

d) **Breach of utmost good faith**

Let us now consider situations which would involve a breach of utmost good faith. Such breach can arise either through **non-disclosure or misrepresentation**.

i. **Non-Disclosure**

- Insured is silent in general about material facts because the insurer has not raised any specific enquiry
- Through evasive answers to questions asked by the insurer
- May be inadvertent [occurs without one's information or intention] or because the proposer thought that a fact was not material. In such case it is innocent.] When a fact is intentionally not disclosed it is treated as concealment. In this case there is intent to deceive.

ii. **Misrepresentation**

A statement made during negotiation of a contract of insurance is called representation. This may be a definite statement of fact or a statement of belief, intention or expectation.

When it is a fact, it is expected to be substantially correct.

When it concerns matters of belief or expectation, it must be made in good faith.

Misrepresentation is of two kinds:

- **Innocent Misrepresentation** relates to inaccurate statements, which are made without any fraudulent intention e.g. an individual who occasionally smokes and is not a habitual smoker may not reveal the same in the proposal form as he does not think it has any bearing on the risk.
- **Fraudulent Misrepresentation** are false statements made with deliberate intent to deceive the insurer or are made recklessly without due regard for truth. E.g. a chain smoker may deliberately not reveal the fact that he smokes.

3. **Insurable interest**

The existence of 'insurable interest' is an essential ingredient of every insurance contract and is considered as the legal pre-requisite for insurance. Let us see how insurance differs from a gambling or wager agreement.

a) **Gambling and insurance**

Consider a game of cards, where one either loses or wins. The loss or gain happens only because the person enters the bet. The person who plays the game has no further interest or relationship with the game other than that he might win the game.

**Three essential elements of insurable interest:**

1. There must be property, right, interest, life or potential liability capable of being insured.