intent to perform;

(4)Any other act fitted to deceive;

(5)Any act/omission which Law specifically declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect willingness of a person to enter into a contract isn't fraud UNLESS it's the duty of person silent to speak or UNLESS his silence is tantamount to speech.

Thus a party needn't (voluntarily) apprise the other of facts unknown to him which may affect his decision to contract.

CASE: BELL v. LEVER BROS LTD –LORD ATKIN 'Failure to disclose a material fact which might influence the mind of a prudent contractor does not give the right to avoid the contract principles of caveat emptor principles outside contract of sale.'

But in case of Uberrimae fidei caveat emptor doesn't apply to insurance contracts in which utmost good faith .Above rule doesn't apply as there is a duty of disclosure .

FRAUD wilful misrepresentation contract voidable & damages (for tort of deceit) + IPC s.420 (in extreme cases).

INNOCENT MISREP contract voidable no damages.

(4)CONSIDERATION:

Def: When at the desire of the promisor the promise or any other person has done or abstained from doing/ promises to do or abstain from doing something such act/abstinence/promise called consideration.

Consideration: for (i) Insurance User Payment of 1st premium.

(ii) Insurance User Promise of Insurance User to indemnify assured against insurance stipulated risk.

2nd & later paid premiums not consideration REASON if assured defaults in paying subsequent premium(s) Insurance User may be released from his promise to indemnify assured but he remains insurance bound by other various subsidiary promises (terms) in the contract (eg: pay surrender value).

(5)OBJECT:

Should be Lawful if not contract rendered void.

S.23 (Contract Act): consideration/object Lawful unless

- i. It's forbidden by Law;**
- ii. Is of such nature that if permitted would defeat provision of any Law;**
- iii. Is fraudulent;**
- iv. Involves injury to person/ property of another;**
- v. Court regards it to be immoral or opposed to public policy.**

Insurance Users issue a written (printed) version of contract called policy of insurance.

LIC Act, 1956 empowers Govt to frame regulations providing for form & manner in which policies may be issued.

Stamped: Life insurance policy should be stamped.

Stamp value: For every Insurance Used of 1k or part thereof in excess of it stamp duty payable in Rs.6/ if policy drawn simply & Rs.3/ if drawn in duplicate for each part.

Unstamped policy: Effect contract in policy unenforceable.

Stamp duty to be borne by assured in the absence of contract to contrary.

S.66 (Stamp Act): If Insurance User receives or takes credit for any premium or consideration for any contract of insurance & doesn't within 1 month there from make out & execute a duly stamped policy it's an offence punishable with fine (max Rs.200/).

EVENT INSURANCE USED AGAINST INSURANCE IN LIFE INSURANCE:

I EVENT INSURANCE USED:

1. Event Insurance Used against insurance in (usual) life insurance is death of life assured arising from disease/accident;
2. Immaterial whether death is caused by natural or accidental causes or criminal act of 3rd party;
3. Ex turpi causa non oritur actio (no man shall be allowed to take advantage of his own wrong) based on this principle in life insurance

2 cases where reps of assured (deceased) can't recover on his life policy:

- i. Death of assured caused by his self conduct;
- ii. Death results from suicide.

CASE: BRESFORD v. ROYAL ASSURANCE CO – LORD ATKIN "Death caused by wilful misconduct of assured himself debars the personal reps from recovering on assured's life policy."

Wilful misconduct of assured is treated as an implied exception Eg:

Fire: Fire caused by wilful misconduct of assured he can't recover;

Life: Person takes life policy on life of another later kills him can't recover.

CASE: LIBERTY NATIONAL LIFE INSURANCE CO v. WELDON –a nurse effected 3 life policies in 3 different companies on life of her niece without knowledge of child's parents child 2yrs old 1 day she went to child's home gave the child a soft drink containing arsenic result child died within a few hours nurse prosecuted/convicted for murder HELD can't recover + insurance co to pay damages to parents for negligently issuing policies to 1 who'd no insurable interest in the life assured.

Misconduct by 3rd party: If loss resulted from wilful misconduct of independent 3rd party doesn't deprive assured/reps from recovering provided that they not privy to the misconduct.

Major source of risk to life of a person is wilful negligence and conduct of third parties. Insurance is taken often to protect from such risk fear. Eg: Person afraid that someone may kill him or put his property on fire.

Misconduct of assured: If Insurance Used commits a crime/violates Law & he is sentenced to death his wrongful/culpable conduct debars him.

Egs: Death resulting from illegal operations death in fight or duel absolves insurance co from liability under policy.

CASE: AMICABLE INSURANCE SOCIETY v. BOLLAND –person sentenced to death for committing murder of another & he died in execution of sentence HELD all people on whom right to recover under policy devolves by op of Law who claim thro such convict debarred from claiming under policy.

FELO DE SE (SUICIDE):

Causes: Risk Insurance Used against insurance in life policy is death which may be caused by disease/accident/negligence/wilful acts of himself or 3rd person.

Insurance User liable: When event Insurance Used against insurance (death) occurs Insurance User liable.

Wear & Tear: Death is natural human being is susceptible to disease age advances this may be likened to 'inherent vice' & 'wear & tear' but these exceptions of inherent vice & wear/tear inapeopleicable in life insurance.

Implied Term: Wilful wrongful act(s) of assured/agent absolves Insurance User.

Death of insurance person (not an exception): Risk in life policies covers death due to 3rd parties (murdered) & death by Insurance Used himself when he was insuranceeane these 2 aren't exceptions they are based on the reasoning insuranceeane person doesn't know what he is doing thou he does it apparently it's not done by him in the real sense not culpable so not an exception to the rule 'No 1 can benefit himself out of his own wrong.'

ENGLAND: Formally that when death caused by felo de se it's a criminal act so absolved the Insurance User from liability (on the ground no 1 can be benefited by his own wrong).

CASES:

BRESFORD v. ROYAL INSURANCE CO LTD –Major Rowlandson Insurance Used his life in 1925 amount payable to executors of his estate 1 clause stated that if assured should die by his own hand (sane/insuranceane) within 1 yr from commencement of assurance policy void he paid premiums for 9 yrs afterwards in sound state of mIndiahe committed suicide in 1934 cause he was deeply indebted action brot to recover on policy insurance co pleaded that suicide was opposed to public policy HELD by (I)TRIAL COURT Insurance User liable REASON greater sanctity to contract (II)APPELLATE COURT unanimously reversed the Judgement REASON thou policy provided for payment if suicide committed after a yr it's against insurance public policy to allow a person who committed a crime or his personal rep to benefit from crime.

BARRANDAILE v. HUNTER –a clause in the policy 'If assured should die of his own hands or by hands of Justice or in consequences of a duel policy should be void' assured threw himself into river Thames & drowned Jury found that thou he died voluntarily he was incapable of distinguishing bet right/wrong HELD contract will govern co not liable.

From above cases known that cl in policy may do 1 or 2 things (i)May provide exemption to Insurance User in all cases of self destruction (sane/insuranceane);

(ii)Provide that Insurance User liable if suicide committed after particular period.

In (i) No difficulty cause provides exemption from liability;

(ii) If suicide committed when assured is insured no difficulty Insurance User liable;

(iii) If provided that Insurance User won't be liable if assured commits suicide (sane) within a period of time which implies that Insurance User will be liable if suicide is committed after stipulated period.

Courts generally favour the view given in *Bresford's* case that it's against insurance public policy to make Insurance User liable for an act of deliberate suicide REASON it may encourage people to commit suicide thereby enabling claimants to recover money.

Better view: If assured commits suicide with intention of benefiting his dependents must be construed as fraud insurance co shouldn't be liable even if provided otherwise in policy.

ENG LAW: Suicide is of 2 kinds:

- a. Felonious suicide – suicide in sound (sane) mind CRIME Insurance User not liable.
- b. Suicide in unsound state of mind NOT CRIME Insurance User liable.

INDIA: Judicial decisions in India preferred not to follow decision in *Beresford's* case.

Further English common Law applies cause criminal Law in India is by Statute in it no punishment for suicide provided.

CASES:

NORTHERN INDIA INSURANCE CO v. KANHAYA LAL –assured Insurance Used his life 1 cl of policy stated that 'if he committed suicide before expiry of 1yr from policy date Insurance User won't be liable to pay' after expiry of a yr he assigned the policy to his son 10 months thereafter committed suicide (out of disgust) when sane son (assignee) sued for policy amt HELD Insurance User liable REASON committing suicide isn't a crime in India.

SCOTTISH UNION & NATIONAL INSURANCE CO v. N.R. JAHAN BEGUM –hubi of plaintiff took out many policies on his life with deft co in 1928 in Aug of 1935 he submitted fresh proposals for 12 more policies for 5k each & paid 1st premium on all the policies co accepted proposal & issued receipts 1 night in Sept. 1935 he committed suicide shooting himself insurance co was sued for recovery of insurance amt Insurance User contended that not liable cause deliberate suicide HELD liable OBSERVATION ? was whether term 'death' included self inflicted death also Court held that they weren't able to read such limitation in the lang of contract intention of parties embodied in the written insurancetrument.

Whether suicide is a crime in India & against insurance public policy:

Where contract expressly dealt with suicide it was viewed that even if insurance companies agreed to pay executors or assigns on death of assured by suicide it won't be enforced in a Court of Law cause principle is 'rights resulting to person asserting them from crime of that person couldn't have sanction of Law' This view is based on public policy in England.

Whether suicide is against insurance public policy depends on system of jurisprudence prevailing in that country on the conception of public policy embodied therein (eg: In Eng (a) crime not to send a child to school in India not so; (b) crime of champerty well known in England in India neither a crime nor against insurance public policy In India suicide not a crime).

Correctness of above decisions (India) open to doubt for following reasons:

- i. Suicide condemned as per Hindu Law; Sinful/immoral as per Muslim Law;**
- ii. On principles of Justice/equity/good conscience murderer disqualified from succeeding to estate of deceased person;**
- iii. Wrong to state that only attempt to suicide offence;**

CASE: AMIRAJU v. SESHAMMA –contended that attempt to commit suicide is an offence while suicide isn't. HELD suicide isn't punished not because it is not immoral act but cause of physical impossibility to punish person who committed suicide as he is already dead.

CONCLUSION:

For above reasons it's submitted that if policy of life insurance contains a clause to pay sum Insurance even if assured commits suicide when sane it must be considered as opposed to public policy within meaning of s.23 of Contract Act Insurance User shouldn't be made liable.

EXCEPTION TO SUICIDE:

CASE: CITY BANK v. SOVEREIGN ASSURANCE CO –assured deposited his life insurance policy with a bank as security thereafter he committed suicide bank had other securities for the loan HELD debt may be realised out of insurance amt REASON bona fide assignee for valuable consideration not subjected to disabilities incurred by assured subsequent to assignment.

According to general principles of Insurance Law bona fide assignee subjected only to equities that assignor was liable for on date of assignment.

CIRCUMSTANCES AFFECTING THE RISK:

I MATTERS AFFECTING THE RISK:

Risk in life insurance is risk of death.

Circumstances affecting risk are factors which tend to shorten life span these are regarded as material facts duty of disclosure.

Such facts discussed hereunder:

(1)AGE OF PROPONENT:

Rate of premium depends on age of assured.

Generally age is proved when policy is issued if age is admitted an endorsement declaring 'age admitted' is made on the policy.

If age isn't proved when policy issued should be proved by assured during performance of contract.

For proof of age assured may submit 1 of the following docs:

- 1) Birth certificate;
- 2) Certificate of Baptism;
- 3) Horoscope;
- 4) School/college certificate;
- 5) Passport;
- 6) Domicile certificate;
- 7) Service certificate;
- 8) Marriage certificate;
- 9) Declaration by an elderly person having knowledge of date of birth sworn before a Magistrate.

Earliest possible: Desirable/convenient that assured should prove & get his age admitted by endorsement (i)at time when policy issued OR (ii)as soon as possible during his life time REASON would become more difficult/inconvenient to prove for claimant after assured's demise.

Date wrongly stated: original rep becomes a misrepresentation effect on validity depends on:

(a)Over stated: Considered as innocent misrepresentation cause will be interest of assured validity of policy unaffected Insurance User accepts proof of age effects

- (i) He can be compelled to refund excess payment made towards premium&
- (ii) Adjust rate of future payments of premium according to age proved.

(b)Under valuation: (If it) doesn't amt to fraud Insurance User has following 2 options:

(i) Assured sum reduced to such amt as would've been secured had correct age been known at time of policy issuance;

(ii) Assured is to pay difference in premium with interest for earlier period & raised rate of premium as to future premiums.

S.45 Insurance Act, 1938: Correctness of rep (as to age) shall not be after 2 yrs (of regular premium payment sans default).

TERMINUS Quo for the Period: Period of 2 yrs fixed by s.45 of Insurance Act, 1938 was

- For policies effected before the Act from date of commencement of Act (Act came into force on 1st.July.1939).
- In other cases period runs from date on which policy effected.

Proviso: Exception – rep as to age in proposal form Insurance User entitled to

- (1) Call for proof of age if not proved/admitted as true by endorsement;**
- (2) No right to cancel/avoid policy;**
- (3) Adjust rate of payment of premium.**

Estoppels on Insurance User: If after knowing about misrep regarding age Insurance User accepts premium he'll be stopped from denying validity of policy.

(2)FAMILY HISTORY:

Risk in life insurance depends on longevity of assured. Heredity & family history casts suff light in determining the probable longevity of a person.

So medical officers ask lots of about

- i. Births/deaths of near relations;**
- ii. Diseases they were affected by;**
- iii. Causes of their death.**

CASE: ASIA ASSURANCE CO v. KARTIYA DEVI –total # of siblings was to be stated in a column # alive in another column assured filled in the 1s t& left the other column blank HELD policy void REASON amounted to suppression of truth thereby amounting to misrepresentation.

(3)PERSONAL HEALTH & MORAL HISTORY:

Habits past/present ought to be disclosed eg use of alcohol/tobacco/opium.

Present: state of health is material cause no prudent Insurance User would affect insurance on life of person afflicted with fatal disease/in death bed.

Past: material cause some kinds of diseases leave a permanent effect on constitution of person tending to shorten his life span.

Nature/duration of treatment: from previous medical attendants.

CASES:

LIC v. PARVATHAVARDHINI –assured died because of cardiac trouble, widow of assured sued LIC to recover 20k & 30k under 2 policies

- LIC contended that assured failed to disclose that he was affected by BP/diabetes/cardiac trouble HELD Insurance User liable REASON burden of proof cast by s.45 is a heavy one on the Insurance User he can't escape obligation of examining reports/reports of Drs LIC failed in its obligation.

ALL INDIA GENERAL INSURANCE CO LTD v. S.P. MAHESWARI –deliberate misrepresentation about a drinking habit & non disclosure abt a venereal disease HELD insurance co entitled to avoid the policy.

SHANTA TRIVEDI v. LIC 5 policies taken by hubbi of plaintiff repudiated by LIC on ground that proposer knowingly suppressed fact that he was suffering from Diabetes, BP, Ectopic kidney but LIC couldn't prove the allegations HELD repudiation by LIC ineffective.

(i) Past illness/treatment answers are facts;

(ii) Present states of health are opinions.

Duration of life span may depend on man's habits eg: Regular food/sleep habits tend to increase longevity; marriage/children may (i) Contribute towards stability providing incentive for person to safe guard his life (ii) may become source of additional stress/worry cause he should earn money for their maintenance & this may adversely affect his life.

(4) GEOGRAPHICAL POSITION:

Eg: Place of living; climate; environment have appreciable effect on health; Unhealthy surroundings (lack of cleanliness causing diseases; Dangerous neighbourhood causing fights & unsocial effects).

CASE: HUGUENIN v. RAYLEY –assured gave his residential address but he wasn't actually residing there at that time HELD insurance co not liable REASON omission of fact fatal to the policy.

(5) OCCUPATION:

Info regarding occupation of proponent to understand nature of risk.

Eg: Dangerous occupation like soldier/sailer/airman/ammunition factory Insurance User charges a higher rate of premium.

If description is in reference to non dangerous occupation it won't affect validity of policy.

NEW INDIA INSURANCE CO v. RAGHAVA REDDI –HELD policy can't be avoided on ground of misrep UNLESS the following are established by Insurance User

- o Statement inaccurate/false;
- o Statement was regarding material matter;
- o Statement suppressed facts which it was material to disclose;
- o Statement fraudulently made;
- o Assured knew at the time of making the statement that it was false;
- o Assured knew fact which ought to be disclosed has been suppressed.

AMOUNTS RECOVERABLE UNDER LIFE POLICY:

I AMOUNT RECOVERABLE:

Under life insurance policy following amounts recoverable:

(a) Amount to be paid: on happening of event/on completion of period;

(b) Bonus: if declared by co recoverable with insurance amount;

(c) Share in profits: of insurance co if participation policy (this doesn't make him a member/contributory of the insurance co).

(d) Surrender value: in case policy lapses due to non payment of premium or where assured surrenders policy to insurance co co may as per rules of co pay a % of premium paid by Insurance Used.

Life assurance is (mainly) based on co operative principle premiums paid by policy holders are pooled together & after meeting administrative expenses of insurance co rest is invested in good business if 1 policy holder withdraws from such co op enterprise remaining policy holders likely to suffer set back so duty of seceding policy holder to make good admn expenses something more this amt of deduction must be fair/equitable thou general principle is that defaulting policy holder not entitled to any remedy & Insurance User can forfeit the premiums paid equity leans against insurance forfeiture but based on the principle that he who seeks equity must do equity he is reqd to forego a reasonable amt to compensate continuing policy holders for loss that may be caused to them by his sudden withdrawal the amt payable to assured is termed 'Surrender value.'

Def: Surrender value Amt agreed to be paid by Insurance User to policy holder whose policy lapses due to default of payment of premium.

LIC: After payment of premium for 2 yrs or 1/10th of total # of premiums stipulated in the policy (whichever is less) provided the premiums paid exceed at least 1 full yrs' premium policy acquires a surrender value.

AUTOMATIC EXTENSION CLAUSE/NON FORFEITURE CLAUSE:

Under the automatic extension clause/automatic non forfeiture clause if assured fails to pay amt insurance co may adjust surrender value towards premiums due & deduct it from sum to be paid when policy matures.

CASES:

MEKENNA v. CITY LIFE ASSURANCE CO – policy premium to be paid quarterly 1 clause stated 'Any policy which has acquired surrender value will not immediately lapse if a renewal premium be not paid within days of grace but will be kept in force for 12 calendar months from dt upon which last premium became due' HELD tender of overdue premium must be made within 2 months from renewal date tender after that time thou within 12 months of expiry of days of grace too late policy lapses REASON as per the clause parties not on equal footing Insurance Used has right to renew (12 months) but Insurance User hasn't right to compel payment.

ANNAPURNABAI v. HINDUSTAN CO OP INSURANCE CO – Insurance Used for 30k for 20yrs a cl in policy stated that surrender value would remain property of assured even if policy lapsed due to nonpayment of premiums assured defaulted in premium payment insurance co informed him that surrender value was exhausted as it was applied to keep policy alive as per rules in the prospectus & rules of co which were not referred to in the policy

NATIONAL INDIAN LIFE INSURANCE CO LTD v. MAHADAVAN –annual premium was payable in 4 quarterly installments default was committed in respect of 4th instalments insurance company argued that surrender value must be sufficient to pay at least 1 yrs premium HELD rejected insurance co's argument under extension clause surrender value must be adjusted towards payment of quarterly premiums due policy can't be forfeited.

HINDUSTAN IDEAL INSURANCE v. VIJAYALAKSHMI AMMA –Policy had lapsed due to default in payment of premium in compliance of Insurance User's letter Insurance Used paid premiums due & gave a declaration of good health to agent of Insurance User Insurance User on receipt of these admitted Insurance Used as policy holder meanwhile Insurance Used was murdered on day of death, Insurance Used's policy was remaining lapsed & on this basis Insurance User repudiated the claim HELD Insurance User's contention rejected REASON moment amt + declaration recd by Insurance User's agent policy revives OBSERVATION Insurance ????

PERSONS ENTITLED TO PAYMENT:

PERSONS ENTITLED:

On maturity of policy by (1) death of assured OR

I PAYEE:

Name entered in the Benefit schedule of policy.

II ASSURED:

(i) If he is alive at the time of maturity of policy;

(ii) If insurance is on life of 3rd party assured entitled to get amt if he is alive.

Eg: Creditor takes out policy on life of debtor creditor will be entitled to amt debtor entitled to amt if (i) it's intention of parties; OR (ii) if insurance is by way of indemnity.

CASE: SALT v. MARQUIS OF NORTHAMPTON –LORD SELBORNE “Prima facie effect of agreement is to vest the equitable property in the policy in the debtor, subject to the creditor's security.”

III EXECUTORS/ADMINISTRATORS:

If assured dies before maturity of policy amt goes to his legal rep.

Generally provided in policy that amt payable to assured or his executors, administrators, assigns, other legal reps.

Legal rep: term used in a broader sense than in Indian Succession Act:

(a) Act includes only executors & administrators;

(b) Here means any person who can give Insurance User a valid discharge on receipt of payment on policy.

Eg: May be heir at Law OR a surviving coparcener (Mitakshara).

Rules:

(1) Probate: If policy has been disposed off by testator by Will/codicil & deceased was a Hindu, Buddhist, Sikh, Jain no suit against insurance User at the insistence of his executor unless executor for probate of Will/codicil;

(2) If Letters of Administration/probate unnecessary Succession Certificate may be obtained;

(3) If assured died without making any assignment/nomination Insurance User requires evidence of legal title of person claiming/receiving amt under policy by production of evidence ie Probate/Letters of admn/ Succession certificate.

(4) Actual practice if policy (claim) amt not very large LIC doesn't insurance on production of above legal docs in proof of title if claimants are Class I heirs & no dispute bet them pays the amt on strength of indemnity bond.

IV JF MEMBERS:

General Rule: In absence of anything to the contrary insurance amount treated as sep property of assured cause it's a personal contract primary object to benefit spouse/children of assured.

CASE: MATHUPALLI VENKATA SUBBARAO v. LAKSHMINARASAMMA –HELD having regard to modern social conditions general presumption is that policy amt is sep property & doesn't become JFP unless clear contrary intention.

If premiums paid out of JFP: Better opinion coparceners have right of a/c for premiums paid BUT policy amt will be treated as sep property of assured.

CASES:

ORIENTAL LIFE INSURANCE CO v. AMMIRAJU –premiums of a policy on life of eldest brother paid out of JF funds similar policies taken on lives of all brothers & all premiums paid out of JF funds death of eldest brother his wife/children claimed the sum contending that insurance policies must be treated as sep property –HELD contention rejected HIDAYATULLAH J. “No proposition of Law by which insurance policies must be regarded as self acqd property of the coparceners on whose lives insurance effected by a coparcenery & proceeds of insurance policy do not belong to the joint family” commenting on view stated in above case (Subbarao's case) opined “Having regard to the growth of individual consciousness in marked contrast to the more corporate outlook of an earlier day general presumption must be that when 1 of them insuranceures his life amt of policy belongs to assured as his sep property premiums would be treated as amts drawn by the individual members & they must be debited with same amts.”

PARVATI KUER v. SARANGHAR –SC accepted above view.

V VOLUNTARY ASSIGNEES:

Claim in life insurance policy is property of assured it's alienable/heritable/actionable claim.

In life insurance transferred by sale/gift/mortgage/assignment.

(i) If it's a valid assignment satisfying s.38 of Insurance Act, 1938 assignee will be entitled to payment;

(ii) If condition (s.38) not satisfied invalid assignment assignee gets no right.

In gift donor/donee may agree that on happening of specified event (which doesn't depend on will of donor) gift shall be suspended/revoked wholly/partly (Eg: Policy holder assigns policy subject to condition that if he survives on date of maturity or if assignee predeceases him assignor gets rights on policy).

Creditors: Assignment is free from attachment of creditors of assignor.

CASES:

LAKSHMI KUTTY v. T.M. VISHNU NAMBIAM –endowment policy was assigned by assured to his spouse & communicated to Insurance User who reg in his records assignment contained a cl 'subject to condition that if I survive her by date of maturity of policy right to receive policy money shall revert to me as if assignment has not been made' before policy matured during life time of assignee assignor died money paid to assignee this amt was sot to be attached in execution of a money Decree obtained against insurance deceased HELD assignment operated as present transfer in favour of assignee giving her absolute interest in the same.

BAI LAKSHMI v. JASWANTLAL THIRIBHUVANDAS –HELD tenor of assignment was to give immediate interest in policy to assured's wife only effect of condition in assignment is assignment would become inoperative on happening of either of two contingencies mentioned therein policy money didn't form part of assured's estate.

DINABAI v. BOMANSHAJI –assignment stated 'I assign policy to my wife provided she survives me' HELD no present transfer in favour of assignee REASON condition precedent without happening of which interest in policy doesn't pass.

CONDITIONS INCORPORATED WHEN ASSIGNMENT IS TO CREATE SECURITY:

- a) Borrower will pay premium& other moneys reqd to keep policy alive;**
- b) Borrower will restore policy if it becomes voidable;**
- c) If policy becomes void borrower will effect a new policy for equivalent amt & assign it to creditor;**
- d) Lender empowered to pay any arrears of premium & add the amt to principal loan amt;**
- e) Lender has right to sell policy by way of –surrendering it to the life insurance co;**
- f) If lender's power to sell policy has arisen he empowered to convert it into fully paid up policy for lesser amt.**

Insurance User itself grants loan on policy up to 90 95% of surrender value of policy.

Special provisions made as to assignment of life insurance policy in favour of Insurance User

CASE: D.V.V. SURYANARAYANA & ANOTHER v. NATIONAL LIFE ASSURANCE CO LTD –the Insurance Used took many policies from the insurance co after receiving the policies & paying some premiums assured took a loan from the Insurance User& also executed a bond in which he agreed that in the event of default in paying the loan on demand the Insurance User shall be empowered to sell the

policies & if the co sells the policies to itself the price shall be the surrender value further the co shall have the power to cancel the policies on payment of surrender value & cancellation shall be deemed to be a sale within the meaning of the bond; The Insurance User took policies for 2k each & later borrowed 1.5k on security of these policies assured later committed a default in payment; Co as per terms of the bond cancelled the 2 policies assured died his widow & sons claimed insurance amt on these 2 policies as legal heirs of the deceased assured HELD legal heirs entitled to the insurance amt REASON provision in the bond for cancellation of the policies amounted to a clog on the equity of redemption & that the co took over the policies on its own initiative without any acquiescence of the assured, which in Law it was not entitled to do.

Mortgagee's rights to sue for the insurance amt: He may sue provided (i) a valid assignment of the policy has been made to him as per s.38 of the Insurance Act, 1938 & (ii) due notice of the assignment has been served on the Insurance User.

Mortgagee can't claim the entire insurance amt he has a right to only to the extent of his interest in the policy (ie, Principal amt + interest). But, if entire insurance amt is paid to him he may give a valid discharge to the Insurance User & he is deemed to hold the balance in trust for the assured's legal reps.

But, the Insurance User is not obligated to pay anything more than what is due to the mortgagee (assignee).

Lien: Stranger hasn't got a right of lien over the policy.

In life insurance lien may be created if the policy is on the life of a 3rd person. Eg: A creditor has the debtor's policy assigned to him as a security later when the debtor defaults in payment of premium creditor pays them thereby he gets the right to lien on the policy until the premium/s he paid are refunded to him.

- i. By contract with beneficial owner of the policy;
- ii. By reason of the right of trustees to an indemnity out of their trust property for money expended by them in their preservation.
- iii. By subrogation to this right of trustee of some person who may at their request have advanced money for the preservation of the property;
- iv. By reason of the right vested in mortgagees or other persons having a charge upon the policy, to add to their original debt.

Only in the above circumstances a 3rd person (without a contract or request) has a right of lien on the policy for the premiums paid by him.

V NOMINEE:

Def: When a person is named in the proposal form as the person for whose benefit the insurance is effected such person is nominee.

When: Nomination can be made at any time before the event Insurance Used against insurance happens.

3rd party: Nominee is a 3rd party to the insurance contract he is not privy to it.

Hence, he can't

- i. Sue for the insurance amt;
- ii. Can't give a valid discharge to the Insurance User if latter pays to him.

Persons entitled to give a valid discharge are: Executors/administrators/other legal reps of the deceased assured.

HOUSEMAN – "The fact that a policy may be expressed to be for the benefit of some 3rd party will not be of itself suffice to give that 3rd party any right of property in the policy or in the policy money either at Law or in equity."

CASES:

CLEAVER v. MUTUAL RESERVE FUND LIFE ASSOCIATION – a person Insurance Used his own life & expressed in the proposal form that the sum Insurance Used is payable to his wife (on his death) if she isn't alive to be paid to his legal reps. Wife convicted for the murder of her spouse HELD she disentitled to the insurance amt REASON the trust created in her favour under the Married Women's property Act inapplicable by reason of her conviction OBSERVATIONS

LORD EASHER MR "The contract is with the husband & with nobody else. The wife is no party to it. Apart from the state the right to sue on such a contract would clearly pass to the legal reps of the husband."

FRY LJ – "She was a stranger to the contract; it might have been put an end to by the contracting parties without her consent, the breach of which would have given her no cause of action against insurance any one."

RE A POLICY No.6402 OF THE SCOTTISH EQUITABLE ASSURANCE SOCIETY – JOYCE J (Contrary view to the above) "The nominee is the person entitled to receive the money in Law though in equity the money belonged to the legal personal reps of the assured."

England: Nominee gets the right to enforce the policy only in the following insurancetances:

- 1) The nomination amounts to a declaration of trust;
- 2) The assured takes out the policy as the agent of the nominee;
- 3) The nomination is made u/s.11 of the Married Women's property Act, 1882;
- 4) The nomination is made u/s.56 of the Friendly Societies Act, 1896.

India: Before 1938 position same as in England contained in Ss.132 & 135 of TP Act (ie assignee of a life policy can't sue in his own name assignor's personal reps would have to be impleaded as necessary parties in a suit by assignee against insurance Insurance User).

After Insurance Act, 1938 provisions as to nominee (his legal position) contained in S.39 of the Act:

(a) Time of nomination: Policy holder may at the time of effecting the policy OR at any time thereafter before policy matures for payment nominate the person(s) who is/are to receive the amt on his death;

If the nominee is a minor he may appoint any person to receive the amt in the event of his death during the minority of the nominee.

(b) How nomination (Procedure): Nomination made by incorporation in the text of the policy OR by endorsement in the policy communicated to the Insurance User registered by Insurance User in the records relating to the policy.

Nomination may be cancelled/changed at any time before policy matures for payment by endorsement or Will + (to be binding on the Insurance User) notice in writing of the cancellation/change shd be delivered to the Insurance User If not CONSEQ if Insurance User pays (bona fide) the insurance amt to the nominee mentioned in the policy he won't be liable for such (wrong) payment.

Insurance User shall make the necessary changes in the records pertaining to the policy.

(c) On request Insurance User shall furnish to the policy holder a written acknowledgment of having registered the nomination/cancellation/change for this issue he may charge a fee not exceeding Rs.1/.

There is dissenting opinion as to right of nominee to receive the money whether he is to receive and hold it in trust for the legal reps OR on his own behalf for himself.

CASES (in this regard):

SAROJINI AMMA v. NEELAKANTHA PILLAI –HELD nominee under a policy of life insurance has bare right to collect money payable under policy on death of assured & give a discharge to Insurance User he acts only as a receiver.

KESARI DEVI v. DHARMA DEVI (DIFF VIEW) nothing in s.39 to suggest that nominee recd money merely as trustee/agent of assured's legal rep sec doesn't lay down that he is under any liability to a/c for the money recd to any person insurance co shd pay money to him & he is left to deal with it in any manner he likes it's not rule of Justice, equity & good conscience that policy money paid to nominee u/s.39 is held by him as trustee of legal rep of assured.

UMA v. DWARKADAS –HELD same view as in above (2nd) case.

SABITA DEVI v. USHA DEVI –SC assured appointed his spouse Usha Devi as nominee to receive sum assured on his death later he died leaving behind wife/son Ashok Kumar/mother Sabita Devi as his nearest legal heirs on strength of nomination wife claimed entire amt to the exclusion of others HELD dismissed her claim REASON lang of s.39 is incapable of altering Law of Succession it merely indicates the hand which is authorized to receive the amt & Insurance User gets a valid discharge.

LIC v. NIRMALA ADI REDDY –assured had nominated his Mum wife & children as legal heirs claimed their share in the amt LIC insisted that it had to pay only to nominee unless it's stopped by a Stay Order of Court so they sued HELD (i) Ordered LIC to pay their share to them insurancepite of nomination (following decision of SC in above<Sabita Devi> case) (ii) Ordered LIC to pay to plaintiff company of suit (as LIC's stand wasn't justified).

CANCELLATION OF NOMINATION:

Title: Nomination doesn't affect title to money secured by policy assured continues to be owner with power of disposition over insurance amt.

Transfer: He can transfer assign the policy even after nominating a person.

Cancellation by implication: Nomination can be cancelled by conduct eg: (a) Assured makes a nomination in an endowment policy assured being alive on date of maturity of policy he himself collects the amt is cancellation of nomination by his conduct; (b) Subseq to nomination u/s.39 policyholder assigns the policy u/s.38.

EXCEPTION: Where assignment is made to Insurance User on his granting loan on security of policy & loan is within surrender value of policy nomination is good (it's not cancelled companies of assignment to Insurance User) but subject to interest of assignee (ie, creditor Insurance User).

RECEIPT OF AMT BY WHOM:

- 1) If policy matures during life time of assured to assured (even if nominee is alive);**
- 2) If before policy matures assured & also nominee(s) die amt payable to heirs/legal reps of assured;**
- 3) If nominee(s) die before policy matures amt payable to assured (if alive) or to assured's heirs;**
- 4) If nominee survives assured (who died before maturity of policy) nominee entitled to receive payment; If more than 1 nominee some of them survive the assured the amt becomes payable to the survivors.**
- 5) If nominee dies after maturity of policy but before receiving payment his heirs (not the heirs of assured) are entitled to receive payment.**

NOMINATION IN FAVOUR OF SPOUSE & CHILDREN:

This is a nomination which is an **EXCEPTION** to the rule that nomination is subject to cancellation.

S.39(7) of Insurance Act provides that rules contained in that section won't apply to s.6 of Married Women's property Act, 1874.

Married Women's property Act, 1874:

S.5: Any married woman may effect a policy of insurance on her own behalf & independently of her husband if expressed on face of it to be so effected shall ensure as her separate property contract evidenced by such policy shall be as valid as if made with an unmarried woman.

S.6: (i) Policy of life insurance effected by a married man on his own life expressed on the face of it to be for benefit of his wife & children or any of them shall ensure & be deemed to be a trust for their benefit & shall not be subject to control of husband or his creditors nor form part of his estate.

(ii) Nothing contained in this section shall impede or destroy right of any creditor to be paid out of policy amt where such nomination may have been effected with intent to defraud creditors.

STATUTORY TRUST: Nomination in favour of wife/children is a Statutory Trust in their favour conferring on them beneficial interest in the proceeds of the policy to the exclusion of assured/his creditors/Court officials like official receiver or official assignee (they can't tamper with it they can't proceed against insurance policy covered by such nomination). This is a welcome provision based on public policy.

CASES:

KRISHNANCHETTIYAR v. VELAYU AMMAL – wording in the policy 'money payable to self or wife' HELD trust favouring wife.

KRISHAMURTHY v. ANJAYYA – regarding nomination words used by husband in the proposal form 'for the maintenance of the family' policy was to be attached for debts of assured HELD doesn't create a trust in favour of spouse & children policy amt liable to be attached for debts of policy holder after his death REASON the word 'family' found only in the proposal form not in the policy.

BHARAT INSURANCE CO LTD v. LAKSHMI DEVI – sum assured was payable to assured on his attaining 60 yrs or his wife (if he died earlier) assured with consent of nominee converted policy into paid up policy on his death ? was whether co entitled to deduct sum of loan of assured & interest thereon from policy amt payable to widow HELD co not entitled to deduct amt representing loan interest from policy amt payable to widow (nominee) REASON at the inception of policy itself trust created in favour of his wife u/s.6 of Married Women's property Act hence assured can't raise a loan which would adversely affect interest (by nomination) created in favour of his wife.

PRESUMPTION OF TRUST WHEN: Arises only if nomination made at the time when policy is formed any subsequent nomination in favour of spouse &/or child (ren) doesn't raise such a presumption of statutory trust.

In cases where such presumption arises official trustee's liabilities/duties governed by Indian Trusts Act.

UNIT - V

MOTOR VEHICLES ACT, 1939

1. INTRODUCTION

The number of people who get killed in motor vehicle accidents is growing day by day. The main source to such helpless people and their dependents is the compensation that they are entitled to receive under law. But right from 1956, motor accident compensation law has been in a state of flux. It was in that year that the legislature amended the Motor Vehicles Act, 1939 by inserting several new sections. Over the years, many more amendments followed and in 1988, a new Motor Vehicles Act replaced the old one. There are various new rights created by the Motor Vehicles Act, 1988 for claiming compensation in case of any death or bodily injury caused in an accident arising out of the use of a motor vehicle. Over the years, the judiciary has not only been called upon from time to time to interpret these statutory provisions and apply them to different facts and situations, but also to lay down the legal principles for assessing compensation.

Comprehensive view of the provision of the Act

An attempt has been made to make a comprehensive review of all aspects of the Motor Accident Compensation Law as per the new Act of 1988. An Act to consolidate and amend the law relating to motor vehicles. It be enacted by parliament in the Thirty-ninth Year of the Republic of India as follows. The objective and Reason for the act were, the motor vehicles Act, 1939, consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up to date. The need was, however, felt that this Act should, now inter alia, take into account also changes in the road transport technology, pattern of passenger and freight movements, developments, of the road network in the country and particularly the improved techniques in the motor vehicles management.

Various Committees, like, National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two Wheeler Committee, as also the Law Commission have gone into different aspects of road transport. They have recommended updating, simplification and rationalization of this law. Several Members of Parliament have also urged for comprehensive review of the Motor Vehicles Act, 1939, to make it relevant to the modern-day requirements. A Working Group was, therefore, constituted in January, 1984 to review all the provisions of the Motor Vehicles Act, 1939 and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like Central Institute of Road Transport.

New Developments

There has been important suggestions made by the Transport Development Council relate to, are the introduction of newer type of vehicles and fast increasing number of both commercial and personal vehicles in the country. Providing adequate compensation to victims of road accidents without going into long drawn procedure, Protecting consumers' interest in Transport Sector, concern for road safety standards, transport of hazardous chemicals and pollution control delegation of greater powers to State Transport Authorities and rationalizing the role of public authorities in certain matters, the

simplification of procedures and policy liberalization in the field of Road Transport, enhancing penalties for traffic offenders.

Report had recommended that every application for a claim be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, at the option of the claimant. The bill also makes necessary provision to give effect to the said recommendation.

2. NATURE & SCOPE

A motor vehicle policy is a unique combination of several types of General Insurance. It provides for indemnity in case of accident and so, it is an accident policy. Its subject matter is a vehicle, so it's a property insurance. It provides for insurance money being paid in case of demise of owner of property and so, it is a life insurance. If any liability is incurred towards third parties in case of accident or negligence of driver, insurer bears the liability of the assured. so, it's liability insurance. If vehicle is insured, insured will be indemnified in case of loss/damage to vehicle by accident. Insurer's options :- (a) pay the amount of loss/damage.

(b) repair the vehicle part. In case of imported vehicle, if the part is not locally available or is exorbitantly priced, then the insurer limits his liability to paying (cash) the catalogue price issued by manufacturer or his agent in India, with service cost (i.e., cost of fitting the part).

DEFINITIONS

SECTION 2(28): Motor Vehicle or Vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters.

Concept and Meaning of Accident

The term 'accident' has not been defined in the Motor Vehicles Act. The term 'accident' was first time defined in *Fenton v. Thorley & Co. Ltd.* as unlooked for mishap which is not designed nor expected.

In *United India Insurance Co, Ltd. v. Somari Devicase* it was observed by the Patna High Court that the word 'accident' generally denotes an event that take place without one's foresight or expectation, i.e. an event which proceeds from an unknown cause or is unusual effect of a known cause or contingency. An accident which is unforeseen is accident which term means some unexpected and unforeseen event or overlooked mischief. It is an event happening without concurrence of will of the person by whose agency it was caused. It may incidentally be stated that the term 'accident' for the purpose of law relating to compensation includes any injury not designed by the injured himself, and it is of consequence that the injury was designed and intended by the person inflicting the same..

In the matter of *Oriental Insurance Co. Ltd. v. Dongkholam* it was held by the High Court that the difference between a murder which is not an accident and a murder which is an accident, depends on the

proximity of the cause of such murder. If the dominant intention of the act of felony is to kill any particular person then such killing is not accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder within the meaning of Motor Vehicles Act.

CONCEPT AND MEANING OF LOSS

Loss of vehicle means loss to the owner of the vehicle.

Moore v Evans– *BANKS LJ* says “Mere temporary deprivation wouldn’t under ordinary circumstances constitute a loss. On the other hand, complete deprivation amounting to a certainty that the goods could never be recovered, is not necessary to constitute a loss. It lies somewhere in between these two extreme cases. “**Webster’s case**– *PARKER J* says “Every case depends on its own facts. An assured is not entitled to sit by & do nothing. Equally he is not bound to launch into legal proceedings nor is it necessary to carry them to the House of Lords.”

3. COMPULSORY THIRD PARTY INSURANCE OF MOTOR VEHICLES

Motor third-party insurance or third-party liability cover, which is sometimes also referred to as the ‘act only’ cover, is a statutory requirement under the Motor Vehicles Act. It is referred to as a ‘third-party’ cover since the beneficiary of the policy is someone other than the two parties involved in the contract i.e. the insured and the insurance company. The policy does not provide any benefit to the insured; however it covers the insured’s legal liability for death/disability of third party loss or damage to third party property.

THIRD PARTY INSURANCE

A third party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the second party, and the person you (the insured) injure who claims damages against you is the third party.

Section 145(g) “third party” includes the Government. **National Insurance Co. Ltd. v. Fakir Chand**, “third party” should include everyone (other than the contracting parties to the insurance policy), be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of insurance policy.

Salient Features of Third Party Insurance

- Third party insurance is compulsory for all motor vehicles. In **G. Govindan v. New India Assurance Co. Ltd**, Third party risks insurance is mandatory under the statute .This provision cannot be overridden by any clause in the insurance policy.
- Third party insurance does not cover injuries to the insured himself but to the rest of the world who is injured by the insured.
- Beneficiary of third party insurance is the injured third party, the insured or the policy holder is only nominally the beneficiary of the policy. In practice the money is always paid direct by the insurance company to the third party (or his solicitor) and does not even pass through the hands of the insured person.

- In third party policies the premiums do not vary with the value of what is being insured because what is insured is the 'legal liability' and it is not possible to know in advance what that liability will be.
- Third party insurance is almost entirely fault-based.(means you have to prove the fault of the insured first and also that injury occurred from the fault of the insured to claim damages from him)
- Third party insurance involves lawyers aid
- The third party insurance is unpopular with insurance companies as compared to first party insurance, because they never know the maximum amounts they will have to pay under third party policies.

Motor Vehicles Acts,1939 and 1988

Motor Vehicles Act,1939 consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up to date. The need was, however felt that this Act should, now interalia take into account also changes in the road transport technology, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management.

The Motor Vehicles Act,1988 which came into force on 1st July,1988 and which is divided into XIV Chapters, 217 Sections and two schedules, makes it compulsory for every motor vehicle to be insured. Chapters X,XI and XII of the 1988 Act deals with compensation provisions. Sections 140 to 144 (Ch.X) deal with liability without fault in certain cases. Chapter XI (Sections 145 to 164) deal with insurance of motor vehicles against third party risks.

Historical Background of third Party Insurance

Chapter VIII of the 1939 Act and Chapter XI of the 1988 Act have been enacted on the pattern of several English statutes which is evident from the report of 'Motor Vehicles Insurance Committee,1936-1937' In order to find out the real intention for enacting Ss.96 of the 1939 Act which corresponds to Ss.149 of the 1988 Act, it is relevant to trace the historical development of the law for compulsory third -party insurance in England. Prior to 1930, there was no law of compulsory insurance in respect of third party rights in England. As and when an accident took place an injured used to bring action against the motorist for recovery of damages.

But in many cases it was found that the owner of the offending vehicle had no means to pay to the injured or the dependent of the deceased and in such a situation the claimants were unable to recover damages. It is under such circumstances that various legislations were enacted. To meet the situation it is for the first time 'the Third Parties' Rights Against Insurance Act,1930' was enacted in England. The provision of this Act found place in Section 97 of the 1939 Act which gave to the third party a right to sue insurer directly. Subsequently, 'the road traffic Act,1930' was enacted which provided for compulsory insurance for Motor Vehicles. The provisions of this Act were engrafted in Section 95 of the 1939 Act and Section 146 of the 1988 Act. It is relevant that under Section 38 of the English Act of 1930, certain conditions of insurance policy were made ineffective so far as third parties were concerned .The object behind the provision was that the third party should not suffer on account of failure of the insured to comply with those terms of the insurance policy.

Subsequently in 1934, the second Road Traffic Act was enacted. The object of this legislation was to satisfy the liability of the insured. Under this enactment three actions were provided. The first was to satisfy the award passed against the insured. The second was that, in case the insurer did not discharge its liability the claimant had the right to execute decree against the insurer. However, in certain events, namely, what was provided in section Section 96(2)(a) which corresponds to section 149 (2)(a) of the 1988 Act, the insurer could defend his liability.

The third action provided for was contained in Section 10(3) of the Road Traffic Act. Under this provision, the insurer could defend his liability to satisfy decree on the ground that insurance policy was obtained due to misrepresentation or fraud. This provision also found place in Section 149 (2)(b) of the 1988 Act. While enacting the 1939 Act and the 1988 Act, all the three actions were engrafted in Section 96 of the 1939 Act and Section 149 of the 1988 Act. However neither the 1939 Act, nor the 1988 Act conferred greater rights on the insurer than what had been conferred in English Law. Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits, i.e. offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defenses specified for in the statute. Thus while enacting Chapter VIII of the 1939 Act or Chapter XI of the 1988 Act, the intention of the legislature was to protect third party rights and not the insurers even though they may be nationalized companies.”

Prohibition on use of motor vehicles without statutory insurance policy, object of is to enable the third party suffering injuries from use of the motor vehicle to get damages irrespective of the financial capacity or solvency of the driver or the owner.

Relevant Provisions of Motor Vehicles Act,1988

Chapter 11 (Section 145 to 164) provides for compulsory third party insurance, which is required to be taken by every vehicle owner. It has been specified in Section 146(1) that no person shall use or allow using a motor vehicle in public place unless there is in force a policy of insurance complying with the requirement of this chapter. Contravention of the provisions of section 146 is an offence and is punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both (section 196).Section 147 provides for the requirement of policy and limit of liability. Every vehicle owner is required to take a policy covering against any liability which may be incurred by him in respect of death or bodily injury including owner of goods or his authorized representative carried in the vehicle or damage to the property of third party and also death or bodily injury to any passenger of a public service vehicle. According to this section the policy not require covering the liability of death or injuries arising to the employees in the course of employment except to the extent of liability under Workmen Compensation Act. Under Section 149 the insurer have been statutorily liable to satisfy the judgment and award against the person insured in respect of third party risk.

Insurance Companies have been allowed no other defense except the following:

- (1) Use of vehicle for hire and reward not permit to ply such vehicle.
- (2) For organizing racing and speed testing;
- (3) Use of transport vehicle not allowed by permit.

(4) Driver not holding valid driving license or have been disqualified for holding such license.

(5) Policy taken is void as the same is obtained by non-disclosure of material fact.

Settlement between insurers and insured persons

Section 152: (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Legal defence available to the Insurance Companies towards third party

The Insurance Company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149(2). In recent time, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defense has been pleaded and proved by the Insurance Company, they are not absolve from liability to make payment to the third party but can receive such amount from the owner insured. The courts one after one have held that the burden of proving availability of defense is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149(2) but has to prove also that such act happens with the connivance or knowledge of the owner. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defense is available.

In *Sohan Lal Passi's v. P. Sesh Reddy* it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner. If owner's knowledge with reference to fake driving license held by driver is not proved by the Insurance Company, such defense, which was otherwise available, can not absolve insurer from the liability. Recently in a dynamic judgment in case of Swaran Singh, the Supreme Court has almost taken away the said right by holding;

(i) Proving breach of condition or not holding driving license or holding fake license or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner.

(ii) Learner's license is a license and will not absolve Insurance Company from liability.

(iii) The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of accident and thereby absolving requirement of driving license to those accidents with standing vehicle, fire or murder during the course of use of vehicle.

This judgment has created a landmark history and is a message to the Government to remove such defense from the legislation as the victim has to be given compensation.

Nature and Extent of Insurer's Liability (section 147)

According to the provisions of this section the policy of insurance must be issued by an authorized insurer. It must be as per requirements as specified in subsection (2). It must insure against liability in respect of death or bodily injury or damage to property of a third party. "Third party" includes owner of the goods or his authorized representative carried in the vehicle and any passenger of a public service vehicle.

The policy of insurance must cover:

1. Liability under the Workmen's compensation Act, 1923 in respect of death or bodily injury to any such employee

(a) engaged in driving the vehicle, or

(b) the conductor or ticket examiner if it is a public service vehicle, or

2. any contractual liability.

Section 147 has to be given wider, effective and practical meaning so that it may benefit various categories of persons entitling them to claim compensation from the insurer or the insured or both. Insurer's liability commences as soon as the contract of insurance comes into force. The liability remains in existence during the operation of the policy. If the existing policy is renewed the risk is covered from the moment the renewal of the policy comes into force. If the accident occurs before the renewal comes into existence, the insurer cannot be made liable. It is the primary duty of the vehicle owner to prove that his vehicle was insured with a particular company. If he fails to comply with it he will have to pay the entire amount of compensation in the case. In case where there is a dispute in respect of the vehicle having been insured by an assurance company, the tribunal must give its finding in the matter, it is its duty to do so. After a certificate of insurance is issued it does not lie in the mouth of the insurer to deny his liability. If the insurer has been a victim of fraud he can recover the amount from the insured by a separate action against him. In *Oriental Insurance Co. v. Inderjit Kaur* - If the insurer has issued a policy to cover the bus without receiving the premium therefore, he has to indemnify third parties in respect of the liability covered by the policy. He cannot avoid the liability arguing that he was entitled to avoid or cancel the contract.

Liability for injury to certain persons or class of persons (other than gratuitous passengers and pillion riders) The policy under the Act covers only third party risks. Insurer is not liable for any harm suffered by a passenger traveling in a private car neither for hire nor for reward. Similar is the position of a pillion rider on a scooter.

K. Gopal Krishnan v. Sankara Narayanan

In this case Madras High Court observed that a scooter-owner is not bound to take out a third party risk policy to cover the claim of the pillion rider that is carried gratuitously. If he is injured, the insurance company would not be liable unless policy covering such risk is obtained by the scooter-owner. A private carrier registered as such with R.T.O. and also in insurance policy, cannot be used for carrying any passenger or goods for hire or reward. However if it is so used and the employees of a party hiring the private vehicle belonging to the insured are injured in an accident the insurance company will not be liable.

Insurer's liability to Vehicle-owner

A contract of insurance is a personal contract between the insurer and the insured. It is for the purpose of indemnifying the insured for damage caused due to accident by the vehicle, to a third party. To make the insurer liable the policy of insurance must be in the name of the owner of the vehicle. Owner of the vehicle as defined in Section 2(30) is a person in whose name the motor vehicle stands registered.

A person in possession of a vehicle under a hire-purchase agreement or an agreement of lease or hypothecation is also covered by the definition, no matter he has exercised his option to purchase the vehicle or not.

Section 157(1) makes it clear that when the owner of a vehicle transfers the ownership of the vehicle, the policy of insurance and the certificate of insurance shall be deemed to have been transferred in favour of the purchaser of the vehicle with effect from the date of its transfer. This deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

According to subsection (2) the transferee has to apply within 14 days from the date of transfer to the insurer for effecting necessary changes in the certificate and in the policy of insurance.

If the certificate of insurance and the policy are not transferred, the insurer could not be made liable even though the vehicle is transferred. It is to be remembered that "an insurance policy is a personal contract between the parties for indemnifying the insured in case of an accident covered under the policy. If the vehicle is transferred by an insured to another person, the insurance policy lapses upon the transfer. In such a case the benefit of the policy is not available to the transferee, without an express agreement with the insurance company. When the insurance policy lapses it would not be available to cover the liability of the purchaser of the vehicle.

S.Sudhakaran v. A.K.Francis,

There was an agreement for sale of a vehicle. The owner did not comply with the statutory provisions regarding transfer of a vehicle. He, however, allowed the vehicle to be used by the transferee. The owner had retained the insurance policy with him.

Held— The insurance company was not liable to indemnify the owner.

Liability in respect of damage to property [Section 147(2)]

For damage to property of a third party under 1939 Act the limit of liability is Rs 6000 in all, irrespective of the class of the vehicle. Under 1988 Act the position as laid down by section 147 (2) in regard to liability is as under:

(i) For death or personal injury to a third party, the liability of the insurer is the amount of liability incurred, i.e. for the whole amount of liability.

(ii) For damage to property of a third party the liability of the insurer is limited to Rs. 6000 as was under the 1939 Act.

Liability of Insurer beyond the limits mentioned in the Act

Section 147 lays down the limits of liability of the insurer. However there is no bar for the insurer undertaking a higher liability i.e. liability for a greater amount than that mentioned in the Act. Thus the insured and the insurer can contract and can provide for a higher liability.

4. PRINCIPLE OF ABSOLUTE OR NO FAULT LIABILITY UNDER MOTOR VEHICLE ACT

a) KNOCK FOR KNOCK AGREEMENTS

When two motorists are involved in an accident, both may be liable. If they would have taken out a motor vehicle insurance, as it's a contract of indemnity, doctrines of Subrogation and Contribution would apply. To avoid this, the insurers enter into an agreement is known as 'Knock for knock agreement'.

Meaning: Settlement of claims, i.e., the insurers of the respective vehicles enter into an agreement between themselves that, irrespective of whoever was responsible for the accident, the insurers will pay their respective assured and they will not enforce subrogation rights.

Hobbs v Morlowe

Held, 'The existence of a knock for knock agreement between insurers doesn't deprive insured of his right of action against wrongdoer for full amount of the damage suffered by him'. The wrongdoer can't urge that the plaintiff has already been indemnified by the insurer.

Applicability in India: But, knock for knock agreements have lost their relevance in India, after the nationalization of general insurance in 1972.

b) ABSOLUTE OR NO FAULT LIABILITY

Sections 140 to 144 of the Act, provides for payment of compensation on the principle of no fault liability i.e. without any fault on the part of any party. Section 140 of the Motor Vehicles Act, 1988 provides for liability to pay compensation in certain cases on the principle of no fault. Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. (a) The amount of compensation which shall be payable under section 140 (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(b) In any claim for compensation under section 140 (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(c) A claim for compensation under section 140 (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement

be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(d) Notwithstanding anything contained in Section 140(2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 – A”.

Section 140 of the Act provides that in case of death or permanent disablement of any person resulting from an accident which arise out of use of a Motor Vehicle/s, the owner of offending vehicle/s shall be liable jointly or severally to pay compensation in respect of such death or permanent disablement. Under this section amount of compensation is a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. For claiming such compensation, claimant is not required to plead that such accident is occurred due to negligence or fault of the owner/ driver of the vehicle and death or permanent disablement is result of that accident. Moreover, such claim shall not be defeated by reason of any wrongful act, neglect or default on the part of the person whose death or disablement has been occurred. Nor the quantum of compensation shall be reduced due to contributory negligence on the part of person who sustained disablement or death. Compensation awarded under this section does not barred the victim to claim compensation under any other law being in force, though the amount of such compensation to be given under any other law shall be reduced by the amount of compensation payable under no fault liability under this section or in accordance with the structured formula laid down under schedule -2 to this Act read with Section 163A of the Act.

In *Satvantkumar Harjit Singh Vig v. Aarti Jayant Lalwani* case it was held by the Double Bench of the Mumbai High Court that the phrase ‘has resulted from’ occurring in section 140 of the Motor Vehicles Act, 1988 does not require the death to have occurred in the accident itself. The section is attracted even where death is result or the consequence of the accident arising out of a motor vehicle. What is necessary to see is whether the death is the consequence of an accident arising out of use of motor vehicle.

In *Ram Singh v. Anil* it was held by the High Court that when occurrence of accident is proved to have arisen out of use of Motor Vehicle, it is not necessary to plead or prove negligence of driver of vehicle under Section 163A.

In *National Insurance Co. Ltd. v. Honnappa* in a claim under no fault liability, claimant need not plead or establish that permanent disablement was due to wrongful act or negligence or default of owner of the other vehicle with which the vehicle of claimant has colluded.

HIT & RUN MOTOR ACCIDENT

Accident arising out of use of motor vehicle. The identity of which cannot be ascertained (despite reasonable efforts to identify it).

Central Government authorized by notification in the Official Gazette formulate a scheme specifying the manner in which compensation is to be administered by General insurance corporation in hit & run motor accidents cases.

4. MOTOR ACCIDENTS / CLAIMS TRIBUNAL

A new forum, i.e. Motor Accidents Claims Tribunal, which substitutes Civil Court, has been created by the Motor Vehicles Act, for cheaper and speedier remedy to the victims of accident of motor vehicles. Chapter XII of the Motor Vehicles Act, 1988 deals with the constitution of Claims Tribunal, Application of Claims and award of compensation etc. This chapter also deals with procedure followed by tribunals in awarding claim and awarding of interest and compensatory costs in some cases and appeals against the orders of claims tribunal.

Establishment and Composition of Claims Tribunal.

Section 165 of Motor Vehicles Act, 1988 empowers the State Government to constitute Claims Tribunal to adjudicate upon claims for compensation arising out of motor vehicle accidents, resulting in death or bodily injury to persons or damages to any property of third parties.

Minu B. Mehta v. Balkrishna

it was held by the Supreme Court of India that the power of a State Government to constitute Claims Tribunal is optional, and the State Government may not constitute a Claims Tribunal for certain areas.

Appointment of Member

A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof. Appointment of a person as member of tribunal by name is not necessary and appointment with reference to an office is sufficient.

Qualification for appointment as member

Any person who :Is/has been High Court Justice or Is/has been-District Judge or Is qualified for being appointed as a High Court Judge.

Application for Compensation

Section 166 of the Act provides for the form of application for compensation, the person who may claim compensation, the time within which the application should be filed, etc. It also provides that if the Claims Tribunal, thinks so, may treat the accident report filed by the Police Officer as per Section 158 as an application under this Act.

WHO CAN APPLY

An application may be filed by

1. By injured/aggrieved person
2. If fatal / death then, by all or any Legal representatives of deceased .Agent (of above) duly authorized.

Essential Documents Required to File Claim

Following documents are required along with application for compensation claim :

1. Copy of the FIR registered in connection with said accident, if any.
2. Panchnama copy (this is a list of damages that is drawn by cops in the presence of witnesses).
3. Copy of the MLC/Post Mortem Report/Death Report as the case may be.
4. The documents of the identity of the claimants and of the deceased in a death case.
5. Original bills of expenses incurred on the treatment along with treatment record.
6. Documents of the educational qualifications of the deceased, if any.
7. Disability Certificate, if already obtained, in an injury case.
8. The proof of income of the deceased/injured.
9. Documents about the age of the victim.
10. The cover note of the third party insurance policy, if any.
11. An affidavit detailing the relationship of the claimants with the deceased.
12. RTO Certificate (showing name and address of owner and insurance particulars of vehicle/s involved in the mishap).
13. Passport-Size Photograph.
14. Court-Fee Stamp

Jurisdiction of Claims Tribunal

In *Sanno Devi v. Balram* it was held that jurisdiction of tribunal depends essentially on the fact whether there had been any use of motor vehicle and once it has been established, tribunal's jurisdiction cannot be held ousted on findings that it is negligence of other joint tortfeasor and not of the motor vehicle in question. A victim of an accident arising out of use of motor vehicles may file their claim application to the Claims Tribunal within local limits of whose jurisdiction the claimant resides or carries on business.

Kishan Lal v. State of Jammu and Kashmir it was held by the court that jurisdiction of civil court is not barred where the impugned order, being in violation of mandatory provisions of the statute is without jurisdiction and a nullity.

FUNCTIONS OF CLAIMS TRIBUNAL

The parties can adjudicate on claims for compensation made by aggrieved parties in relation to the accident (caused in the course of using the motor vehicle) which involve-

- Fatal injury.
- Bodily Injury .
- Loss/damage to property of 3rd persons.

Procedure and powers of Claims Tribunal

Section 169 of the Act lays down the procedure to be followed by the Claims Tribunal in setting claims compensation and the powers of the Claims tribunal. In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedures as it thinks fit. The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any

matter relevant to the inquiry to assist it in holding the inquiry⁷⁷. The procedure to be followed at the Claims Tribunal is as under:

I. Application for Compensation

II. Amendment of Pleadings: Amendment for Enhancement of Claim Amount

III. Service of summons

The expression „award must be given wider and proper meaning. An award would comprehend every decision of the Tribunal, whether for or against the claimant or the opposite parties. The meaning of the word „Award as given in Webster’s New World Dictionary is “a decision, as by Judges”. Section 168 of the Act provides that the Claims Tribunal shall deliver the copies of the award to the parties within fifteen days of the award and that the person against whom the award is made shall deposit the amount awarded within thirty days of announcement of the award. On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

In *New India Assurance Co. Ltd. v. G. Lakshmi* it was held that the tribunal is expected to award a compensation which appears to be just, it follows that in deserving cases, the tribunal may not be bound by the figure stated in the claim petition and can award an amount even more than what has been claimed.

ASSESSMENT OF CLAIM

The Hon'ble Supreme Court of India with the development of accident claims has decided the landmark case of General Manager, *Kerala State Road Transport Corporation v. Susamma Thomas* has started giving appreciation to the annual income of deceased. This appreciation ranges to the double of income depending upon the nature of job, age, future prospects etc. Supreme Court has held that after determining and doubling annual income, 1/3 should be deducted towards the expenses to be incurred on the deceased and the remaining amount should be multiplied by a multiplier depending on the age of deceased and beneficiary.

EXECUTION OF AWARD OF CLAIMS TRIBUNAL

Executing court is not empowered to reconsider any aspect of an award afresh but is required to execute it as passed by trial court. Execution of award if taken out after twelve years is not permissible. The award if not executed within twelve years becomes inoperative and unenforceable.

APPEALS AGAINST THE DECISIONS OF CLAIMS TRIBUNAL

Section 173 makes provision for appeal to High Court by the aggrieved against the orders of Claims Tribunal and where the person aggrieved is the person who has to pay the compensation such person shall deposit 50 percent of the amount awarded as directed by the High Court. Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court.