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L.L.B Part- 2nd

Subject- Insurance Act

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Topic- Essential elements of Life Insurance Contract.

Introduction -

Insurance may be defined as a contract between two parties whereby one party called insurer undertakes, in exchange for a fixed sum called premiums, to pay the other party called insured a fixed amount of money on the happening of a certain event.

The insurance, thus, is a contract whereby

1. Certain sum. called premium, is charged in consideration
2. Against the said consideration, a large sum is guaranteed to be paid by the insurer who received the premium
3. The payment will be made in a certain definite sum. I.e., I lose or the policy amount whichever may be, and
4. The payment is made only upon a contingency

Since Insurance is a contract, certain sections of the Contract Act are applicable.

All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and which are not hereby declared to be void.

Elements of Insurance Contract can be classified into two sections;

1. The elements of general contract and
2. The elements of special contract relating to insurance: the special contract of insurance involves principles: insurable interest, utmost good faith, indemnity, subrogation, warranties. Proximate cause, assignment, and nomination, the return of premium.

Elements of Insurance Contract -

Insurance Act

This Act says that all agreements are the contract if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and which are not at this moment declared to be void".

The insurance contract involves—(A) the elements of the general contract, and (B) the element of special contract relating to insurance.

The special contract of insurance involves principles:

1. **Insurable Interest.**
2. **Utmost Good Faith.**
3. **Indemnity.**
4. **Subrogation.**
5. **Warranties.**
6. **Proximate Cause.**
7. **Assignment and Nomination.**
8. **Return of Premium.**

So, in total, there are eight elements of the insurance contract which are discussed below:

Insurable Interest -

For an insurance contract to be valid, the insured must possess an **insurable interest in the subject matter of insurance**.

The insurable interest is the pecuniary interest whereby the policy-holder is benefited by the existence of the subject-matter and is prejudiced death or damage of the subject- matter. The essentials of a valid insurable interest are the following:

1. There must be a subject-matter to be insured.
2. The policy-holder should have a monetary relationship with the subject-matter.
3. The relationship between the policy-holders and the subject-matter should be recognized by law. In other words, there should not be any illegal relationship between the policy-holder and the subject-matter to be insured.
4. The financial relationship between the policy-holder and subject-matter should be such that the policy-holder is economically benefited by the survival or existence of the subject-matter and or will suffer economic loss at the death or existence of the subject matter.

Insurance Act

Utmost Good Faith -

The doctrine of disclosing all material facts is embodied in the important principle **'utmost good faith'** which applies to all forms of insurance**.**

Both parties to the insurance contract must agree (ad idem) at the time of the contract. There should not be any misrepresentation, non-disclosure or fraud concerning the material.

In case of insurance contract the legal maxim 'Caveat Emptor" (let the buyer beware) docs not prevail, where it is the regard of the buyer to satisfy himself of the genuineness of the subject-matter and the seller is under no obligation to supply information about it.

But in the insurance contract, the seller, i.e., the insurer will also have to disclose all the material facts.

An insurance contract is a contract of uherrimae fidei, i.e., of absolute good faith both parties to the contract must disclose all the material facts and fully.

Principle of Indemnity -

As a rule, all insurance contracts except personal insurance are contracts of indemnity.

According to this principle, the insurer undertakes to put the insured, in the event of loss, in the same position that he occupied immediately before the happening of the event insured against, in a certain form of insurance, the principle of indemnity is modified to apply.

For example, in marine or fire insurance, sometimes, a certain profit margin which would have earned in the absence of the event, is also included in the loss. In a true sense of the indemnity, the insured is not entitled to make a profit from his loss.

1. To discourse over insurance the principle of indemnifying it an essential feature of an insurance contract, in the absence of which this industry would have the hue of gambling, and the insured would tend to affect over-insurance and then intentionally cause a loss to occur so that a financial gain could be achieved. So, to avoid this international loss, only the actual loss becomes payable and not the assured sum (which is higher in over-insurance). If the property is under-insured, i.e., the insured amount is less than the actual value of the property insured, the insured is regarded his insurer for the amount if under insurance and in case of loss one shall share the loss himself.

2. To avoid an Anti-social Act; if the assured is allowed to gain more than the actual loss, which is against the principle of indemnity, he will be tempted to gain by the destruction of his property after getting it insured against risk. He will be under constant temptation to destroy the property. Thus, the whole society will be doing only anti-social acts, i.e., the persons would be interested in gaining after the destruction of the property. So, the principle of indemnity has been applied where only the cash-value of his loss and nothing more than this, though he might have insured for a greater amount, will be compensated.

3. To maintain the Premium at Low-level; if the principle of indemnity is not applied, the larger amount will be paid for a smaller loss, and this will increase the cost of insurance, and the

premium of insurance will have to be raised. If the premium is raised two things may happen first, persons may not be inclined to ensure and second, unscrupulous persons would get insurance to destroy the property to gain from such an act. Both things would defeat the purpose of insurance. So, a principle of indemnity is here to help them because such temptation' is eliminated when only actual loss and not more than the actual financial loss is compensated provided there is insurance up to that amount.

Doctrine of Subrogation -

The doctrine of subrogation refers to the right of the insurer to stand in the place of the insured, after the settlement of a claim, in so far as the insured's right of recovery from an alternative source is involved.

If the insured is in a position to recover the loss in full or in part from a third party due to whose negligence the loss may have been precipitated, his right of recovery is subrogated to the insurer on the settlement of the claim.

The insurers, after that, recover the claim from the third party. The right of subrogation may be exercised by the insurer before payment of loss.

Warranties-

There are certain conditions and promises in the insurance contract which are called **warranties**.

According to Marine Insurance Act, "A warranty is that by which the assured undertakes that some particular thing shall or shall not be done, or that some conditions shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts."

Warranties that are mentioned in the policy are called express warranties. Certain warranties are not mentioned in the policy.

These warranties are called implied warranties. Warranties which are answers to the question arc called affirmative warranties. The warranties fulfilling certain conditions or promises are called promissory warranties.

Warranty is a very important condition in the insurance contract which is to be fulfilled by the insured. On the breach of warranty, the insurer becomes free from his liability.

Therefore insured must have to fulfill the conditions and promises of the insurance contract whether it is important or not in connection with the risk. The contract can continue only when warranties are fulfilled.

If warranties are riot followed, the contract may be canceled by the other party whether the risk has occurred or not or the loss has occurred due to other reasons than the waiving of warranties.

However, when the warrant is declared illegal, and there is no reverse effect on the contract, the warranty can be waived.

Proximate Cause-

The rule; is that immediate and not the remote cause is to be regarded. The maxim is “sed causa proximo non-remold-spectator”; see the proximate cause and not, the distant cause.

The real cause must be seen while payment of the loss. If the real cause of loss is insured, the insurer is liable to compensate for the loss; otherwise, the insurer may not be responsible for a loss.

Proximate cause is not a device to avoid the trouble of discovering the real ease or the common sense cause.

Proximate cause means the actual efficient cause that sets in motion a train of events which brings about result, without the intervention of any force started and worked actively from a new and independent source.

The determination of real cause depends upon the working and practice of insurance and circumstances to losses. A loss may not be occasioned merely by one event.

There may be concurrent causes or chain of causes. They may occur in a sequence or broken chain. Sometimes, certain causes arc excepted by (the insurance contract and the insurer is not liable for the accepted peril.

The efficient cause of a loss is called the proximate cause of the loss.

For the policy to cover the loss must have an insured peril as the proximate cause of the loss or also the insured peril must occur in the chain of causation that links the proximate cause with the loss.

The proximate cause is not necessarily, the cause that was nearest to the damage either in time or place but is rather the cause that was responsible for the loss.

Assignment or Transfer of Interest-

It is necessary to distinguish between the assignment of (a) the subject-matter of insurance, (b) the policy, and (c) the policy money when payable.

Marine and life policies can be freely assigned but assignments under fire and accident policies, are not valid without the prior consent of the insurers—except changes of interest by will or operation of law.

Moreover, assignments under fire and accident policies must be made before tine insured parts with his, interest. Once he has lost interest, the policy is void and cannot be assigned.

The life policies can be assigned whether the assignee has an insurable interest or not.

Life policies are frequently charged, assigned or otherwise dealt with, for they are valuable securities. The marine policy is freely assignable unless it contains terms expressly prohibiting assignment.

It assigned either before or after a loss. A marine policy may be assigned by endorsement thereon or in another customary manner.

In practice, a marine cargo policy is frequently endorsed in blank and becomes in effect a quasi-negotiable instrument.

Thus, it will be appreciated, adds considerably to the convenience of mercantile transactions as the policy can be negotiated through a bank along with other documents of title.

Assignment in fire insurance cannot be recognized without the prior consent of the insurer, change of interest in fire policies (unless by will or operation of law) are not valid unless and until the consent of the insurer has been given.

The fire policies are not like an assignment nor intended to be assigned from one person to another without the consent of the insurer. Assignment in fire insurance constitutes a new contract.

Return of Premium-

Ordinarily, the premium once paid cannot be refunded. However, in the following cases, the refund is allowed.

By Agreement in the Policy

The assured may pay a full premium while affecting the insurance but it may be agreed to return it wholly or partly in the happening of certain events. For example, special packing may reduce risk.

For Reasons of Equity

1. Non-attachment of risk: Where the subject-matter insured or part thereof, has never ten imperiled, for example, term insurance with returnable premium where the premium is returned to the policy-holder if death does not occur during the period of insurance.

2. The undeclared balance of on open policy: The policy may be canceled and premium may be returned for short interest allowed provided there was no further interest in the policy.

3. The payment of Premium is apportionable. The apportioned part of -the consideration is refundable when a part of policy interest is not involved. For example, insurance may be taken for a voyage in stages, each stage being rated separately. In such a case if some stages are not completed the premium relating to the incomplete stage is returnable.

4. Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable provided the policy was not attached by way of wagering.

5. Unreasonable delay in commencing the voyage may also entitle the insurer to cancel the insurance by returning the premium.

6. Where the assured has over-insured under an unvalued policy a proportionate part of the premium is returnable.

The End