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L.L.B Part- 2nd

Subject- Insurance Act

Paper- 8th

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Topic- Write short notes on the following:
1. Nomination and Assignment , 2. Surrender Value , 3. Deviation , 4. Memorandum Clause , 5. Touch and Stay Clause , 6. Proximate clause , 7. Consequential loss

1. Nomination and Assignment-

In Life Insurance, nomination can be understood as a facility, which allows the policyholder or say insured to nominate a person, who can claim the policy amount, in the event of death of policyholder. If, in case, a minor is appointed as nominee, then a major should be specified, in order to receive the money secured by the policy, upon the demise of the insured.

The policyholder can make nomination either at the time of purchasing the policy, or anytime before the expiry of the term. The policyholder is allowed to change the nomination, during the term of the policy, by making a fresh nomination, which should be incorporated, either through text in the policy or through an endorsement to the policy, to become effective.

When the policy matures while the insured is alive or when the nominee dies prior to the maturity of the policy, the policy amount is paid to the policyholder, or his/her legal heir or representative.

Assignment, as the name suggest is the legal transfer of rights from the policyholder to the assignee to receive benefits indicated in the insurance agreement. It is usually made out of love and affection with the family members or for adequate consideration to any outside party.

The assignment can be made either through an endorsement upon the policy or separate instrument, duly signed by the assignor or his agent. The signature is required to be witnessed by at least one person competent to contract. It becomes effective from the date when the documents are received by the insurance company in proper order.

2. Surrender Value- The surrender value is the actual sum of money a policyholder will receive if they try to access the cash value of a policy. Other names include the surrender cash value or, in the case of annuities, annuity surrender value. Often there will be a penalty assessed for early withdrawal of cash from a policy.

In most cases, the difference between your policy's cash value and surrender value are the charges associated with early termination. Since your insurance provider does not want you to stop paying premiums or request an early withdrawal of funds, it often builds different fees and costs into policies to deter you from canceling your policy.

3. Deviation- Deviation in marine insurance happens when the ship intentionally changes its route or remains in port without cause, here, the new route or delay of the ship would be called deviation.

4. Memorandum Clause- A memorandum of association (MOA) contains a name clause, registered office or business location clause, objective or objects clause, liability clause, capital clause, as well as an association clause. MOAs are legal documentation that are prepared prior to the registration of limited liability companies (LLCs).

The purpose of an MOA is to explain a business's relationship with all its stakeholders. It lays out the company constitution along with the articles of association, which is another type of legal corporate document.

5. Touch and Stay Clause- As per the clause; the ship should go and stay only at those points which are clearly mentioned in the marine insurance policy. In case the ports are not mentioned in the policy document, the ship must take the customary route and stay at the port which comes on that route In case the ship goes to any other port, it will be termed as the deviation.

6. Proximate clause- **(1)** The clause having the most significant impact in bringing about the loss under a first-party property insurance policy, when two or more independent perils operate at the same time (i.e., concurrently) to produce a loss. Courts employ a set of proximate clause rules to resolve clausation disputes when a property policy states that it covers or excludes losses "caused by" a peril and there is more than one peril at work in a fact pattern. Under common law, whether the policy provides coverage depends on which peril is chosen as the proximate cause. If the peril selected as the proximate clause is covered, courts consider the loss to have been caused by the covered peril and will hold that the loss is covered. If the peril selected as the proximate clause is uncovered or excluded, courts consider the loss to have been caused by the uncovered or excluded peril and will hold that the loss is not covered. **(2)** As a principle of tort law, proximate clause refers to a doctrine by which a plaintiff must prove that the defendant's actions set in motion a relatively short chain of events that could have reasonably been anticipated to lead to the plaintiff's damages. If the defendant's actions were "proximate" or close enough in the chain of causation to have forcibly led to the plaintiff's damages, courts will impose liability. Otherwise, if the defendant's actions set in motion a long, bizarre chain of events that could not have reasonably been foreseen to lead to the plaintiff's damages, courts will not impose liability. In tort law, multiple actions by one or more defendants that are a substantial factor in producing the loss can qualify as proximate clauses.

7. Consequential loss- A consequential loss is an indirect adverse impact caused by damage to business property or equipment. A business owner may purchase insurance to cover any damage to property and equipment, and may also obtain coverage for secondary losses. A consequential loss policy or clause will compensate the owner for this lost business income.

Business owners routinely obtain casualty insurance to cover any damage to their facilities or equipment caused by theft, fire, flood, or other natural disasters. These direct coverage policies do not compensate the owner for income that is lost due to the business' inability to use that property or equipment.

Indirect losses that are the result of physical damage and adversely affect normal business operations may be considered consequential losses.

Coverage of consequential losses may include compensation for ongoing obligations such as salaries and fixed operational expenses.

Thus, insurers distinguish between two types of damage: primary or direct damage, such as destruction by fire, and indirect or consequential loss, such as a cessation of business due to the fire.

The End