

The parties to the contract are expected to examine the subject matter of the contract and so long as one party does not mislead the other and the answers are given truthfully, there is no question of the other party avoiding the contract.

b) **Utmost good faith**

Insurance contracts stand on a different footing. The proposer has a legal duty to disclose all material information about the subject matter of insurance to the insurers who do not have this information.

Material information is that information which enables the insurers to decide:

- ✓ Whether they will accept the risk
- ✓ If so, at what rate of premium and subject to what terms and conditions

This legal duty of utmost good faith arises under common law. The duty applies not only to material facts which the proposer knows, but also extends to material facts which he ought to know.

What is meant by complete disclosure?

The law imposes an obligation to disclose all material facts.

c) **Material fact**

Material fact has been defined as a fact that would affect the judgment of an insurance underwriter in deciding whether to accept the risk and if so, the rate of premium and the terms and conditions.

Whether an undisclosed fact was material or not would depend on the circumstances of the individual case and could be decided ultimately only in a court of law. The insured **has to disclose** facts that affect the risk.

Let us take a look at some of the types of material facts in insurance that one needs to disclose:

- i. Facts indicating that the particular risk represents a greater exposure than normal. Examples are hazardous nature of cargo being carried at sea; past history of illness
- ii. Existence of past policies taken from all insurers and their present status
- iii. All questions in the proposal form or application for insurance are considered to be material, as these relate to various aspects of the subject matter of insurance and its exposure to risk. They need to be answered truthfully and be full in all respects

Duty of disclosure in non-life insurance

In non-life insurance, the contract will stipulate whether changes are required to be intimated or not. When an alteration is made to the original contract affecting the risk, the duty of disclosure will arise. The duty of disclosing material facts ceases when the contract is concluded by issue of a cover note or a policy. The duty arises again at the time of renewal of the policy, if during the period of the policy; there is any change in the risk.