This work seeks to introduce a law student to basic concepts in the law of insurance by providing a comprehensive meaning of insurance, General principles governing the law of insurance, the dramatic and drastic evolution of insurance law and other valuable concepts surrounding the law of insurance in Tanzania.
THE LEGAL FRAMEWORK OF INSURANCE LAW IN TANZANIA.

The legal frameworks of insurance law in Tanzania is mainly governed by the insurance Act No. 10 of 2009 which repealed and replaced Insurance Act Cap 394 which failed to meet the expectations of insurance business in Tanzania. There are other accompanying legislation regulating insurance business in Tanzania such as Marine Insurance Act, Motor Vehicle Insurance Act [Cap 169 R.E 2002] and Micro-Insurance Regulations of 2013 made by virtue of section 167 of the Insurance Act of 2009.

SALIENT FEATURES OF THE INSURANCE ACT NO. 10 OF 2009¹

Introduction

The regulation of Insurance Market in Tanzania existed since its liberalization of the Industry in year 1996. The Insurance Act Cap 394 of year 1996 was a product of economic and financial sector liberalization carried out by the government of Tanzania from the second half of 1980s to date. The Act established an agency of the government known as Insurance Supervisory Department (ISD) under the Ministry of Finance and Economic affairs.

The main objectives of ISD, among others, were to provide superintendence of the conduct of insurers, brokers and agents; formulate standards in the conduct of the business and afford guidance to the players. As time passed, the Act fell short of expectations of the market therefore calling for its review.

The process of enacting new Act commenced in year 2007 and continued up to April 2009 when the National Assembly unanimously passed it and His the President ascended. Hence the new law came into effect on July 1, 2009 through the Government Notice No. 266 Published on 24th July 2009, which Section 2 read as follows: “The 1st day of July, 2009 is hereby appointed to be the date on which the Insurance Act, 2009 shall come into operation” The declaration meant that the Insurance Act Cap 394 was repealed and replaced by the new Insurance Act No. 10 of 2009.

¹Tanzania Insurance Regulatory Authority.
GENERAL OVERVIEW OF THE NEW INSURANCE ACT NO 10 OF 2009²
The new Insurance Act comprises twelve (xii) Parts with one hundred sixty eight (168) sections contrary to the repealed Act which had only one hundred forty one (141) sections, in brief those parts are; Part One is as usual covers Preliminary Provisions with three (3) sections. Part Two contains ten section (10) on Administration of the Authority. Part Three provide Capital requirements for registrants having thirty seven (37) sections and, Part Four is on Association of Underwriters having six (6) sections. Part Five is on Third Party Rights against Insurers on bankruptcy having three (3) sections and, Part Six is on Registration of registrants other than Insurers having eighteen (18) sections, while, Part Seven covers Mandatory Reinsurance Cessions for six (6) sections. Long term insurance or Life insurance is covered in Part eight having thirty seven (37) sections Establishment of Ombudsman Services and Tribunal are provided in part nine which has five (5) sections. Part Ten is on Financial Provisions of the Authority having three (3) sections. Part Eleven is on General Provisions with twenty nine (29) sections and Part Twelve covers offences against insurance business and punishment having nine (9 sections).

CHANGES Brought by NEW INSURANCE Act NO. 10 OF 2009³
☐ The new Act is establishing an Independent Regulatory Authority known as “Tanzania Insurance Regulatory Authority” (Section 5) departing from the previous Act which established an agency of the government known as an Insurance Supervisory Department. The Authority will operate independently as per the requirements of the core principles of insurance supervision formulated by the International Association of Insurance Supervisors (IAIS).
☐ The main objectives of the Authority and its functions are provided under section 6 of the Act, which include Promotion and maintenance of efficient, fair, safe and stable insurance market for the benefit and protection of insurance policyholders.
☐ The appointment of the Commissioner and Deputy Commissioner were previously made by the Minister. The new Act prescribes that the two shall be appointed by the

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²Tanzania Insurance Regulatory Authority
³Ibid
Prepared by Tsar MWAKISIKI, MWAKISIKI EDWARDS

President. Their qualifications are also given as possession of adequate knowledge and experience in Insurance Industry. (Sections 7 & 8 of the Act).

☐ It is of interest to note here that at no point in time the Commissioner and deputy Commissioner shall hail from one part of the Union. Subsection 2 of section 8 read together with section 2 of the Act clarifies this position.

☐ The role of the National Insurance Board is now more of a functional nature than it was previously which was more or less advisory to the Commissioner. This is to ensure that there is a good governance in the Authority as far as oversight exercise of the Board is concerned. Section 14 of the Act provide core functions of the Board to include, provision of guidance to the Authority Generally in the supervision of insurance business in the country and to ensure that the Authority undertakes its activities in a competent manner.

☐ Even the composition of the Board membership has changed as per section 13 (2), it includes professionals from the industry such as a member from ATI, TIBA and TIAA and from other recognised institutions that are related to the insurance sector, contrary to the previous membership structure which their appointment were based on the wisdom of the Minister. However this provision will be actualized by the government authority in line with the saving provision of section 168 (2) (b).

NEW FEATURES OF INSURANCE ACT NO.10 OF 2009

The following are completely new features of the new Insurance Act:

☐ Establishment of a special insurance tribunal, technically known as Ombudsman Services as provided in section 122 and 124. The main function of this institution is to resolve disputes arising between policyholders and insurers on the contracts of insurance. The Insurance Ombudsman will function as a quasi-court under leadership of a very senior legal practitioner at a level of a judge of the High court of Tanzania and alike.

☐ Establishment of an Appeals Tribunal which is mandated to deal with all appeals of Registrants against the decision of the Commissioner of Insurance. Section 126 of the Act particularises the process and timing of commencing the appeal. Any aggrieved person from the decision of the Commissioner may appeal to that Tribunal. Under the repealed law such complaint would go to the Minister responsible for Finance.

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*4Tanzania Insurance Regulatory Authority*
The right to declare a “Bad faith claim” against Insurance Company which fails to settle a claim within a statutory time limit of 45 days after admitting liability is provided. Also when liability under normal circumstances is supposed to be admitted but an insurer refuses to do so may face consequences under section 166 on general penalties.

The term Bad faith claim is defined by Section 131(3) to mean a delay in processing a legitimate claim beyond time limit and delay to pay the claim beyond 45 days without consent of the Commissioner. This is also a new feature which never existed before.

Composite insurance is also barred by law under section 17 of the Act, instead the Insurers may transact either general Insurance or Life insurance but not both. The insurers whose transactions are both long term and general insurance are given timeframe of three (3) years to separate the two businesses. The timeframe of three years is provided by regulation 19 of the new Regulations.

The new law also provides guidance to the Management of the Authority on the use of funds appropriated by Parliament or from levies or any sum of money which the Board may borrow. Section 127 deals with the sources of fund of the Authority. Apart from imposing an overall duty of care of Directors and Officers to policyholders, the new law also provides for consultation before any changes to the regulations are proposed to the government. Other features of the law are like a requirement for an insurer to establish audit and investment committees, placing of additional duties for auditors, definition of related party transactions and the requirement that actuarial valuation of a Non life fund shall be carried out after every two years.

**OFFENCES AND PENALTIES UNDER THE ACT**

Several Provisions in the Act have created offences punishable under Part XII of the Act. For instance punishment prescribed in section 160 are related to offences committed under sections 18, 26, 30 and 34 which is fine of not exceeding five million or imprisonment, while conviction under section 26 and 66 is punished by fine not exceed three million.

Carrying insurance business without registration to the Commissioner of Insurance is a serious offence under the new law which its punishment upon conviction is not less than

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5Tanzania Insurance Regulatory Authority
five million or imprisonment of not less than two years or both. It means the court has no discretion to issue punishment less than the one prescribed by law. Therefore this time the Insurance players should work more closely with the Authority to reduce or to make illegal insurance in Tanzania a history.

☐ It should be understood that the Commissioner of Insurance is mandated by law to issue fine to any offender under sections 18, 26, 30, 34 and 66 instead of being prosecuted in the court of law. However, if they refuse to pay fine then they will face criminal prosecution in a court of law.

☐ The Commissioner shall compound offence and issue an order to pay fine only if the offender admits in writing that he has committed the offence. Section 162 is very clear on it.

☐ Offences under sections 19, 20, 73, 88 and 91 may be prosecuted in court by the Commissioner of Insurance or his representative upon obtaining consent from the Director of Public Prosecution under the National Prosecution Services Act 2007. This requirement is demonstrated in sections 163 and 164 of the Act.

☐ In addition the Commissioner of Insurance may exercise powers vested to him under section 165 to issue a cease and desist order to any Insurance Registrant where in his opinion a person registered to conduct insurance business is conducting business in an unlawful or unethical manner.

☐ The concluding section on this part is section 166 which provide general penalty to whoever acts in contravention of any provision of the Insurance Law.

Generally, at large the new Insurance Act is among the best insurance legislations in Africa. This fact is attested to by looking through the salient features of the Act and the new features embraced therein. No doubt the changes made in the insurance market of Tanzania with the operations of the new Insurance law are quite pertinent and are geared towards aligning the market insurance practice with best International practice as provided under core principles of the International Association of Insurance Supervisors (IAIS). As such every insurance player should be well conversant with the new law and adhere to the statutory requirements because in law not knowing the law is not a defense at all.
MEANING OF TERMS AS USED IN INSURANCE LAW

1. INSURANCE

Is a contract, where by one person called the insurer undertakes in return for the agreed consideration called the premium to pay to another person called the insured a sum of money or its equivalent on the happening of the specified event. Or it is a contract in which one party, known as insured or assured, or insurers with another person, known as the insurer, users or underwriters, his property or the life of another person in whom he has a pecuniary interest, or property in which he is interested, or against some risk or liability by paying a some of money as the premium.

A profound meaning of insurance was given in the case of SCOTTISH AMICABLE HERITABLE SECURITIES ASSOCIATION LTD .V. NORTHERN ASSURANCE CO. Lord Justice Clerk, defined insurance as a contract of insurance belonging to a very ordinary class by which the insurer undertakes in consideration, may sustain by the occurrence of an uncertain contingency.

Insurance is a cooperative device to spread the loss caused by a particular risk over a number of persons who are exposed to it and it does not reduce risk. But it only reduces financial loss to a number of people who take insurance in one insurance company. Therefore, insurance is financial management that spread the costs of loss among a number of members of the insurance company.

The principal forms of insurance are life, fire, marine and motor vehicle. The parties to a contract of insurance are the insurer, who is the person taking the risk, and agreeing to indemnify or pay a lump sum down on the happening of a particular event. The insured is the person paying the premium in order that he may be indemnified or receive payment. Except in insurance on life, the insurer contracts to

6 I .Hardy, The General Principles Of Insurance Law pg 3
7 S.S Gulshan, Merchantile law.pg 730
8 (1883) 11 R
indemnify the insured for what he may actually lose by the happening of certain events upon which the insurers’ liability is to arise. The insured is not supposed to make any profit on his loss. Contracts of life insurance are not contracts of indemnity but are contingency contracts; i.e. the insurer undertakes to pay a lump sum on the happening of a certain event, irrespective of the loss suffered by the insured.

The legal definition of insurance is that, it is a contract between the insurer and the insured whereby, in consideration of payment of premium by the insured, the insurer agrees to make good any financial loss the insured may suffer due to the operation of a peril (risk).

Thus terminology used in definition of Insurance includes: Insurer or insurance company, which means the agency involved in Insurance business. Insured/Assured, which means the person who gets his property/life insured. Policy which means agreement or contract which is put in writing. Premium which means the consideration in return of which the insurer undertakes to make goods the loss or give a certain amount in case of life insurance.

2. INSURABLE INTEREST
Insurable interest is an interest in the subject matter of a contract of insurance that provides the person insured with the right to enforce the contract.

NB: An insurable interest, example, ownership of goods insured distinguishes a contract of insurance from wager or Bet.

3. INSURANCE BROKER
An Insurance Broker is defined under section 3 of the Insurance Act. The phrase Insurance Broker means a person who negotiates Insurance Contracts with Insurance Company on a commission basis and usually handles claims on its clients’ behalf.

4. INSURANCE ACT, 1996
Insurance Act is the law that governs the business of insurance and related matters. It has taken away the monopoly position vested in the NIC. to conduct business of insurance. It also lifts the restriction of imposed on NIC to carry on business in Tanzania only. It
provides inter alia Capital requirements, margin of solvency, registration procedure and general conditions upon which companies may open and or carry on insurance business in Tanzania.

5. **INSURANCE ASSESSORS**

Insurance Assessor is the one who calculates an appropriate sum payable to the insured in the event of claim. Insurance assessor calculates such appropriate sum payable to the insured in event of claim when the amount agreed in the policy is not payable.

6. **INSURANCE LOSS ADJUSTMENT**

Insurance loss adjustment is the process for determining the amount required to be paid to or to indemnify the insured after the occurrence of the loss or risk insured against.

7. **INSURANCE INDUSTRY**

Is an industry comprised of insurance service providers namely insurance companies, insurance Agents, insurance brokers, Loss adjusters, Loss Assessors, inspector & surveyors, customers, and the regulatory authority, all participating in the sector. It is used to describe the entire insurance market arena where insurance providers and buyers come together.

8. **INSURANCE REGULATIONS**

Insurance regulation refers to set of rules or agreed behavior either imposed by government or Regulatory authorities or other external agency or self-imposed by agreement within the insurance industry that direct and limits the activities and business operations of Insurance players in the industry to ensure that they carry out their activities in a safe and sound manner and in the accordance of the law.

9. **INSURANCE POLICY**

The insurance policy like all contracts is viewed as an arrangement that creates rights and duties for those who are a part to it (Dorfman, 1983). Dorfman went further to say: “for instance, the insurance contract creates the right of the insured to collect from the insurer when a covered loss takes place. There is a corresponding duty on the part of insurer to pay for such losses”. Therefore, insurance policy is an evidence of the contract entered between the insured and the insurer, and any differences or disputes are interpreted according to what is contained in the policy document. It shows that is covered under the insurance contract and what is excluded.
10. **INSURANCE INDUSTRY DEVELOPMENT**

Development of insurance industry refers to the general improvement in the services offered in by insurance companies, growth of the sector, better performance and stability of the sector and the solvency of the insurance companies and or the positive change of affairs in the industry. The Change should be for the better of the industry (Beers & Swanepoel 2000) and the insuring public and policy holders.

11. **INSURANCE PREMIUM**

Is a consideration, price paid by the customer to the insurance company in order to assume the risk and the liability protection. Further an insurance premium is the amount of money charged by a company for active coverage. The sum a person pays is determined by several factors, sum insured incase of property, including age, health, and the area a person lives incase of life insurance. People pay these rates annually or in smaller payments over the course of the year, and the amount can change over time. When insurance premiums are not paid, the policy is typically considered void and companies will not honor claims against it.

12. **INSURANCE SUPERVISION**

Is the process of monitoring insurance service providers to ensure that they are carrying out their activities in accordance with laws, rules and regulations, and in safe and sound manner. Insurance supervision activities employed by supervisory authorities include the following issue the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration and protect the interests of the policy holders. Further, it regulates investment of funds by insurance companies, regulating maintenance of margin of solvency, adjudication of disputes between insurers and intermediaries policyholders.

13. **STABLE INSURANCE INDUSTRY**

A stable insurance Industry means that Insurance service providers have the ability and capacity, financial and technical knowledge to conduct insurance services in a professional manner to meet obligations, and are making adequate profits from authorized insurance business to justify their investment while at the same time keeping failures at a minimum within the country.
14. INSURANCE COMPANY

Insurance Company is company registered and licensed to transact insurance business and dealing and underwriting Insurance business. It can either be General Insurance Business, Health Insurance Company or Life Insurance Company. But for the purpose of this study insurance company will refer to the General insurance company service provider. A general insurance company will offer insurance policies such as motor vehicle insurance, Fire Insurance on properties, Theft and Burglary on properties, marine insurance, group personal accident, money insurance, aviation and many other miscellaneous insurance covers.

15. ASSURANCE AND INSURANCE DISTINGUISHED.

The two words were used synonymously at one time, but there is fine distinction between the two. Assurance’ is used in those contracts which guarantee the payment of a certain sum on the happening of a specified event which is bound to happen sooner or later, for example attaining a certain age or death. Thus life policies comes under ‘assurance’. Insurance, on the other hand, contemplates the granting of agreed compensation of the happening of certain events stipulated in the contract which are not expected but which may happen, for example risk relating to fire, accident or marine.

16. LIFE INSURANCE AND LIABILITY INSURANCE DISTINGUISHED

In cases of life insurance,

- It covers the risk of death and a health insurance policy as a cushion against hospitalization expenses. Personal accident schemes cover the policyholder against death or disability due to an accede; it does not cover natural death. Life insurance will cover all causes of death except for suicide (which can be contested in the first two years only).

- Upon the death of an insured person designed to provide a benefit, typically a lump sum payment, in the event of specified event. A common form of a protection policy design is term insurance.

- A life insurance provides you and your family cover in case of the policyholder’s death (due to accident/ illness or other reasons) or total permanent disablement. Accident and Illness Insurance Covers areas, which a life insurance policy does not such as, partial permanent disablement, temporary total disablement, and accidental medical expenses, etc.
In cases of liability insurance

- Liability insurance covers specific types of legal liabilities that a homeowner, driver, professional, business executive, or business itself might incur in the round of daily activities.

- Liability policies cover not only any settlement or award that might ultimately have to be paid but also the cost of lawyers and related expenses in defending any claims.

- Protect the purchaser (the "insured") from the risks of liabilities imposed by lawsuits and similar claims. It protects the insured in the event he or she is sued for claims that come within the coverage of the insurance policy.

- Liability insurance is designed to offer specific protection against third party insurance claims, i.e., payment is not typically made to the insured, but rather to someone suffering loss who is not a party to the insurance contract.

- Liability insurance policies cover both legal costs and any legal payouts for which the insured would be responsible if found legally liable. Intentional damage and contractual liabilities are typically not covered in these types of policies. There are different types of liability insurances such as Directors & Officers Liability, Professional Indemnity Policy, Products Liability Policy, Commercial General / Public Liability Policy, Workmen's Compensation Policy, IPO Insurance, Media Liability Insurance.

17. WAGERING AND INSURANCE DISTINGUISHED

1.1. Distinctions:

✓ The main distinguished factors Insurance contract from Wagering contract, holder of an insurance policy must have an insurable interest. An insurable interest exists whenever a particular event causes a person damage. In a wagering agreement, the parties have no insurable interest or no insurable interest needed. ⁹

✓ Contract of insurance; both parties are interested in the subject matter. When an insured has the required financial interest, he or she will suffer dam occurrence of the event and will therefore be entitled to compel the insurer to its obligation to pay a sum of money. In wagering agreement, neither party has any interest in happening or non-happening of an event.

✓ Contracts of insurance are contracts of indemnity except life insurance contract, which is a contingent contract - In indemnity insurance the insured must at least have a financial interest in non- occurrence of the risk. A wagering agreement is a

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⁹ JLRI Teaching material, p 126
conditional contract:- no question of indemnify on the happening of the event. Fixed amount becomes payable.

✓ Contract of insurance are based on scientific and actuarial calculation of risks wagering agreements are a gamble without any scientific calculation of risk.

✓ Contracts of insurance are regarded as beneficial to the public and hence encouraged by the State - Is a contract to make good the loss of property(or life) of another person against some consideration called premium. Wagering agreements serve no useful purpose.

✓ Contract of insurance is a valid contract wagering agreement is void being expressly declared by law. - A wagering contract is unenforceable in court. 10

1.2. Similarities:
➢ Contract of insurance resembles to a wagering agreement when it is a legal and enforceable contract with important economic and social purposes like, stock exchange speculations, sporting activities and lottery or betting authorized by the government. In such, whereby the insurer bets with the insured that his house will not be burnt and giving him the odds of its value.

17. INSURANCE AND GAMBLING DISTINGUISHED

1.1. Distinctions:
The main differences between Insurance and gambling are
➢ Exacting risk and creation of risk: insurance is a technique for handling an already existing pure risk But gambling creates a new speculative risk

➢ Interest in the prevention of a loss: Insurance and the insured both have a common neither the insurance not the insurer is place in apposition where the gain of the winner comes at the expense of the loser. However, gambling is socially unproductive, because the winner’s gain comes at the budgets of the loser.

➢ Minimizing uncertainty and increasing uncertainty: insurance helps to minimize the uncertainty and risks in the society, hence it promotes industrialization and economic development. In contrast, gambling increases uncertainty, risks and conflict in the society. It does not promote industrialization. Rather than it increases people’s

10 Comparative study on contract of insurance and wagering agreement: by kebal pant 57
will to earn money by speculation or luck, not by honest activities of labor. Hence gambling increases bad people and social crime.

➢ **Restore:** insurance contract restore the insured financially in completely of partially if a loss occurs. In contrast, consistent gambling transactions generally never restore the losers to their former financial position.

➢ **Prevention of loss:** Insurer and the insured both have a common interest in the prevention of a loss. Both parties win if the loss does not occur. However, in case of gambling one can win only if the second party loses financially.\(^{11}\)

### 1.2. **Similarities:**

Insurance and gambling seem to be same in some extent.

✓ In both, one party promises to pay a given sum to the other upon the occurrence of a given future event, the promise being condition upon the payment of, or agreement to pay, a stipulated amount by the other party to the contract.

In either case, one party may receive more, much more, than he paid or agreed to pay.\(^{12}\) Besides, a contract of insurance may similar with gambling agreement whereby the insurer bets with the insured that his house will not be burnt and giving him the odds of its value, it is a legal and enforceable contract with important economic and social purposes.

❖ **Gambling can be divided** into three basic formats based on style of play: lotteries, betting and gaming. All lotteries are gambling, for instance, but not all forms of gambling are lotteries. The same holds true for gaming and wagering. Lotteries and games of chance depend on the generation of random numbers within set parameters: possible results available from fifty-two cards, two dice, three reels, etc.

✓ When we make distinction from the insurance, since they are the kinds of gambling there is no Common interest in the prevention of a loss and no more insurable interest. Beside they ate creates a new speculative risk restore the losers to their former financial position. No question of indemnify on the happening of the event. Fixed amount becomes payable.

**Gaming and Gambling:** both words refer to wagering money at games like pokies, roulette, and blackjack in the hopes of winning even larger sums of cash. gambling as distinct from playing games "against deceitful, disorderly and excessive gaming" which deals with games both of skill and chance at which people cheat, or play otherwise than

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\(^{11}\) The Costs and Consequences of Gambling In the State of Delaware

\(^{12}\) insurance and gambling, by Eric Hehner
with ready money, or lose more than on credit. Gaming" is now always associated with the staking of money or money's worth on the result of a game of pure chance, or mixed skill and chance; and "gambling" has the same meaning, with a suggestion that the stakes are excessive or the practice otherwise reprehensible.\textsuperscript{13}

**Lotteries**: A lottery is a form of gambling which involves the drawing of lots for a prize. Some governments outlaw lotteries, while others endorse it to the extent of organizing a national or state lottery. Today, government-sponsored lotteries are by far the most numerous. Lotteries come in many formats. Some of them are, the prize can be a fixed amount of cash or goods. In this format, there is risk to the organizer if insufficient tickets sold, the prize fund will be a fixed percentage of the receipts. Many recent lotteries allow purchasers to select the numbers on the lottery ticket, resulting in the possibility of multiple winners, Lottery purchases can be explained by decision models based on expected utility maximization, as the curvature of the utility function can be adjusted to capture risk-seeking behavior.\textsuperscript{14}

**Betting**: Betting" is usually restricted to wagers on events connected with sports or games, and "lottery" applies to speculation to obtain prizes by lot or chance. Betting, like sporting depends on odds and payoff calculations, measured against results transmitted real-time. Sports Betting – Players wager money on various sporting events, from football to auto racing. The payout for a win is determined in advance by fixed odds.

**18. BUSINESS INSURANCE**

Is a risk management tool that enables business to transfer the risk of a loss to an insurance company. By paying a relative small premium to the insurance company, the business can protect itself against the possibility to sustain a much larger financial loss. Section 3 of the Insurance Act, 2009 stipulates that: "insurance business" means the business of assuming the obligation of an insurer in any class of insurance whether defined in this section or not, ...and includes assurance and reinsurance and reassurance.

**NATURE OF INSURANCE**

The following are the main characteristics of insurance which are applicable to all types of insurance (life, fire, marine and general insurance).
1. **Sharing of Risks** - Insurance is a device to share the financial losses which may occur to individual or his family on the happening of certain events.

2. **Co operative Device** – Insurance is a co-operative device to spread the loss caused by a particular risk over a large number of persons who are exposed to it and who agree to insure themselves against the risk.

3. **Value of Risk** – Risk is evaluated at the time of insurance. There are several methods of valuing the risk. Higher the risks, higher will be premium.

4. **Payment on Contingency** - If the contingency occurs, payment is made; payment is made only for insured contingency. If there is no contingency, no payment is made. In life insurance contract, payment is certain because the death or the expiry of term will certainly occur. In other insurance contract like fire, marine, the contingency may or may not occur.

5. **Amount of Payment of Claim** - The amount of payment depends upon the value of loss occurred due to the particular insured risk. The insurance is there up to that amount. In life insurance insurer pay a fixed sum on the happening of an event or within a specified time period.

Example – In fire insurance, if fire occurs and half the property is destroyed, but the whole property is insured, then payment of claim will be made only for that half building that is destroyed not the whole amount of insured.

6. **Insurance is different from Charity**, In charity, there is no consideration but insurance is not given without premium

7. **Large number of Insured Person** - Insurance is spreading of loss over a large number of persons. Larger the number of persons, lower the cost of insurance and amount of premium and incase lower the number of persons, higher the cost of insurance and amount of premium.

8. **Insurance is different from Gambling** - In gambling, there is no guarantee of gain, by bidding the person expose himself to risk of losing. Whereas in insurance, by getting insured his life and property, he protect himself against the risk of loss.
FUNCTION OF INSURANCE

Functions of insurance can be divided into parts that is Primary functions and Secondary functions.

Primary Functions

1. **Certainty of compensation of loss**
   Insurance provides certainty of payment at the uncertainty of loss. The elements of uncertainty are reduced by better planning and administration. The insurer charges premium for providing certainty.

2. **Protection**
   The main function of insurance is to provide protection against risk of loss. The insurance policy covers the risk of loss. The insured person is indemnified for the actual loss suffered by him. Insurance thus provide financial protection to the insured. Life insurance policies may also be used as collateral security for raising loans.

3. **Risk sharing**
   All business concerns face the problem of risk. Risk and insurance are interlinked with each other. Insurance, as a device is the outcome of the existence of various risks in our day to day life. It does not eliminate risks but it reduces the financial loss caused by risks. Insurance spreads the whole loss over the large number of persons who are by a particular risk.

Secondary Functions

1. **Prevention of losses**
   The insurance companies help in prevention of losses as they join hands with those institutions which are engaged in loss prevention measures. The reduction in losses means that the insurance companies would be required to pay lesser compensations to the assured and manage to accumulate more savings, which in turn, will assist in reducing the premiums.

2. **Providing funds for investment**
   Insurance provide capital for society. Accumulated funds through savings in the form of insurance premium are invested in economic development plans or productivity projects.
Insurance increases efficiency
The insurance eliminates the worries and miseries of losses. A person can devote his time to other important matters for better achievement of goals. Businessman feel more motivated and encouraged to take risks to enhance their profit earning. This also helps in improving their efficiencies.

4. Solution to social problems
Insurance take care of many social problems. We have insurance against industrial injuries, road accident, old age, disability or death etc.

5. Encourage of savings
Not only provides protection against risks but also a number of other incentives which encourages people to insure. Since regularity and punctuality pf payment of premium is a perquisite for keeping the policy in force, the insured feels compelled to save.

FORMATION OF A CONTRACT OF INSURANCE

It is the insurance company which provides the proposed person to be insured with the proposal form which contains questions to be answered by him. Insurance contract is a unilateral contract in which the promise of one party is exchanged for a specific act of the other party; it is further a contract of adherence. Due to its nature, it then follows that the insurer is the one who benefits than the insured because no man who can always be fair in his own case.

In ROBERTS V. WARNE, the relevant policy did not cover the particular driver who was using the car, although a cover note had been arranged to effect this and when this expired the insurer clearly regarded the driver as uncovered. The driver was convicted for using the car without insurance and the owner for causing or permitting this. It was held that even where the insurer were bound contractually to cover the driver, which may well have been the case the policy, did not cover him.

15 [1973] RTR 217
The first step is the Proposal: This is the means, by which the insured makes known to the insurer, the nature of the risk the insurer is being asked to undertake. The terms of the proposal are embodied in a formal document called a policy. There is no statutory requirement that contracts of insurance, other than marine insurance, must be in writing.

The second step is cover note: This is a provisional contract of insurance, quiet distinct from the contract to be embodied in the policy. It provides an interim protection and usually states that it is to be for a limited period only until formal policy is delivered. In the meantime, however, the insurers are free to decide whether or not to accept the insured’s proposal. Similarly, the insured may withdraw his proposal without in anyway affecting the contract contained in the cover note.

The third step is commencement of cover: The moment the insurance contract is formed mark the point at which cover commences. However, in practice the this commence the moment the first premium is paid.

ESSENTIALS OF INSURANCE CONTRACT
Section 10 of the Law of Contract says a contract to be valid must have the following elements: □ Agreement (offer and acceptance) □ Legal consideration □ Parties competent to contract □ Free consent □ Legal object A contract of insurance is a legal agreement between two or more parties and has to comply with all elements of the law of contract Act. Insurance contract is the contract between the insurer and insured, in consideration of a sum to make good financial loss of the insured, subject to the limit of the insured specific property against peril and during the stated period. All insurance contracts must have five elements of a valid contract as follows:

1. Offer and acceptance. The person who want to take the cover against a particular peril offers his risk through the proposal form to the insurance company. The insurance company may or may not accept the risk. Therefore, offer come from the insured person.

2. Legal consideration. The promise (insurer) promise to pay a fixed sum of money at a given contingency. So the insurer must have something in return for his promise. The premium paid is the consideration given by the insured to the insurer.
3. **Parties must have capacity to enter into contract.** Every person is competent to contract who has attained the age of majority and of sound mind as well as not disqualified by the law from contracting.

4. **Free consent.** Both parties must make decision to enter into contract without any influence in their decision making. The consent must not be caused by fraud, undue influence, mistake and misrepresentation.

5. **Legal object.** The purpose for which the contract is entered must be legally lawful. The contract should not be against the public interest.

**PARTIES TO INSURANCE CONTRACT**

1. Insurer. The party agreed to pay for the loss of the insured

2. Insured: the party who insured his risk of loss with insurer

**RIGHTS OF THE INSURER**

i. Right to collect premium from the insured

ii. Right to specify the conditions and benefit under the policy

iii. Responsibility to for the loss occurred

**RIGHTS AND RESPONSIBILITY OF THE INSURED**

i. To pay premium

ii. Right to collect the money from the insurance company if the loss occurred

iii. Obligation to comply with the terms of the contract of insurance

**CLASSIFICATION OF INSURANCE**

Insurance cover various types of risks and include various insurance policies which provide protection against various losses. **There** are two different views regarding classification of insurance:

I. From the business point of view; and

II. From the risk points of view

**I. Business point of view**

The insurance can be classified into three categories from business point of view

1. Life insurance;

2. General Insurance; and

1. **Life Insurance**

The life insurance contract provide elements of protection and investment after getting insurance, the policyholder feels a sense of protection because he shall be paid a definite sum at the death or maturity. Since a definite sum must be paid, the element of investment is also present. In other words, life insurance provides against pre-mature death and a fixed sum at the maturity of policy. At present, life insurance enjoys maximum scope because each and every person requires the insurance.

Life insurance is a contract under which one person, in consideration of a premium paid either in lump sum or by monthly, quarterly, half yearly or yearly installments, undertakes to pay to the person (for whose benefits the insurance is made), a certain sum of money either on the death of the insured person or on the expiry of a specified period of time.

**Life insurance offers various polices according to the requirement of the persons -**

- Term Assurance
- Whole Life
- Endowment Assurance
- Family Income Policy
- Life Annuity Joint Life Assurance
- Pension Plans
- Unit Linked Plans
- Policy for maintenance of handicapped dependent
- Endowment Policies with Health Insurance benefits

2. **General Insurance**

The general insurance includes property insurance, liability insurance and other form of insurance. Property insurance includes fire and marine insurance. Property of the individual and business involves various risks like fire, theft etc. This need insurance Liability insurance includes motor, theft, fidelity and machine insurance.

**Type of General Insurance policies available are -**

- Health Insurance
- Medi-Claim Policy
- Personal Accident Policy
3. Social Insurance
Social insurance provide protection to the weaker sections of the society who are unable to pay the premium. It includes pension plans, disability benefits, unemployment benefits, sickness insurance and industrial insurance.

II Risk Points of View
The insurance can be classified into three categories from Risk point of view
1. Property Insurance
2. Liability Insurance
3. Other forms of Insurance

1. Property Insurance
The Property of the individual and business is exposed to risk of fire, theft marine peril etc. This needs insurance. This is insured with the help of:-
(i) Fire Insurance
(ii) Marine Insurance
(iii) Miscellaneous Insurance

(i) Fire Insurance
Fire insurance covers risks of fire. It is contract of indemnity. Fire insurance is a contract under which the insurer agrees to indemnify the insured, in return for payment of the premium in lump sum or by instalments, losses suffered by the him due to destruction of or damage to the insured property, caused by fire during an agreed period of time. It includes losses directly caused through fire or ignition. There are various types of fire insurance policies.
- Consequential loss policy
- Comprehensive policy
- Valued policy
- Valuable policy
- Floating policy
- Average policy

(ii) **Marine Insurance**
Marine insurance is an arrangement by which the insurer undertakes to compensate the owner of the ship or cargo for complete or partial loss at sea. So it provides protection against loss because of marine perils. The marine perils are collisions with rock, ship attack by enemies, fire etc. Marine insurance insures ship, cargo and freight.

The following kinds of marine policies are -
- Voyage policy
- Time policy
- Valued policy
- Hull Policy
- Cargo Policy
- Freight Policy

(iii) **Miscellaneous Insurance**
It includes various forms of insurance including property insurance, liability insurance, personal injuries are also insured. The property, goods, machine, furniture, automobile, valuable goods etc. can be insured against the damage or destruction due to accident or disappearance due to theft.

Miscellaneous insurance covers
- Motor
- Disability
- Engineering and aviation risks
- Credit insurance
- Construction risks
- Money Insurance
- Burglary and theft insurance
- All risks insurance

2. **Liability Insurance:**
The insurer is liable to pay the damage of the property or to compensate the loss of personal injury or death. It includes fidelity insurance, automobile insurance and machine insurance.

The following are types of liability Insurance:-
- Third party insurance
- Employees insurance
- Reinsurance

3. **Other forms of Insurance:**
It include export credit insurance, state employee insurance etc. whereby the insurer guarantees to pay certain amount at the happening of certain events.

The following are other form of Insurance-
- Fidelity Insurance
- Credit Insurance
- Privilege Insurance

**FUNCTIONS OF INSURANCE**
1. It helps capital formation 2. It help to share risk 3. It helps prevention of losses 4. It provides protection against economic loss 5. It provides certainty

**CHARACTERISTIC OF INSURANCE**
1. It is a cooperative device 2. It helps risk sharing and risk transfer 3. It require number of insured to be large to operate properly 4. It is not gabling 5. Claim is paid upon the occurrence of the insured event/risk. 6. There must be an uncertain future event as no one knows when, or if, the event insured against will occur. Nevertheless, the party paying for insurance is essentially paying for peace of mind, with the security of being able to transfer any loss that does in fact occur onto the party bearing the risk. 7. The insured must have an insurable interest in the subject matter of the insurance, whether this is the life or the property in question. Without insurable interest, the contract would be regarded as a gaming or wagering contract and would, therefore, be invalid.
8. The insurance contract must be lawful. In order for any contract to be enforceable, it must first be legally binding on the parties. In the case of insurance, the insurer must be under a legal obligation to pay the other party when the uncertain event occurs. 9. A contract of insurance must pay money or money’s worth to the insured as compensation for his loss when the insured event occurs. After all, that is the point of taking up insurance in the first place.

**DIFFERENT BETWEEN INSURANCE AND WAGERING**

<table>
<thead>
<tr>
<th>Insurance contract</th>
<th>Wagering</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Insurable interest matter of rest is the subject the contract of insurance</td>
<td>The interest in the asset is limited. Parties are interested in winning and not otherwise</td>
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<tr>
<td>2. The insurance contract is based on the principle of indemnity</td>
<td>No need of the application of the principle of indemnity because no risk covered.</td>
</tr>
<tr>
<td>3. The contract of insurance is legally enforceable</td>
<td>Not legally enforceable because not recognised by the law</td>
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<tr>
<td>4. Risk and premium are fixed in the basis of scientific methods</td>
<td>No such calculation are made</td>
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<tr>
<td>5. The insurance contract is based on the principle of good faith.</td>
<td>Not at all</td>
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**PRINCIPLES OF INSURANCE**

1. **The principle of utmost good faith (uberima fidei).**
   The contract is said to be the contract of utmost good faith, in which the highest standard of honest is imposed on the parties than as imposed under the ordinary contract. The principle require parties to disclose all relevant material fact relevant to in making decision. It is the duty of the insurer to disclose all relevant fact about
the insurance policy conditions and benefits. However, there some information which are not necessary to be disclosed such as the fact which are very common to the public, facts which reduce the level of risk, facts which have already surveyed by the insurer.

Example– in case of life insurance, the insured must revel the true age and details of the existing illness/diseases. If he does not disclose the true fact while getting his life insured, the insurance company can avoid the contract. Similarly, incase of the insurance of a building against fire, the insured must disclose the details of the goods stored, if such goods are of hazardous nature.

2. The principle of insurable interest
The insured (proposer) should give all data about the subject matter to the insured. This information include the information relating to the relationship between the proposer with the person or property insured i.e the subject matter of the insurance. This relationship is known as insurable interest. The principle of insurable interest is important during indemnification because the insured must be made good the loss that he has actually suffered. This help to prevent the insurance from becoming a gabling contract.

For example – In life insurance, a man cannot insured the life of a stranger as he has no insurable interest in him but he can get insured the life of himself and of persons in whose life he has a pecuniary interest. So in the life insurance interest exists in the following cases:-
- Husband in the life of his wife and wife in the life of her husband-- Parents in the life of a child if there is pecuniary benefit derived from the life of a Child-Creditor in the life of a debtor- Employer in the life of an employee- Surety in the life of a principle debtor.

In life insurance, insurable interest must be present at the time when the policy is taken. In fire insurance, it must be present at the time of insurance and at the time if loss if subject matter. In marine insurance, it must be present at the time of loss of the subject matter.

3. Principle of indemnity
Indemnity means to make good the loss. An insurance contract relate to the making of payment for the happening of loss by the insured peril and not otherwise. The happening of the insured peril must be contingent.
Example – A house is insured against fire for Rs. 50000. It is burnt down and found that the expenditure of Rs.30000 will restore it to its original condition. The insurer is liable to pay only Rs. 30000. In life insurance, principle of indemnity does not apply as there is no question of actual loss. The insurer is required to pay a fixed amount upon in advance in the event of accident, death or at the expiry of the fixed term of the policy. Thus, a contract of a life insurance is a contingent contract and not a contract of indemnity.

4. **The principle of proximate cause (Causa Proxima).**

This is the principle require that the causes of the loss must be connected with the insured peril. It provide that there is no need to go further after proving the effect of the cause. The law is concerns with the immediate causes of the insured peril/event and not remote cause of the insured event.

**Example** – In a marine insurance policy, the goods were insured against damage by sea water, some rats on the board made a hole in a bottom of the ship causing sea water to pour into the ship and damage the goods. Here, the proximate cause of loss is sea water which is covered by the policy and the hole made by the rats is a remote cause. Therefore, the insured can recover damage from the insurer.

**Example** – A ship was insured against loss arising from collision. A collision took place resulting in a few days delay. Because of the delay, a cargo of oranges becomes unsuitable for human consumption. It was held that the insurer was not liable for the loss because the proximate cause of loss was delay and not the collision of the ship.

5. **Principle of contribution.**

This principle refers to the sharing of loss between the co-insurers. Sometime the insured take insurance of policy from more than one insurance company against one loss and one interest in property. This is quite legal. Essential elements of this principles:

- The insured should be the same for all contract
- The policies should cover the same peril
- All protect the same interest of the same insured
- All policies should be in place when loss occur.

**Exam** – B gets his house insured against fire for Rs. 10000 with insurer P and for Rs. 20000 with insurer Q. a loss of Rs. 15000 occurs, P is liable to pay for Rs. 5000 and Q is labile to pay Rs 10000. If the whole amount pf loss is paid by Q, then Q can recover Rs. 5000 from P. The liability of P &Q will be determined as under:
Sum insured with Individual insurer (i.e. P or Q ) x Actual Loss = Total sum insured

Liability of P = 10000 x 15000 = Rs.5000

Liability of Q = 20000 x 15000 = Rs.10000

The right of contribution arises when:

(a) There are different policies which related to the same subject matters;
(b) The policies cover the same period which caused the loss;
(c) All the policies are in force at the time of loss; and
(d) One of the insurer has paid to the insured more than his share of loss.

6. The principle of subrogation Insurance

The law say after an insurer has paid a claim to insured person he is entitled to all rights and remedies of the insured in mitigating the loss. In simple subrogation means stepping into the shoes of the insured and take all the asset/ property for which the claim has been paid. The insurance company is entitled to recover compensation from third party if any.

7. Principle of Mitigation of Loss: An insured must take all reasonable care to reduce the loss. We must act as if the property was not insured.

Example – If a house is insured against fire, and there is accidental fire, the owner must take all reasonable steps to keep the loss minimum. He is supposed to take all steps which a man of ordinary prudence will take under the circumstances to save the insured property.

LIMITATIONS ON THE SCOPE OF INSURANCE

1. All risk cannot be insured. Insurance exist to combat risk, but not all risk which are covered by insurance. There must be insurable interest
2. Insurance limited to financial value. The person seeking the insurance must be legally to insure the article or event.
3. There must be large numbers of similar risks. Insurance can only provide monetary compensation.
4. It must be possible to calculate the risk of loss 5. Losses must be reasonably unexpected
6. Losses must be accidental. Losses arising through the deliberate acts of the insured cannot be insured.
ADVANTAGE OF INSURANCE

1. Transfer of loss The purpose of insurance is to transfer the financial loss to insurer who spreads it over larger numbers (policy holders). The loss suffered by one is distributed over many. 2. As social security Insurance provide social security to people. 3. Development of economy Insurance mitigates financial losses of the insured people, by theft, fire, loss of goods. Thus, insurance provides the continuity of trade which help for the growth of economy. 4. Investment of insurance funds. The insurance companies invest fund collected from the public in various instruments of economy of the country. 5. It helps people to develop habit of saving and help to generate employment by giving working to insurance companies.

BENEFITS OF INSURANCE

Benefits of insurance can be divided into these categories -

1. Benefits to Individual
2. Benefits to Business or Industry
3. Benefits to the Society

1. Benefits to Individual

(a) Insurance provides security & safety

Insurance gives a sense of security to the policy holder. Insurance provide security and safety against the loss of earning at death or in old age, against the loss at fire, against the loss at damage, destruction of property, goods, furniture etc.

Life insurance provides protection to the dependents in case of death of policyholders and to the policyholder in old age. Fire insurance insured the property against loss on a fire. Similarly other insurance provide security against the loss by indemnifying to the extent of actual loss.

(b) Encourage Savings

Life insurance is best form of saving. The insured person must regularly save out of his current income an amount equal to the premium to be paid otherwise his policy get lapsed if premium is not paid on time.
(c) **Providing Investment Opportunity**
Life insurance provide different policies in which individual can invest smoothly and with security; like endowment policies, deferred annuities etc. There is special exemption in the Income Tax, Wealth Tax etc. regarding this type of investment

2. **Benefits to Business or Industry**

(a) **Shifting of Risk**
Insurance is a social device whereby businessmen shift specific risks to the insurance company. This helps the businessmen to concentrate more on important business issues.

(b) **Assuring Expected Profits**
An insured businessman or policyholder can enjoy normal expected profits as he would not be required to make provisions of allocate funds for meeting future contingencies.

(c) **Improve Credit Standing**
Insured assets are easily accepted as security for loans by the banks and financial institutions so insurance improve credit standing of the business firm

(d) **Business Continuation**
With the help of property insurance, the property of business is protected against disasters and chance of closure of business is reduced

3. **Benefits to the Society**

(a) **Capital Formation**
As institutional investors, insurance companies provide funds for financing economic development. They mobilize the saving of the people and invest these saving into more productive channels

(b) **Generating Employment Opportunities**
With the growth of the insurance business, the insurance companies are creating more and more employment opportunities.

(c) **Promoting Social Welfare**
Policies like old age pension scheme, policies for education, marriage provide sense of security to the policyholders and thus ensure social welfare.

(d) **Helps Controlling Inflation**
The insurance reduces the inflationary pressure in two ways, first, by extracting money in
supply to the amount of premium collected and secondly, by providing funds for
production narrow down the inflationary gap.

**DEVELOPMENT OF INSURANCE LAW**

In the early history of insurance business little efforts were made to distinguish it from
other transactions which have a strong chance element. It was confused with many other
forms of gaming and wagering and Christianity had never looked kindly at these\(^{16}\).

The basic principle of Insurance is to protect against loss rather than creating an
opportunity for speculative gain. This led to the burning of life insurance in France,
Holland and Sweden during 16\(^{th}\) & 17\(^{th}\) century. A notorious abuse of insurance occurred in
Pennsylvania in the late 1800s; six men obtained an insurance policy on an elderly man,
who continued to live longer than expected. The United Kingdom provided leadership by
passing registrations that prohibited the insurance contract if no insurable interest could be
proven, notably life insurance Act of 1774 which lenders such insurance illegal and The
Marine Insurance Act 1906 which lenders such contract void.

In Tanzania before colonialism mutual assistance were common to the members of the
society who were living together in order to assist each other in production process, also
they could assist any member who do not produce due to sickness, accident and disabled
persons. So these were the insurance business as was to save the risk of each other.

By virtual of section 2(3) of the Judicature and Application of Laws Act of Tanzania,\(^{17}\)
under the reception date, Tanzania also adopted insurance business from Colonialist, but
this position was solidified during liberalization period where by mass insurance
companies were allowed to operate in Tanzania.

**THE MODERN INSURANCE LAW**

The power of an insurance company to enter into insurance of any particular kind depends
upon the terms of its memorandum of association or other instrument constituting it. So
any insurance policy not authorized by its memorandum is utravires and can not be

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\(^{16}\) J.B Byamugisha, Insurance Law in East Africa pg 34.

\(^{17}\) [CAP 358 R.E 2002]
enforced by the company against the assured, this was held in the case of **JOSEPH V. LAW INTERGILITY INSURANCE CO. LTD.**\(^{18}\)

But the assured, provided that he acted in good faith, can enforce an ultravires insurance policy against the company. The memorandum or Companies Act of 1985 of England specified the kinds of insurance to be undertaken or expressly prohibits certain kind of insurance business. So an insurance falling outside the specified kinds or within the prohibited kinds, as the case may be are clearly ultravires and void.

**WHO BENEFITS FROM CONTRACT OF INSURANCE?**

**INSURABLE INTEREST**

In **LUCENA V CRAUFURD.**\(^{19}\) The court defined insurable interest to mean a right in Property, which in either case may be cost upon some contingency affecting the possession or enjoyment of the party.

Insurable interest distinguishes contracts of insurance from gambling in order to define the legitimate area of insurance business. Insurable interest is required for all types of insurance and its absence renders the contract void and hence unenforceable.

The leading Roman-Dutch law case on insurable interest is **LITTLEJOHN V NORWICH UNION FIRE INSURANCE SOCIETY** 1905 TH 374 where it was held that if the insured can show that he stands to lose something of an appreciable commercial value by the destruction of the thing insured then his interest will be an insurable one. The Court went further to state that as a general rule insurable interest should exist at the time of taking the policy and at the time the loss is incurred. *These principle fever the insurer and not the insured*

If a person has insurable interest in an asset at the time of taking the policy but loses the interest thereafter for example, if he sells the car, the policy ceases to have any validity. In

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\(^{18}\) (1912) 2 ch 581 CA

\(^{19}\) (1806) 2B&P.N.R 269
Lord Esther observed, the cause of proximate of loss can only arise where there has been a succession of causes.

Generally the insured knows more about the risk to be insured than the insurer. To rectify this imbalance the law compels disclosure of information between the parties. In the case of **ECONOMIDES V.COMMERCIAL UNION ASSURANCE**, the insurer pleaded non-disclosure as a defense as well as misrepresentation as it was seen that such indiscriminative pleadings is common practice and if a non disclosure defense succeeds any discussion of the misrepresentation the insurer will be exonerated from the liability.

**The insurer normally benefits from the insured through this doctrine by**, avoiding the contract after discovering that there was non disclosure of the contract and the insured can not claim back his premium paid previously. In the case **KAUSAR V. EAGLE STAR**, Staughton J. observed that, avoidance of or non disclosure is drastic remedy. It enables the insurer to disclaim liability.

The insurer has the right to claim damages, and can retain any premium paid. In **LONDON ASSURUANCE V. MANSE**, it was held that, the principle that he who comes into or for equity must do equity, recession might be granted by the court on the terms that premium are paid irrespective of whether the insured misrepresentation is innocent or fraudulent. The same position was stated in the case **UNITED BUS LIMITED CO. V.THE NEW INDIA ASSURANCE COMPANY LTD**.

Specific exclusions are often written into the contract to limit the liability of the Insurer, the insurance contracts are designed to meet specific needs. **MEDICAL DEFENCE UNION LTD V. DEPARTMENT OF TRADE** where it was held that, the right of a member of the medical defense Union, on a claim being made against him, to have his
application for help with that claim considered by the union did not suffice to constitute the contract of insurance for it was merely a right to a benefit other than money or moneys worth.

**DOCTRINE OF SUBROGATION**

It means the right of one person to stand at in the place of another and to avail of all rights and remedies of that other person. The right of the insurers depends on the doctrine of subrogation, which is not confined to the enforcing of remedies, but *confers on the insurers the right to receive the advantage of any remedy which he has applied by the assured to himself*. As in the case of *CASTELLIN V PRESTON*.27

The right of insurer depends on an implied contract that the assured is to hold for the benefit of the insurer or pay over to them whatever he may after wards receive from other sources in respect of the loss. This was stated in the case of *KING V. VICTORIA*.28

A right of the insurer depends on the promise on the party of the assured which is to be implied from the payment by insurers of the amount of the loss. That, if loss is afterward made good from other sources he will repay them what he has received from those sources.29 The right of the insurer depends on the facts that the insurer made their payment on the condition that the assured had, in fact sustained the loss for which he made his claim, and their, therefore entitled on its turning out that he has sustained no loss at all, to maintain an action for money had and recovered the recover what they paid.30

**Circumstance in which the insurer can get benefit from the insurance business under the principle of subrogation**

*Where the payment is made by tort feasor:* where the payment is made by the person to whose negligence or default the loss is to be attributed, the payment is already made by

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27 (1986) L1QB 380 CA
28 (1896) AC 250
29 J. Bird, Modern Insurance Law pg 485
30 Ibid
way of compensation for the loss. Whether it is recovered in an action for tort for damages or whether it is made voluntarily by the tort feasor\textsuperscript{31}.

**Where the payment is made under a contract:** if the contract imposes on the person making the payment a liability towards assured to make good the loss which he has sustained, for example, where such person is a carrier or a tenant under a covenant of repair, such payment being a discharge of a liability operates as an indemnification of the assured in respect of the loss against which he had insured, and for which he has already received an indemnity from the insurer.\textsuperscript{32}

**Where the payment is made as a gift:** the fact that the payment is made voluntarily by the third person as a gift or even as a matter of grace by a person who is in fact though not in law responsible for the loss does not necessarily preclude the insurers from claiming the benefit of it, if it result in diminishing or extinguishing the loss which the assured has sustained.

### THE PREMIUM

The term premium was defined in the case of \textit{LIEN INSURANCE V ASSOCIATION V TUCKER},\textsuperscript{33} to mean that the price for which the insurer undertakes his liabilities. It may be a consideration other than a money payment. For stance in a mutual insurance may consist of a liability to contribute to the losses of other members of the mutual society mode of payment.

The premium must be paid in money unless some other mode of payment is substituted by agreement. Thus, the manager of the company has no authority to accept a promissory not by way of premium as per the case of \textit{MONTREAL ASSURANCE V MC GILLIVRAY}\textsuperscript{34}.

**Benefits which the insurer gain during the day of grace**

\textsuperscript{31} J. Bird op cit pg 486
\textsuperscript{32} Ibid
\textsuperscript{33} (1883)12 QB BD 176
\textsuperscript{34} (1859) 13 MOO.P.CC.87
Whether or not the insurer would be liable where the premium is paid within the days of grace but after the occurrence of the loss depends on the facts of each case and requires carefully consideration.

In TARLETON V. STANIFORTH. It was said that where the insurers have a right to refuse renewal premium and elect not to carry on with an insurance which they are not bound to renew, then it is clear that their liability will cease on the last day of the period for which insurance was expressed to run and the lender of renewal premium by the assured during the days of grace will alter the position.

In STUART V FREEMAN. A life insurance policy was renewable annually, by payment of the appropriate premium but installments of the premium were payable quarterly, and the policy was liable for forfeiture on non-payment of such quarterly installment within the days of grace allowed.

**Benefit which the insurer can get when the insured fails to pay the premium**

First, *action for remedies;* In the case of MUNICIPAL MUTUAL V. PONTENFRAC T it was stated that where a premium becomes due to insured under a contract of insurance they are entitled to bring an action for its payment. The assured cannot escape liability for it on the ground that, as by the terms of the contract the insured are not liable for any loss which may happen before it is paid. There is no consideration for the promise to pay it, for the original contract of insurance supplies such consideration.

**Another benefit is forfeiture**

Where the risk or the renewal of the risk does not begin to run until the premium is paid no provision for forfeiture is necessary. However, the premium is payable by installments while the risk is being run is usual for insurer to insert a provision in the policy providing for forfeiture in the event of premiums not being duly paid, subject to any days of grace which may be allowed. Such forfeiture will be enforced by the courts unless the insurers

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35 (1794) 5TR. 695
36 (1903) 1 K.B 47
37 (1927) 11
are estopped by their conduct from relying on it. The same position was stated in the case of *SCOTTISH EQUITABLE LIFE V. BUIST*. 38

**CRITICISMS OR CRITICAL ANALYSIS**

Although it has been argued that the modern insurance law favors the insurer than the insured this preposition is not conclusive because of the following criticisms:

The insured person is protected from risk by being indemnified: the purpose of the principle of indemnity is to make a fair compensation for the loss to the insured who suffers loss, so that he does not gain loss by having an insurance policy. 39 Indemnity does not imply that the insured will be indemnified to the full value of his loss. For example a person whose factory is destroyed by fire cannot recover for loss of profits or against any liability that may arise from the fire unless he has appropriate policies in place specifically designed to deal with these losses.

In the case of *ETHERINGTON V. LANCASHIRE AND YORKSHIRE ACCIDENTAL INSURANCE CO.* 40 A man fell from a horse and sustained injuries that prevented him from moving. As a result he contracted pneumonia due to lying in the wet and died. It was held that if the insured makes a prima-facie case that the loss was proximately caused by an insured peril the insurer is obliged to indemnify unless they can prove that an exception applies.

Therefore insured party is covered when he is involved in an accident under which the third party involved will be paid by the insurance company. This is provided for under section 15 of the Motor vehicle Act of Tanzania. It is clear that this provision transfers the liability of the insured to the insurer. 41

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38 (1877) A.R 1076
39 E.A Mwkajinga, Op cit pg23
40 (1990) AC 156
41 [CAP 169 R.E 2002]
Furthermore, insurance mitigates actual individual loses by spreading them across a broad section of individuals who do not actually suffer loss but are all along exposed to it. Those who contribute to the insurance fund, but suffer no loss have the satisfaction to know that they would have been indemnified against it, if it had occurred to them and this is to have satisfaction when the period of insurance is in progress.\textsuperscript{42}

**Insurance policy also acts as a life time protection with whole life insurance policy.** It implies that the plan covers you until you die. Unlike other policies which has a certain term that will not cover you any more, this is almost like for ever. Also it can give you loans and finally when you come to rest for ever your beneficiaries will benefit so much from what you have served plus the gained interest, plus death benefit.

*Another criticisms* is that some aspect of application [such as under writing and insurable interest provisions] make it difficult, life insurance policy have been used in case of exploitation and fraud. In the case of life insurance there is a motivation to purchase a life insurance policy, particularly if the face value is substantial and then kill the insured.

*Also it is on record that*, the large the claim and or the more serious incident, large and more intense will be the number of investigative layers, consisting in police and insurer investigation, eventually also loss adjusters hired by the insurers to work independently.

**For example:** there was a documented case in 2006 where two elderly women were accused of taking in homeless men and assisting them. As part of their assistance they took out life insurance on the men. After the contestability period ended on the policies the women were alleged to have had the men killed via hit and run car crashes.

This makes the law concerning insurance to be very disadvantageous to the whole society at large.

In some of the jurisdictions insurance business is based on technicalities, In **BROWN V. ROBERTS**,\textsuperscript{43} the passenger in a car was negligence in opening all doors and thereby injured the pedestrian. It was held that she was nor using the car in the statutory sense because she had no control over the vehicle, so the driver was not therefore causing or

\textsuperscript{42}J.B Byagisha op cit pg 36
\textsuperscript{43}(1965) IQB15
permitting her to use it and thus not liable in damages for breach of statutory duty in not insuring her against her potential liability.

*Generally speaking insurance* company is a business and the goal of the business is to make a profit, from this an insurance company has a bias towards denying insurance coverage to its insured, for example accidental life insurance policy proceeds, an insurance company may deny the claims of the parents for the death of the child, when that child dies after loosing control of a car he was driving even where the car was insured for the same, the insurance company may deny the claim upon the basis that the child was under the influence and the influence of a controlled substance and coverage for such is excluded by the policy.

*Finally a critical criticism* should be entertained in, the following principles, the principle of contribution, uberima fidei, indemnification, subrogation and insurable interest are nothing but to large extent protecting the interest of insurer and not the insured. For example under the principle of insurable interest, the subject can not be covered unless he is covered by the principle thereof. This is provided for under section 130 of the Insurance Act of Tanzania.\(^{44}\)

The same position was stated in the case of Macaura v. Northern Assurance Co. Ltd.\(^{45}\) that for a person to have an insurable interest on property, he must show the legal interest or obligation to bear any loss arising from destruction of the insured property, there must be a factual expectation of loss from the destruction of such property and benefit from its existence.

**QUESTION.** “The modern insurance law and practice makes the insurer to benefit from it but not the insured. For the insurer, insurance is a blessing while that is not the case on the part of the insured.” Do you agree with this statement as far as the insurance contract is concerned?

\(^{44}\) Act No 10, 2009
\(^{45}\) (1974) 1WLR 1308
REINSURANCE

What Is Reinsurance?

Definition: Reinsurance is insurance used to transfer all or part of the risk assumed by an insurer under one or more insurance contracts to another insurer, and it refers to insurance for insurers. It is a transaction between insurance companies only. An insurance company, called the primary or ceding company, shares portions of its liability with another insurance company, known as a reinsurer. Reinsurance is one of the major risk and capital management tools available to primary insurance companies, and the reinsure agrees to indemnify the insurer against all or part of the loss, which the insurer company may occur under certain policies of insurance that it has issued. In turn, the insurer pays a consideration, typically a premium, and discloses information needed to assess. Price and manage the risk covered by the reinsurance contract. Shortly, the reinsurer “reimburses” the insurer for its portion of paid claims. The underlying policyholder has no interest or private in the reinsurance contract. The subject matter of a reinsurance contract is the risk the Reinsured undertook in its original policies.  

Which principle of insurance are applicable for reinsurance and, which are not, why, or why not?

Most the principle insurance contracts are applies to the reinsurance contract. Accordingly, since Reinsurance contracts are contracts of indemnity, it applies only to those principle apply to insurance of indemnity. These are Principle of Utmost Good Faith, Principle of Indemnity, Proximate Cause, Insurable Interest, and Doctrine of subrogation and Doctrine of Contribution. It does not apply to the Risk Must Attach, Mitigation of Loss, and Third Party Interests in Liability Insurance, because these mix some other type of insurance. Let we will see one by one,

1. Principle of Utmost Good Faith

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[46] Swiss Re III Understanding insurance
Among the principle of insurance, which are applicable and the heart of reinsurance is the principle of utmost good faith (uberima fidei)

✓ **Reason:** in applying a notion of utmost good faith to the reinsurance contract, it will be look to those aspects of the parties’ relationship that demand such a duty. Utmost good faith traditionally has mean that thereinsurerandthecedinginsurerwouldconductthemselvesinamanne roftrust and full disclosure that led to long relationships. Therefore, the main reason for applying duty of utmost good faith is in cases reinsurance

✓ **Duty of disclosure**

Inherent in the concept of “utmost good faith” is the duty of the ceding insurer to disclose all known information material to the risk.

✓ **duty to provide notice of claim**

Most reinsurance contracts require that prompt notice be given to the reinsurer of any claim subject to reinsurance. Prompt notice of claims permits there insurer “to reserve properly, to adjust premiums to reflect the loss experience under the reinsurance contract, and to decide whether to exercise the option of becoming associated with the ceding insurer in the handling and disposition of the claim.47

2. **Principle of Indemnity**

The principle of indemnity is one of the important principle of insurance that applies to Reinsurance.

➢ **Reason:** the rationale behind why we applies this principle is that; Reinsurance contracts are contracts of indemnity. It is irrelevant if the original contract is not a contract of indemnity.

✓ The general principles regulating contracts of indemnity are applicable to reinsurance policies. Accordingly, the purpose of indemnity is not benefit more

47Utmost goodfaith in reinsurance : a tradition in need of adjustments by: Steven w.Thomas, p 1564
than the loss suffered by original insured, rather to restore the policyholder to the financial position they enjoyed immediately before a loss occurred.

✓ Reinsurer could not claim under a reinsurance policy until the extent of the loss ascertained. This can only be determined from the outcome of the claim between the insurers and insured.

✓ The primary insurer is obligated to and bound by reasonable clause, which made in good faith in respect of legal liability arising from the insurance policy.\textsuperscript{48}

3. **Proximate Cause**

The principle of proximate cause applies to all classes of insurance including contract of indemnity and, life and personal accident. Accordingly, all contracts are subject to terms and conditions that will exclude certain causes of loss. this principle in cases of reinsurance, only applies to the part of the contract of indemnity by excluding life and personal accident insurance, this due to the fact that reinsurance contract is only applies to contract of indemnity

➢ **Reason:** the main reason we apply this principle is,

✓ In the event of a claim, it is important to ascertain the cause of the loss in order to determine if that cause is insured or excluded insurances.

✓ To determine whether there is, an insured peril involved; otherwise, the loss is definitely irrecoverable.

✓ Reinsurer is liable not liable for all loss, only for those losses, which have been proximately caused by the peril insured against or the nearest, immediate, or the last cause has to be looked into, and if it is the peril insured against, the insured can recover. Reinsurers are not liable for remote causes and remote consequences even if they belong to the category of insured perils. I

4. **Doctrine of Subrogation:**

Principle of Subrogation is an extension and another corollary of the principle of indemnity. This principle is applicable only when the damaged property has any value after the event causing the damage. This means that it applies to all contracts of indemnity.\textsuperscript{49}

\textsuperscript{48}Risk Management Tips brought to you by the insurance specialists at Belmont International Belmont Virtual Academy Issue 1 April 2013

\textsuperscript{49}re•in•sur•ance: a Basic Guide to Facultative and Treaty reinsurance

Compiled Notes On Insurance Law in Tanzania-Moshi Co-operative University-LLB 42
Reason: principle of subrogation is equally applies to reinsurance agreements since a contract of reinsurance is also a contract of indemnity. Here the important point is, the reinsurer, before paying the money, must make sure that the ‘original insurer has paid the sum originally insured. The reinsurer can benefit out of subrogation rights only to the extent of the amount he has paid to the reinsured as compensation. After paying the money in proportion to the risk transferred to him, a reinsurer becomes entitled to the benefits of subrogation.

5. Insurable Interest

The concept of insurable interest permeates every aspect of insurance contract irrespective of the type. The nature of insurable interest required however varies from policy to policy. The cardinal principle of insurance law is that every contract of insurance must establish that the reinsured has an insurable interest. Therefore, insurable interest required and applies to the case of reinsurance.50

Reason: the primary insurer must be establishes insurable interest in the subject matter of the reinsurance to create a valid reinsurance contract.

✓ Lack of insurable interest in the subject matter of the insurance renders the transaction invalid and baseless.

✓ It also renders the insurance policy incapable of enforcement. Back of insurance interest renders the transaction speculative and synonymous with gambling. Only the reinsurer has the capacity to raise absence of insurable interest as defense to a claim.

6. Doctrine of Contribution

Since the principle of contribution and double insurance is only applicable to contracts of indemnity; they shall applies to reinsurance contract.

Reason: Contribution is the right of the reinsurer to invite other reinsurers, with which the reinsured had taken out a policy,

✓ To share or contribute to indemnify an insured for the occurrence of a risk that was insured against.

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50 Insurance Intermediaries Quality Assurance Scheme Principles and Practice of Insurance Examination
To recover the total value of the loss from any of two reinsurers up to the amount of the policy, if person who has double insured a risk has the prerogative it occurs where the same subject matter is insured against the same risk with more than one insurer.

➢ The principle does not apply to reinsurance

a. Mitigation of Loss

This principle does not applies to contract of reinsurance, because

➢ It is a policy relationship exists between insurer and insured before the loss occurred the duty of the policyholder to take steps to mitigate or minimize the loss as if he were uninsured and must do his best for safeguarding the remaining property. Otherwise, the insurer can avoid the payment for loss attributable to the negligence of the policyholder.

➢ The reinsurers only enter into contract to indemnify reinsured, when the reinsured assume larger risk from direct insurance and when the risk exceeds over his retention capacity.

b. Third Party Interests in Liability Insurance

This principle also does not apply to the case of reinsurance, since contract of reinsurance does not apply employers’ insurance against loss through liability to employees for work related injuries. The injured third party could not bring a direct action against the insurer even after obtaining a judgment against the insured and could not bring on the policy.

It does not applies to reinsurance, since it is Liability insurance originated solely as a protection for the interests of the insured against loss suffered through liability to third parties 51

Legal relationship between the insured and the reinsurer

No legal relationship between the insured and the reinsurer: because unless the policy otherwise Provides, reinsurance has effect only between the insurer and the reinsurer and the original insured has no right or interest in respect of reinsurance.

➢ Reinsurance has no direct effect for the policyholder.

51 Law of Banking, Negotiable Instruments and Insurance, page 153 Prepared by Fasil Alemayehu and Merhatbeb Teklemedhn
He is not entitled to know, and probably has no need to know, that his insurance is being reinsured. That is a matter entirely between the insurer and the reinsurer(s).

The insurer is always directly liable to the policyholder for the full amount payable under the contract irrespective of the financial condition of its reinsurers. Reinsurance, however, does give an added security that the insurer will be able to pay!

The existence of this reinsurance contract, does not affect the original insurer’s contractual obligation to the insured under the original contract of insurance.

It differentiated from the case of insurance contract, they differ either in their legal relationship toward the primary insurance policy holder. This means that, primary insurers have a legal relationship with their policyholder, whereas reinsurers only have a legal relationship with the primary insurer.

Reinsurance contract applies for both property and liability insurance

Since reinsurance contract is contract of indemnity, both liability and property insurance. In cases of liability insurance the reinsurer should indemnifies the legal liability of the primary insurer, to the extent of his duty; of the loss, original insured suffers. Similarly, in cases of property damage, the reinsurer should compensate the part his duty, to the original insured.

MARINE INSURANCE

What is marine insurance?
Marine insurance was the earliest well organized and developed Policy and relates to coverage against loss of or damage to a ship, goods in transit and damage, which occurs to such goods over waterways, land, and air. Therefore, it defines as, an agreement whereby the insurer undertakes to indemnify the insured, in the manner and to the extent thereby agreed, against transit losses, that is to say losses incidental to transit. Contract of marine insurance may by its express terms or by usage of trade be extended so as to protect the insured against losses on inland waters or any land risk which may be incidental to
any sea voyage. In a marine insurance policy, if the subject matter of the insurance is to provide cover for a journey from one place to another or for a definite voyage, it known as a “voyage policy”. Where it is to cover the subject matter for a definite period, it called a “time policy”.

**Types of Marine insurance**

There are different kinds of marine insurance. Depending on the types of coverage or the subject matter insured, marine insurance can be categorized into hull insurance, cargo insurance, freight insurance, and liability insurance. It should also be noted that there are numerous special coverage’s, such as pollution insurance and protection and indemnity (P&I) coverage. Such a good exposed loss can be protected by ocean marine and inland marine, the former provides protection for goods transported over water and the later, provides protection for goods shipped on land. Inland marine insurance is transportation insurance that provides protection for goods shipped on land including imports, exports, domestic shipments, and means of transportation, personal property floater risks, and commercial property floater risks. Accordingly, it is possible identify the other kinds of marine insurance which are protected under ocean marine insurance. These include, the vessel, the cargo; the shipping revenue or freight received by the ship owners, Legal liability for proved negligence – protection and indemnity (P&I).

1. **Hull insurance**: It known as insurance of the vessel with its gear. Hull insurance covers physical damage to the ship or vessel. It is always written with a deductible. The coverage of maritime perils includes fire, collision, stranding etc. the coverage of additional perils such as latent defect in machinery, accidents in loading / discharging cargo, The Running Down Clause embodied in the hull insurance provide cover for damage caused to another ship in collision as a consequence of negligent navigation; It may also cover vessels in course of construction, which are taken by the ship builders.

2. **Cargo Insurance**: it is insurance of goods carried by sea. it covers the shipper of the goods if the goods are damaged or lost. Cargo insurance covers the cargo or goods contained in the ship and the personal belongings of the crew and passengers. It provides cover for various transit perils in respect of goods and or merchandise in transit from one place to another by sea, air, road, or registered post. Transit or marine risks or perils are covered under marine insurance. Marine insurance plays a pivotal role in import, export, and internal trade. Trade involves movement of goods from one place to another place. Goods while in transit are liable to be lost or damaged through

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52 Notes on marine insurance  
53 Liability insurance, on the other hand, indemnifies a vessel owner for liabilities incurred to third persons – these liabilities include personal injury and death, property damage and damage to cargo. JLRI maritime teaching material  
54 Legal aspects of marine insurance in India…
one or other of various perils from the time it leaves the warehouse of the supplier until it is received at the final warehouse of the consignee. 55

3. **Freight Insurance**: Freight insurance provides protection against the loss of freight. In many cases, the owner of goods is bound to pay freight, under the terms of the contract, only when the goods are safely delivered at the port of destination. If the ship is lost on the way or the cargo is damaged or stolen, the shipping company loses the freight. Freight insurance is taken to guard against such risk and indemnifies the ship owner for the loss of earnings if the goods are damaged or lost and are not delivered.

4. **Liability Insurance**: Liability insurance is one in which the insurer undertakes to indemnify against the loss which the insured may suffer on account of liability to a third party caused by collision of the ship and other similar hazards. 56

**Insurable Interest in Marine Insurance**

Insurable interest is one of the principles of insurance law. Accordingly, *like* other contract of insurance marine contract required to show that the existence of insurable interest. This because, the marine insurance will be valid if the person is having insurable interest at the time of loss. Therefore, it is necessary to show insurable interest when the loss was caused by the peril insured against, *at the time the loss was caused by the peril insured against*, or *financial loss occurs and besides, in the subject matter was covered by the policy.*

**Reason:**

- In a broader view: the relationship between the insured and the subject matter of the insurance efficiently close to justify his being paid in the event of its loss or damage. This because marine insurance valid if the person is having insurable interest at the time of loss. 57
- Insurable interest, in the event that freight charges are not paid, the carriers have lost income with which to reimburse expenses incurred in preparation for a voyage.
- The rules on floating policies are not needed unless it is primarily assumed interest (which is insurable) is mandatory for a valid contract of marine insurance.
- A legal prohibition against contracts of insurance in general by way of gambling and wagering is common. Taking out insurance by way of gambling and wagering is not *lawful* as there is no legally recognized insurable interest.
- Maritime liens against a vessel are created in favor of a wide variety of persons who render the ship service. The interests thus acquired are generally insurable…There
can be little doubt that a carrier may insure cargo in order to protect himself against possible liability in case of loss.

➢ In cases convenience of commercial practice used to “to avoid chaos,”. Like , the carrier has an insurable interest in the cargo in his charge even if the cargo owner had previously insured the cargo\(^58\).

**The necessity to have the distinct legal regime for marine insurance**

To answer this question it is important to see the necessity to have the distinct legal regime for marine insurance in deferent perspective, one from international and national perspective, and other is that from trader perspective.

➢ Marine insurance deals with goods when these are being moved from one place to another by approved mode of transportation. The goods can be moved within the country and outside the country. The risks are involved in any type of transportation and to cover these risks marine (transit) insurance is developed.

➢ As world trade grew and values at risk became larger, the need for coverage became more apparent. Larger ships and more advanced instruments of navigation made long voyages possible, and with these changes came the realization that insurance protection was almost a necessity.\(^59\)

➢ One of the most important reasons in trader perspective is simply that a trader could not afford to bear frequent losses of his good. Whether he is a rich man or not, a trader necessarily has to deal in goods that are worth far more than he is. This is usually done by borrowing money, arranging finance with other participants, or generally extending his credit to cover the deal in question. If a deal went wrong, so that goods were lost, a merchant would then have to pay his bills without the prospect of selling goods to recover his outlay and make a profit.

➢ Most merchants would be unable to survive such a loss, and would, therefore, go out of business. The fact that they had gone out of business would lead to consequent difficulties for all the people to whom they owed money, and everybody in the mercantile community would be adversely affected. Of course, nobody is going to take on the risks of merchants willingly and gratuitously, therefore, merchants developed a system whereby they would pay to somebody prepared to underwrite the risk a small premium in relation to the value of the goods. The person taking on the risk would amass all those premiums and put them in a fund so that he could use the money from that fund to pay any

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\(^{58}\) The suggestions given by Backrush J., Insurable Interest in Maritime Law, 8 J. Mar. L. & Com. (1976-77), pp.247 et. seq. on JLRI teaching material page154

\(^{59}\) Law of Insurance Teaching material
losses…Consequently; marine insurance passes the risk of loss from the owner of the goods to a professional risk underwriter. 60

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WABILLAHI TAWFIQ

I may not agree with what you’re saying but I will defend to death you are right to say what you believe in"

ENGEEENERED

BY

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60 Maritime teaching material, page 147, it enumerated by Judith Evans, Law of International Trade, 3rd ed. (London: Old Bailey Press, 2001), from the perspective of traders pp.269