INSURABLE INTEREST IN LIFE ASSURANCE & MARINE INSURANCE

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INTRODUCTION

Life Assurance

Life insurance contract may be defined as the contract, whereby the insurer in consideration of a premium undertakes to pay a certain sum of money either on the death of the insured or on the expiry of a fixed period. It offers a way to replace the loss of income that occurs when the insured person dies, usually the person who is the majority income provider of the family\(^1\).

Marine Insurance

Marine Insurance has been defined as a contract between insurer and insured whereby the insurer undertakes to indemnify the insured in a manner and to the interest thereby agreed, against marine losses incident to marine adventure\(^2\).

INSURABLE INTEREST DEFINED

Insurable interest is a basic requirement of any contract of Insurance. Unless it can be, and is, lawfully waived. The party to the insurance of contract who is the insured or policyholder must have a particular relationship with the subject matter of the insurance, whether it is a life or property or a liability to which he is exposed\(^3\). The absence of the required relationship will render the contract illegal, void or simply enforceable depending on the type of insurance.

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\(^2\)Ibid

\(^3\)The Chartered Insurance Institute Company & Contract Law & Their application of Insurance, study course 520, publishing Division, 1999.
The Black’s Law Dictionary⁴ defines insurable interest as a legal interest in another person’s life or health or in the protection of property from injury, loss, destruction or pecuniary damage.

The most comprehensive of judicial pronouncements on the subject of insurable interest were delivered by Lord Eldon and Lawrence J, in Lucena v. Craufurd⁵, Lawrence J defined interest as having some relation to, or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment, or prejudice to the person insuring. Lord Eldon disagreed with Lawrence J’s views and defined interest unless as a “right in the property, or a right derivable out of some contract about the property, which is either case may be lost upon some contingency affecting the possession, or enjoyment of the party.”

Under Section 5 (1) and (2) of the Marine Insurance Act, a person has an insurable interest in a marine insurance contract if he or she is interested in a marine adventure and a person is interested in a marine adventure when he or she stands in any legal or equitable relation to the adventure or to any insurable property at risk in it, in consequence of which he or she may benefit by the safety or due arrival of the insurable property, or may be prejudiced by its loss, damage, detention, or may incur liability in respect of it.

⁴Black’s Law Dictionary, 8th ed., 2004
⁵[1806] 2 Bos & PNR 269
Under Tanzanian law, insurable interest is a statutory requirement be it on marine insurance contracts or life insurance policies. Section 90 (1) of the Marine Insurance Act, provides that every contract of marine insurance by way of gaming or wagering is void. Under Section 90 (2) of the said Act a marine insurance contract is deemed to be by way of gaming or wagering where the assured has no insurable interest and has no expectation of acquiring such an interest or where the policy is made “interest or no interest” or “without proof of interest than the policy itself” or subject to any other term.

Section 130 of the Insurance Act\(^6\), restrict insurance policy made with no insurable interest. The Section reads thus;

"...no contract of insurance shall be made by any other person on the life or lives of any person or persons or any other event or events in which the person for whose use, benefit, or on whose account the insurance made shall have no insurable interest and the insurance so made shall be null and void ab initio."

From the wording of this section its crystal clear that lack of insurable interest in insurance policy made the policy null and void. No Court will allow enforcing that contract.

**Common Features of Insurable interest**

\(^6\)Act No. 10 of 2009
In order to show that the legal right to insure, that is insurable interest does exist conditions must be presented and these are:

(a) There must be some property, right, interest, life, limb or potential liability capable of being insured.

(b) Such property, right, interest must be the subject matter of insurance

(c) The insured must stand in relationship with the subject matter of insurance whereby he benefits from it safety, wellbeing or freedom from liability and would be prejudice by its damage or the existence of liability.

(d) The relationship between the insured and the subject matter of insurance must be recognized at Law.

THE BASIS AND TIME WHEN INSURABLE INTEREST IS REQUIRED

Noteworthy, Insurance Act, 2009, does not provide for when insurable interest is required, the statute only provide for those deemed to have insurable interest in life assurance. The idea of time when insurable interest is required is either at a time of commencing a contract or at a loss is the special requirement for the insured to be compensated for the loss he suffers and such loss is within the insurance cover of an insurance policy.

Frankly speaking, the time when the insurable interest must be present varies with the type of insurance policy. The General understanding is that in case of life insurance, the presence of insurable interest is necessary at the time of commencement of the policy,

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although it is not necessary afterwards, not even at the time of occurrence of risk. In case of marine insurance, the insurable interest must be present at the time of the loss. It is immaterial whether he has or does not have any insurable interest at the time of commencement of the policy.

In Life Assurance

In life assurance, insurable interest is only required at inception thus need not to exist at the time of the loss and this is so because life assurance is not a contract of indemnity. In Dalby v. The Indian and London Life Assurance Company, set down the principle that the interest need only be valued at inception and so there is no requirement for insurable interest at the time of a claim. Other insurances, being contract of indemnity required the insured to have suffered a loss before there is liability, so that the insured must have insurable interest at the time of loss.

The assured is presumed to have an unlimited insurable interest in his or her own life. In M'Farlane v. Royal London Friendly Society, it was held that there is nothing to prevent any person from insuring his own life a hundred times provided it is a bona fide insurance on his life and for his benefit.

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9[1854] 15 QB 365
10[1886] 2 TLR 755
Section 86 (1) of the Insurance Act\textsuperscript{11} provides that no policy shall be issued on the life or lives of any person or persons other than as provided in under Section 86 (2) of the Act. However Section 86 (2) (a)-(f) of the Insurance Act\textsuperscript{12}, deems insurable interest to be had by certain people. The law presumes insurable interest in certain family relationships. It is deemed to be had by a parent of a minor or the guardian of a minor on the life of a minor. A husband or wife is also deemed to have insurable interest on the life of his or her spouse. In this case, the presumption is conclusive.

Insurable interest is also presumed to be had by any person on the life of another upon whom he or she is wholly or in part dependent for support or education or a company or other person, on the life of an officer or employee; and; a person who has a pecuniary interest in the duration of the life of another person in the life of that person to the extent only of that pecuniary interest at the outset.

From the wording of this provision is evident that only those mentioned have insurable interest that they can affect insurance policy. The section further provides that the policy will only be valid if the names of the persons who lives are insured and of the person interested to whose use benefit or whose account the policy has be made are identified by names of the policy document\textsuperscript{13}.

\textsuperscript{11}Act No. 10 of 2009

\textsuperscript{12}Act No. 10 of 2009

\textsuperscript{13}Section 86 (3) of the Insurance Act, No. 10 of 2009
Therefore it is evident that, a company or other person is deemed to have an insurable interest on the life of an officer or employee of the company or that other person. The interest is limited to the duration of the unexpired part of a fixed-term agreement as anything beyond that is mere expectation.\(^{14}\)

Insurable interest is also deemed to be had by a person who has a pecuniary interest in the duration of the life of another person, in the life of that person to the extent of that pecuniary interest at the outset.\(^ {15}\)

A creditor may insure the life of his or her debtor. In *Lucena v. Craufurd (supra)*, it was observed that a creditor may insure the life of his debtor for he might be essentially injured by his death. An employee may insure the life of his employer, but his insurable interest is limited to a sum representing his contractual rights against the employer, namely the minimum notice period or the amount of the unexpired term of a fixed-term contract.

Partners also have an insurable interest in each other’s lives up to the amount of loss which might potentially be caused following withdrawal of capital in the event of the death or retirement of a partner.

Except in the above cases, there is no presumption of insurable interest. Not even natural love and affection will give rise to an insurable interest to entitle a relative to insure the

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\(^{14}\)Ibid Section 86 (2) (e)  
\(^{15}\)Ibid Section 86 (2) (f)
life of another. In Shilling v. Accidental Death 16, a son was held to have no insurable interest in his poor father whom he had supported.

In Property Marine Insurance

As intimated earlier on in case of property marine insurance, the insurable interest must be present at the time of the loss. It is immaterial whether he has or does not have any insurable interest at the time of commencement of the policy. The Marine Insurance Act under section 6 (1) requires the assured to be interested in the subject-matter at the time of the loss. However under Section 6 (2) of the Act the assured may recover although the interest had not attach at the time of the loss where the subject-matter is insured “lost or not lost” unless he was aware of the loss and the insurer was not.

The Marine Insurance Act under Section 8 permits as insurable a partial interest of any nature or a defeasible and contingent interest under Section 7 of the Act. The following are also considered to have an insurable interest in a marine insurance contract under the Act: an insurer in his or her risk, the lender of money or bottomry or respondentia in respect of the loan, the master or any member of the crew of a ship in respect of his or her wages, the person advancing freight in so far as that freight is not repayable in case of loss, the assured in relation to the charges of any insurance which he may effect, the mortgagor and mortgagee in respect of any sum due or to become due under the mortgage and the owner of insurable property.

16[1858] 2 H. & N 42
In Property Non-Marine Insurance

In Property non-marine Insurance and other Insurance Insurable Interest must exist at the time of inception as well as at the time of loss or claims.

THE LEGAL AND ECONOMIC FUNCTION OF PRINCIPLE OF INDEMNITY

Indemnity means security, protection and compensation given against damage, loss or injury. According to the principle of indemnity, an insurance contract is signed only for getting protection against unpredicted financial losses arising due to future uncertainties.
Insurance contract is not made for making profit else its sole purpose is to give compensation in case of any damage or loss.

In an insurance contract, the amount of compensations paid is in proportion to the incurred losses. The amount of compensations is limited to the amount assured or the actual losses, whichever is less. The compensation must not be less or more than the actual damage.

Indemnity according to the Cambridge International Dictionary is “Protection against possible damage or loss”. In Insurance the word indemnity is defined as “financial compensation sufficient to place the insured in the same financial position after a loss as he enjoyed immediately before the loss occurred”\(^\text{17}\).”

Indemnity thus prevents the insured from recovering more than the amount of his pecuniary loss. It is undesirable that an insured should make a profit out of an event like a fire or a motor accident because if he was able to make a profit there might well be more fires and more vehicle accidents\(^\text{18}\).

As in the case of Insurable Interest, the principle of indemnity also relies heavily on the financial evaluation of the loss but in the case of life and disablement it is not possible to be precise in terms of money\(^\text{19}\).

\(^{18}\)Ibid  
\(^{19}\)Ibid
An Insurance may be for less than a complete indemnity but it may not be for more than it. To illustrate let us take the example of a person who insures his car Tshs. 10 million and it meets with an accident and is a total loss. It is not certain that he will get 10M. He may have over valued the car or may be the prices of cars have fallen since the policy was taken. The Insurer will only pay an amount equal to the value of the car at the time of loss. If he finds that a car of the same make and model is available in the market for 1.5M then he is not liable to pay more than this sum and payment of 1.5M will indemnify the Insured.

Similarly in the case of partial loss if some part of the car needs to be replaced the Insurer will not pay the full value of the new part. He shall assess how much the old part had run and after deduction of a proportionate sum he shall pay the balance amount. An insured is not entitled to new for old as otherwise he would be making a profit from the accident20.

However there are two modern types of policy where there is a deviation from the application of this principle.

One is the agreed value policy where the insurer agrees at the outset that they will accept the value of the insured property stated in the policy (sum insured) as the true value and will indemnify the insured to this extent in case of total loss. Such policies are obtained on valuable pieces of Art, Curious, Jewellery, Antiques and vintage cars21.

21Ibid
The other type of policy where the principle of strict indemnity is not applied is the Reinstatement policy issued in Fire Insurance. Here the Insured is required to insure the property for its current replacement value and the Insurer agrees that in the event of a total loss he shall replace the damaged property with a new one or shall pay for the replacement in full\textsuperscript{22}.

Other than these there are Life and Personal Accident policies where no financial evaluation can be made. All other Insurance policies are subjected to the principle of strict Indemnity. In most policy documents the word indemnity may not be used but the courts will follows this principle in case of any dispute coming before them\textsuperscript{23}.

\textbf{COROLLARIES OF PRINCIPLE OF INDEMNITY}

Essentially, there are two corollaries to the principle of Indemnity and these are Subrogation and Contribution.

\textbf{Principle of Contribution}

Principle of Contribution is a corollary of the principle of indemnity. It applies to all contracts of indemnity, if the insured has taken out more than one policy on the same subject matter.

\textsuperscript{22}Ibid
\textsuperscript{23}Ibid
According to this principle, the insured can claim the compensation only to the extent of actual loss either from all insurers or from any one insurer. If one insurer pays full compensation then that insurer can claim proportionate claim from the other insurers.

Illustration: Mr. Kilakuno insures his property worth Tshs. 100,000 with two insurers. "Kizuka Ltd." for Tshs. 90,000 and "Kituko Ltd." For Tshs. 60,000. Kilakuno’s actual property destroyed is worth Tshs. 60,000, then Mr. Kilakuno can claim the full loss of Tshs. 60,000 either from "Kizuka Ltd." or "Kituko Ltd." or he can claim Tshs. 36,000 from Kituko Ltd. and Tshs. 24,000 from Kizuka Ltd.

Principle of subrogation

The principle of subrogation is an extension and another collary of the principle of indemnity. Subrogation may be defined as the transfer of legal rights of the insured to recover, to the Insurer.

Subrogation It has already been established that the purpose of Indemnity is to ensure that the Insured does not make a profit or gain in any way as a consequence of an accident. He is placed in the same financial position, which he had occupied immediately before the loss occurred.24

As an off shoot of the above it is also fair that the insurer having indemnified the insured for damage caused by another (A Third Party) should have the right to recover from that party the amount of damages or part of the amount he has paid as indemnity\(^\text{25}\).

This right to recover damages usually lies with the bereaved or injured party but the law recognises that if another has already paid the bereaved or injured party then the person who has paid the compensation has the right to recover damages\(^\text{26}\).

In case the insured after having received indemnity also recovers losses from another then he shall be in a position of gain which is not correct and this amount recovered from another shall be held in trust for the insurer who have already given indemnity\(^\text{27}\).

Why Subrogation is called a corollary of Indemnity and not treated as a separate basic Principle of Insurance can be traced to the judgement given in the case of Casletlan v. Preston\(^\text{28}\). “That doctrine (Subrogation) does not arise upon any terms of the contract of Insurance, it is only the other proposition, which has been adopted for the purpose of carrying out the fundamental rule i.e. indemnity. Which I (Judge) have mentioned “it is a doctrine in favour of the underwriters or insurers, in order to prevent the insured from recovering more than a full indemnity; it has been adopted solely for that reason.”

Subrogation does not apply to life and personal accidents as these are not contracts of Indemnity. In case death of a person is caused by the negligence of another than the

\(^{25}\)Ibid
\(^{26}\)Ibid
\(^{27}\)Ibid
\(^{28}\)[1883] 11 QBD 380, CA,
legal heirs of the deceased can initiate proceedings to recover from the guilty party in addition to the policy proceeds. If the insured is not allowed to make profit the insurer is also not allowed to make a profit and he can only recover to the extent he has indemnified the Insured\(^{29}\).

**REFERENCE**

**BOOKS**


**STATUTE**

The Insurance Act No. 10 of 2009

Marine Insurance Act

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