LEGAL ASPECTS OF INSURANCE

PRINCIPLES OF INSURANCE

Definition of a Principle

A principle is:

- A basic truth, law or assumption
- A fixed or predetermined policy or mode of action
- A basic or essential quality or element determining intrinsic nature or behaviour
- A basic law or rule underlying a particular theory or philosophy

PRINCIPLES OF INSURANCE:

- INSURABLE INTEREST
- UTMOST GOOD FAITH
- INDEMNITY
- PROXIMATE CAUSE
- SUBROGATION
- CONTRIBUTION

INSURABLE INTEREST

Introduction

- An agreement to insure must satisfy all the requirements as to offer and acceptance, consideration, contractual capacity and form which were discussed in the chapter three.
- However, even if these requirements are fulfilled, the contract may still fail if the policyholder has no valid interest which they can insure.
- This is known as 'insurable interest'.

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- This in simple terms means that the policyholder must be in a position where they will suffer loss if the event which they have insured against occurs.
- Insurable interest is the legal right to insure arising out of a financial relationship recognised at law, between the insured and the subject matter of insurance.

Essentials of Insurable Interest

- Subject matter of insurance;
- The policyholder must have an economic or financial interest in the subject matter of insurance;
- The interest must be a legal interest; and
- Interest must be current and not expectancy.

1. Subject matter

The term 'subject matter' can refer to two things.

- It is important to understand that when a person arranges insurance on, say, their house, they are insuring not the property as such but their **interest in that property.**
- Although **the property is the subject matter of insurance, it is this interest which is the subject matter of the contract.**
- The most straightforward example of insurable interest is the interest which a person has in property which they own, such as a house or a car or other goods.
- it may be human life or something intangible, such as a debt.

2. Economic/financial interest

- The doctrine of insurable interest requires there to be a relationship between the insured and the subject matter of insurance whereby the insured will suffer a financial loss if the insured event occurs.
- In the case Castellain vs. preston, the court held that a man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it.
- However, the interest must be one that is reasonably capable of valuation in money.

3. Legal Interest

- In Kenya, the interest must also be a legal (or equitable) interest, that is, one that the law recognises and will support.
- In *Macaura v. Northern Assurance Co. Ltd.* (1925), Macaura had insured a quantity of timber on his estate under a fire policy in his own name. He had already sold the timber to a company of which he was the only shareholder. When the timber was destroyed in a fire the insurers refused to meet the claim on the grounds that Macaura had no insurable interest in the assets of the company.
- The House of Lords supported the insurers, holding that the insured had an interest in his shares, but none in the timber, which was owned by the company, a separate legal entity
- A number of countries where the legal system is based on English law the *Macaura* principle has been rejected, abandoned, or never adopted e.g. the USA, Australia and Canada. In these countries, an economic or financial interest in the subject matter is required but not a legal or equitable interest.

4. Current interest

- The law requires that a person has a current interest in the subject matter of insurance. A mere hope or expectation of acquiring an interest in the future is not enough.
- Suppose the case of the heir at law of a man who has an estate worth Kshs. 50 million and who is ninety years of age, upon his death bed intestate, and incapable from incurable lunacy of making a will, there is no man who will deny that such an heir at law has a moral certainty of succeeding to the estate, yet the law will not allow that he has any interest, or anything more than a mere expectation.

Why the law requires insurable interest

1. Reduce moral hazard

- Moral hazard relates to the character and behavior of the insured in relation to the subject matter of insurance.
- The granting of insurance may actually increase the likelihood of a loss occurring, because it changes the incentives and behaviour of the insured in the absence of insurable interest.
- The insured may become less careful than they would be if they had no insurance or even cause a loss deliberately in order to collect the insurance money e.g. tempting the policyholder to commit arson or other destructive acts in order to get the insurance money.

2. Discourage wagering

- A wager is an amount of money that you risk in the hope of winning more, by trying to guess something uncertain
- Society has often tried to suppress, or at least control wagering (or gambling).
- In the past insurance policies were often used as a 'cloak' for gambling and it was this irresponsible use of insurance as a means of betting on the lives and property of others that led Parliament to discourage the practice by imposing a need for insurable interest.

CREATION OF INSURABLE INTEREST

Insurable interest may arise through:

1. Common law – ownership of property
2. Contract – e.g. tenancy agreements
3. By Statute – some laws place responsibility on people e.g. laws may make tenants of government property responsible for their upkeep.

Application of the Principle of Insurable Interest

Life Insurance

- **a person has unlimited insurable interest in one's own life** and may effect a life policy for any amount of sum assured; this being limited only by his ability to pay premiums.
- A person likewise has **unlimited insurable interest in the life of a spouse.** Other blood relationships do not create automatic insurable interest.
- Insurable interest may also be created in **certain relationships like partnership and creditor/debtor relations**. Where insurable interest is created in this manner, it is **limited to the likely financial loss if a partner or a debtor dies.**

Property Insurance

Ownership

Insurable interest arises out of full ownership of the subject matter of insurance.

Bailee

A bailee is a person to whom property has been temporarily entrusted. During the time the property is in his or her custody, the bailee may be held liable if the property is lost or damaged. As a result of this, the bailee has an interest, which gives him or her the right to insure.

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Agent

Where agents hold goods on behalf of a principal, they can insure them in their own names.

Husband and Wife

A spouse has insurable interest in the property of the other and may insure the property.

Part or Joint Ownership

A person who has part interest in a property may insure the property at full value and, if paid for the whole loss, the person holds a portion of this in trust for the other owners.

Liability insurance

- Everybody faces the risk of being sued for damages if they cause harm to another person through their negligence or other unlawful act.
- They also face the risk of having to pay legal costs in defending themselves. Liability can arise in connection with a business enterprise or through private activities, such as the ownership of a home or the driving of a car.
- Liability of this sort is often unlimited.
- The subject matter of liability insurance is the potential liability itself.
- However, it is more correct to say that the subject matter of a liability policy is the insured's wealth or their assets, which will be reduced if they have to pay damages.

Liability

Every person, through his or her activities, may cause loss or injury to others.

For example: A person who owns a car can hit a pedestrian, causing injuries, and may be required to compensate the pedestrian.

A car owner, therefore, has insurable interest on such liabilities.

Reinsurance

- When insurers grant cover they agree to pay the insured money if a particular loss or event occurs.
- Having assumed a liability to pay claims under the policies that they issue, insurers then have an insurable interest arising from that liability, In other words, they can themselves insure against the risk of having to pay claims, or pay claims that exceed a certain level. This is done by means of a reinsurance contract.
- The subject matter of reinsurance is usually the same as that of the underlying insurance (e.g. property of some sort), but the subject matter of the reinsurance contract is the original insurer's liability to indemnify their policyholders.

Limited/overlapping interest

In many cases a person will have only a limited interest in the property concerned.

The interest of a part-owner will be limited to the value of their share in the property and the interest of a mortgagee such as a bank or building society will be limited to the amount of the loan that has been granted.

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To avoid confusion, and possible double insurance, it is sensible for the parties to agree about who should arrange the insurance. For this reason, a mortgage deed or lease agreement should normally state which of the parties shall have the duty to insure.

This similarly should apply to bailees such as warehouse keepers and carriers or goods to agree with the owner about how insurance is to be arranged.

This does not mean, however, that they can keep all the insurance money in such a case; on the contrary, the maximum amount that he will be able to retain is the amount of his own interest.

Any surplus will generally be held on trust for the other person or persons with an interest in the property.

UTMOST GOOD FAITH

Introduction

- The duty of utmost good faith (uberrima fides) is central to the buying and selling of insurance.
- Accordingly, insurance policies are described as contracts uberrimae fidei (the utmost good faith).
- This means, in simple terms, that the insurer and the person who is applying for insurance have a duty to deal honestly and openly with each other in the negotiations that lead up to the formation of the contract.
- This duty may also continue whilst the contract is in force.

Two duties

Duty not to misrepresent any matter relating to the insurance - i.e. a duty to tell the truth; and

Duty to disclose all material facts relating to the contract - i.e. a duty not to conceal anything that is relevant.

Misrepresentation

- A misrepresentation has been defined in lecture two as a false statement of fact that induces the other party to enter into the contract. To affect the validity of the agreement the false statement must:

- be one of fact rather than a statement of law, or of opinion
- be made by a party to the contract;
- be material (i.e. something which would influence a reasonable person in deciding whether to enter into the agreement);
- induce the contract (i.e. be something that the other party relied upon in deciding to enter into the agreement); and
- cause some loss or disadvantage to the person who relied upon it.

Non disclosure

- Contracts for the sale of goods are subject to the doctrine of 'caveat emptor' (let the buyer beware).
- Although the buyer of goods is given considerable protection by statutes such as *Sale of Goods Act* which applies to commercial contracts generally but not to insurance the basic responsibility of each party is still to make sure that they make a good bargain.
- This is largely because the buyer is able to examine the goods, assess their quality, and judge for themselves whether the price is fair.

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Positive duty of disclosure in insurance

- **A contract for the sale of goods will involve tangible property, such as the car in our example above.**
- **However, the parties to an insurance contract are dealing with a product that is intangible.**

Reciprocal Duty Of Disclosure

- In order to create equity, the law imposes a mutual duty of disclosure on both parties to the insurance contract.
- Hence, a **reciprocal duty** is imposed on the insurer to also disclose all facts material to the contract.

The insurer is therefore not expected to:

- **make untrue statements** during negotiation;
- **issue policies the insurer is not authorized** to deal in under the Insurance Act;
- **issue ambiguous policies**; or
- **take advantage of the insured's ignorance** by offering inadequate claim settlements.
- **conceal from the insured the fact that they are entitled to a discount on premium** due to a good feature in the risk e.g. where there is a fire extinguisher.

Material Facts

Material facts can be defined as:

“facts which would influence the judgment of a prudent insurer in deciding whether or not to accept a risk and if accepted, at what terms and conditions.”

Examples of material facts

- types of material used in construction in fire insurance,
- the age of the car in motor insurance,
- types of stock in theft insurance, and
- the state of the health of the proposer in life insurance.

Material facts which must be disclosed are:-

Facts which show that the particular risk being proposed is **greater than would be expected** from its nature or class.

Facts which would **make the likely amount of loss greater** than that normally expected.

Previous losses and claims under other policies.

Previous declinature or adverse terms imposed on previous policies by other insurers.

Full facts relating to and descriptions of the subject matter of insurance.

Contractual Duty

In insurance contracts, the common law duty of utmost good faith is converted into a **contractual duty of utmost good faith.**

Through the proposal form, the **insured warrants the accuracy of the answers he or she gives to the insurer and agrees that the proposal shall be the basis of the contract between the two parties.**

A breach of utmost good faith may take the form of **non-disclosure** and/or **misrepresentation**.

Generally, the facts which the insurers deem to be material are the subject of **specific questions in the proposal form.**

There are certain **facts which, though material, need not be disclosed.** Among them are facts:

which lessen risk,

of public knowledge,

which an insurer's survey should have revealed,

of law,

which an insurer is deemed to know,

which the proposer does not know, and

which an insurer has been put on inquiry.

Continuing duty

- A continuing duty of disclosure, in the sense of a duty to disclose new material facts affecting the risk during the currency of the contract, occurs in two cases only.
- However, as we shall see, a general duty of good faith continues throughout the contract and becomes important if there is a loss that results in a claim.
- We begin, however, with the three cases where there is an ongoing duty to disclose information relating to the risk.

Cont'd

1. Changes in the contract
2. During the claims process
3. Renewal

Claims process

the right to repudiate a claim and the contract itself will arise only in the case of actual fraud in the claims process; that is, a deliberate attempt to deceive the insurers and gain an advantage.

The falsehood in question must be substantial, willful and material in the sense that it had a decisive effect on the insurer's willingness to pay.

The burden of proving fraud rests on the insurer and the standard of proof required is likely to be rather higher than the usual standard of the civil law.

Remedies for Breach of Duty

Where the principle of utmost good faith is breached, the insurer may resort to any of the following:

- avoid the contract from inception;
- avoid liability for an individual claim;
- sue for damages in addition to avoiding the contract from inception or avoiding liability for a individual claim;
- waive the above rights and let the contract continue, for example, by making ex-gratia payments.

Modification of the principle

Section 81 (1) of the Insurance Act provides that a policy of life assurance **shall not** be avoided by reason only of **an incorrect statement** made either in the proposal form or other document upon which the policy was issued unless the statement is material and was made either

Section 86(1) of the Insurance Act stipulates that no policy of life assurance shall be avoided by reason of misstatement of the age of the life assured.

PROXIMATE CAUSE

Introduction

- Careful drafting is necessary to minimize disputes about the meaning of the words used in insurance policies.
- Unfortunately, even where there is no dispute about the meaning of the words used, a dispute may still arise as to the true cause of the loss.
- This is a separate issue.

- The doctrine of proximate cause and that insurers will only pay if the loss is proximately caused by a peril insured against.
- A policy may cover fire but exclude fire caused by earthquake. What happens if a fire breaks out during an earthquake?
- There may be a dispute, not about the meaning of the words 'earthquake' or 'fire', but about whether or not the fire resulted from the earthquake.

Cont.

- This means that it need not necessarily be the cause, which operated first or last as it may have been, but a link in the chain connecting the cause with the result.
- It is the cause most closely allied with the loss not necessarily in time but in effect (the cause, which is most powerful in its effect).

Cont.

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It is the cause most closely allied with the loss not necessarily in time but in effect (the cause, which is most powerful in its effect).

Cont.

The event must be a **natural consequence** of that cause and must be **connected with the cause by a chain of circumstances from one cause to the other.**

Hence it must be the dominant cause, which brings about the result in question.

In insurance, however, we are concerned only with the proximate cause for the purpose of the agreement expressed in the insurance policy.

In other words, our task is to establish whether or not the parties intended the loss to be covered.

Importance of establishing the proximate cause

It enables the insurers to know whether the

cause of loss is:

Insured peril -stated in the policy as covered e.g., accident, theft, fire.

Excluded / excepted peril -stated in the policy as not covered e.g. riots and strike

Uninsured peril - not mentioned anywhere in the policy e.g. damage caused by water from automatic sprinkler during fire.

Issues

Difficulty tends to arise when the loss results from a series of events which are spread over time and other perils, uninsured or excluded, are involved besides those which are insured in other words, there is a chain (or train) of events.

Efforts to minimize

A further possibility is that two or more perils will operate together to bring about a loss.

Chain of

1. The insured fell from his horse, and suffered some injuries that forced him to lie in damp condition so that he contracted pneumonia of which he eventually died.

   It was held that the proximate cause of death was the original ‘accident’ of fall from the horse and not the disease that ultimately killed him (which was excluded).

Cont.

2. An earthquake caused oil stove to overturn.

- Spilt oil was ignited by the wick and the building caught fire which then spread from one building to another until the insured premises, some 500yards away, caught fire.
- The loss was not insured because the policy excluded fire caused by earthquake and the chain of causation between excluded peril and the loss was unbroken.

Marsden V. City and County Insurance (1865)

A fire caused a mob to gather, and a glass was broken when a riot developed and the mob took to plundering.

The policy in question covered breakage of glass but excluded breakage by fire.

In this case, the riotous conduct of the mob was not an inevitable or probable result of the fire and so the chain of events was broken.

The riot and not the fire was held to be the proximate cause, so the exception did not apply and the loss covered.

Efforts to minimize

- Insurance policies usually require the insured to take reasonable precautions to avoid loss or damage and also to take reasonable steps to mitigate (i.e. minimize) any loss which actually occurs.
- The latter duty-to mitigate loss-may even apply automatically, as a matter of law.
- In any event, provided the steps taken are reasonable efforts to prevent or limit the operation of the insured peril, the insurers are liable for any damage to the subject matter that results, this action being regarded as part of the insured peril itself.
- To take some obvious examples, fire insurers are liable to pay for damage caused by water which is used to extinguish a fire.

Case law

- A good example of attempted damage limitations is found in the marine case of *Canada Rice Mills v.Union Marine and General Insurance Co. (1941).*the master of a ship was carrying rice in stormy seas ordered the ventilations to the holds to be closed to stop sea water getting in, and the lack of ventilation to the holds caused damage to the rice.
- It was held that this loss was covered because the proximate cause was the heavy weather, a peril of the sea that was insured by the policy.

3.Concurrent causes

Occasionally, two or more perils operate concurrently (i.e. at the same time) to bring about a loss.

Example

A building might be damaged by a fire that was raging and a storm that was battering it at the same time. Where the perils are independent i.e. either one would have caused some loss without the other, the insurers are simply liable for that part of the toss attributable to whichever peril is insured. So, if the policy covered fire but excluded storm the insurers would be liable for the fire damage but not for the storm damage. In some cases, of course, it may be difficult to say how much damage would have been caused by the insured peril alone.

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In other cases the perils may not only be independent but also interdependent, in the sense that neither peril would have caused damage on its own.

It is impossible to attribute part of the damage to one peril and part to the other.

It is now accepted, however, that two causes might be equally powerful in their effect, so that each is a proximate cause.

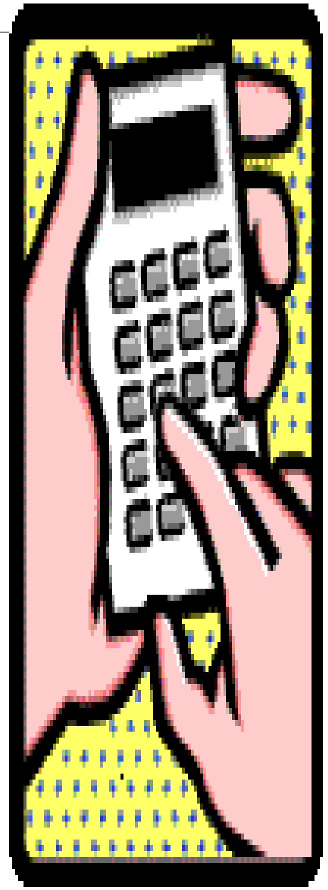
If this happens the result will depend on whether there is a combination of an insured peril and an excepted peril, or a combination of an insured peril and an uninsured peril.

Example of goods in transit insurance policy.

“The company shall not be liable in respect of any loss or damage directly or indirectly, proximately or remotely occasioned by, or contributed to by, or traceable to, or arising out of, or in connection with flood, typhoon, war, etc.”

INDEMNITY

INDEMNITY



- The major legal principle on which insurance contract is based.
- Indemnity is placing the insured in the same financial position he occupied immediately before the loss.
- Applicable to general insurance contract but not life and personal accident policies.

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Life assurance and personal accident contracts not contracts of indemnity.

It would not be possible to grant indemnity.

Are contracts of benefit as they are agreements to pay a specified sum of money.

Measure of indemnity

A claim under a policy of indemnity has been described (in the case of *Jabbour v. Custodian of Israeli Absentee Property (1954)*) as a claim for unliquidated damages.

This means that the exact amount of the compensation is not known in advance but is to be fixed afterwards on the basis of the loss actually suffered

Property insurance

The general rule is that the measure of indemnity for the loss of any property is determined not by its cost, but by its value at the date of loss and at the place of loss.

Under property insurance the insured cannot claim for loss of prospective profits or other consequential losses unless these are specifically insured.

Property policies cover only the actual financial value of the subject matter and the insured cannot claim any amount for sentimental value.

How do we measure indemnity

Buildings

Machinery and equipment

Manufacture’s stock

Wholesale and retail stock

Farming stock

Pecuniary insurances e.g. credit, business interruption

Liability insurances

Marine insurance

FOUR METHODS OF INDEMNITY

- Cash
- Repair
- Replacement
- Reinstatement

Note

The principle of indemnity requires that the insured should be fully compensated for their loss, but not over-compensated or under-compensated.

Variations in the principle of indemnity

The parties to the contract may agree if they wish that the policy will provide either more or less than strict indemnity.

Less tha
indemni

The following are factors which may limit the insured's entitlement to a full indemnity;

- Sum insured
- Liability limits
- Excess and deductible
- Average
- Franchise

Extensio operatio indemnit

At an additional premium the following are some instances where the insured may, depending on the precise circumstances recover more than a strict indemnity.

- New for old
- Reinstatement
- Agreed value
- Agreed additional costs

SUBROGATION AND CONTRIBUTION

Subrogation and Contribution

- Subrogation and contribution are corollaries of indemnity.
- They support indemnity which states one must not receive more than compensation for his financial loss.

Subrogation

deals with money recovered form another source i.e. third party

Contribution

deals with possibility of having many policies for the same risk. One must not claim equal compensation from all polices nor should one insurer bear the whole loss.

Subrogation

<u>Definition</u>

Subrogation is the right of one person, having indemnified another under a legal obligation to do so, to stand in the place of that other person and avail oneself of all rights remedies of the other person whether already enforced or not.

Why subrogation?

- It is sometimes suggested that subrogation **prevents the guilty party from being let off the hook**, ensures that they do not escape their financial responsibilities simply because the other party has been careful enough to arrange insurance.
- The main purpose of subrogation is simply to **prevent what is known as the unjust enrichment of the insured** in other words to prevent him from unfairly profiting from their loss and so to preserve the principle of indemnity.

Principles under Napier vs. Hunter

- **a duty on the part of the insured to start proceedings against a third party in order to reduce his loss ;**
- **a promise by the insured to account to the insurer for moneys received from the third party;**
- **a promise by the insured to permit the insurer to exercise their right of action against the third party should the insured fail to do so themselves;**
- **a promise by the insured to act in good faith when proceeding against the third party**

When Subrogation Rights are exercised

- **Under common law it arises after the insurers have indemnified the insured.**
- **This is still the position in marine insurance.**
- **Subrogation Condition: Insurers place a condition on the policy giving themselves subrogation rights before the claim is paid. They hold the third party liable pending their settlement of the claim.**

Operation of the principle of Subrogation

1.The insured may have actually succeeded in recovering for the same loss twice i.e. collected a claim payment from his insurers and also recovered compensation for the same loss from another source. In this case the insurers can call upon the insured to pay back to them the 'profit' which has resulted from the double recovery. Moreover, the courts have held that insurers have an enforceable equitable lien or charge over such money. This means that the insurer may be able to secure an injunction requiring the money to be paid over.

2. Second, where the insured has not received compensation from another source, insurers who have indemnified the insured in respect of the loss may themselves bring an action against the third party who is legally responsible for it. We will look at each of these situations in turn.

What happens where the insured has ‘recovered for the same loss twice?

Cont’d

- Action in the name of the insured
- No more than one action
- No subrogation on ex gratia payments
- Sharing recovery

Modification in the operation of subrogation – Subrogation waived

Market Agreements/Knock for knock agreements

An inter-company agreement so that insurers do not exercise subrogation rights against each other especially for motor business as the claims would be so many.

2. Employers liability/Public policy

- Waived where one employee causes injury to another.
- Avoids the unacceptable situation of insurers suing one employee on behalf of the insured, his employer.

3. Co-insurance cases

- This is where two or more persons can be insured under the same policy.
- A question then arises as to whether an insurance company, having indemnified one co-insured for a loss covered by the policy, can exercise subrogation rights against another co-insured who was legally responsible for the loss.
- In some cases there may be an express waiver of subrogation clause to the effect that no subrogation rights will be exercised against a co-insured. However, even if there is no such clause, subrogation will usually be denied.

4. Contractual waiver of subrogation

insurers agree with a particular insured that the will not exercise subrogation rights against certain other parties or persons who are associated with the insured. They can do this by including in the policy a 'subrogation waiver clause'. The clause may, for example, expressly state that subrogation rights will not be exercised against affiliated or subsidiary companies of the policyholder, the intention being to prevent a subsidiary from having to pay back sums which had been paid to the parent company under an insurance claim.

Cont'd

5. Where a claim is paid on ex-gratia basis

6. Where the two vehicles involved are insured by the same insurance company.

Contribution

Definition

Contribution is the right of an insurer to call upon others similarly, but not necessarily equally liable to the same insured to share the cost of an indemnity payment.

The total claim is shared in a fair manner.

Cont’d

- This arises where one has more than one contract of indemnity over the same subject matter.
- In the past, deliberate double insurance was not unknown, a second insurance being arranged in case the first insurer should be insolvent and unable to pay. This would be rare nowadays, when the motive for deliberate double insurance is more likely to be an attempted fraud.
- More frequently, there may be some overlap in cover between two different types of policy which the insured has arranged.
- If a camera is stolen from a car, the loss might be covered under the owner's motor policy which may cover personal effects in the vehicle and a household contents or personal all risks policy. If the owner was on holiday at the time then there might be additional cover under a separate travel insurance.

When contribution arises

- Two or more policies of indemnity exist covering the same subject matter.
- All the policies are in force at the time of loss
- The policies cover the same interest
- The policies cover a common peril or perils that caused the loss.

Common law position

- At common law, they can claim against the insurers in any order and for such proportion of the loss as they think fit.
- In particular, they may choose to claim from one insurer only and recover in full from that insurer. Having satisfied the loss, the insurer who pays may then, and only then, claim a contribution from the other insurer(s).
- Insurers have always regarded this as an unsatisfactory state of affairs, because the insurer that is called upon to pay has the full burden of handling the claim and paying the loss, plus the further inconvenience of claiming from another insurer.
- It may be some time before the paying insurer is able to make a recovery and the process of doing so may involve extra cost and, perhaps, even lead to a dispute with the other office.

Contribution conditions

Escape clauses

- An escape clause is a condition that effectively forbids the insured from taking out another policy without the consent of the insurers.
- It does this by providing that the insurance will be avoided if the insured takes out any further insurance on the same risk without notifying the insurers and obtaining their consent.
- The original purpose of these clauses was to prevent the insured from secretly arranging double or multiple insurances and so guard against possible fraud.
- The clause may also state that the insurance will be invalid if the insured already has cover on the same risk with another insurer.

Other conditions

- The clause in question may not prohibit other insurances being arranged without consent in the way described above, but simply state that there will be no liability for any loss which is insured by another policy.
- Example There shall be no liability under this policy in respect of any loss for which the insured is entitled to indemnity under any other policy.

Cont'd

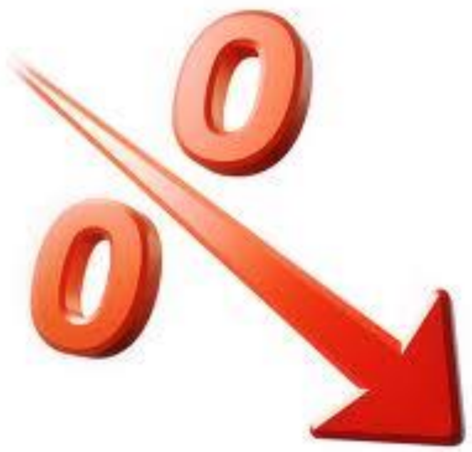
- In some cases insurers will exclude liability for the amount of the loss covered by the other policy but agree to contribute to the balance of any loss that is not insured by the first policy.
- In other words, they will pay once the cover provided by the other policy has been exhausted.

More specific policies

- In some cases a policy will provide that where a loss is covered by another more specific insurance, the policy will respond only when the cover provided by the more specific insurance has been exhausted.
- In other words, the policy operates like an excess of loss policy (above), but only where the 'primary' cover is more specific.
- The term 'more specific' mayor may not be defined in the policy. However, a policy is likely to be regarded as more specific if it describes or identifies the subject matter more precisely.

Rateable proportion clauses

- A clause of this type is now included in virtually all indemnity insurances, and it is sometimes found in conjunction with other contribution conditions.
- The clause states that the insurers will be liable for a 'rateable proportion' only of any loss that is also insured by another policy.
- The effect is to prevent the insured from recovering in full under a policy that includes the condition.



The basis of contribution

- Each insurer pays their **rateable proportion** of the sum insured.
- This is to protect insurers so that one does not pay the whole loss and lose money while recoveries are being made.
- Maximum liability method is commonly used

Example

- Policy A – Sum Insured Kshs.10,000/=
- Policy B – Sum Insured Kshs.20,000/=
- Policy C – Sum Insured Kshs.30,000/=
- Loss - Kshs.6,000/=

Total Sums Insured = Kshs.10,000+20,000+30,000) = 60,000

Insurer A: $\frac{\text{Kshs.10,000}}{\text{Kshs.60,000}}$ x Kshs. 6,000 = Kshs.1,000

Insurer B: $\frac{\text{Kshs.20,000}}{\text{Kshs.60,000}}$ x Kshs. 6,000 = Kshs.2,000

Insurer C: $\frac{\text{Kshs.30,000}}{\text{Kshs.60,000}}$ x Kshs. 6,000 = Kshs.3,000

Challenge

- There are many circumstances where this method will not operate fairly, or simply not work at all.

Example

- If the terms and conditions of the policies are not the same the maximum liability method will not operate fairly (for example, one policy may be subject to an average clause or policy excess).
- If the range of the two policies is different it will be difficult to compare properly the sums insured.
- If one policy provides unlimited cover (as in the case of some liability insurances)

Independent liability method

- Under the independent liability method, the liability of each insurer for the particular loss which has occurred is assessed as though its policy were the only one in force.
- The figure that results in each case represents the independent liability of the insurer for the loss.
- The loss is then shared in proportion to the independent liabilities of the two insurers.

Example

Policy A sum insured	£10,000
Policy B sum insured	£20,000
Loss	£6,000

Calculation

Step 1 Calculate independent liability of policy A (the amount payable if A was the only policy in force)'

This is also £6,000

Step 2 Calculate independent liability of policy B

This is also £6,000

Step 3 The loss is shared in proportion to the two independent liabilities (i.e., the proportion of the loss which the independent liability of each policy bears to the total of the independent liabilities), i.e.

A pays £6,000/ £12,000 x £6,000 = £3,000

B pays £6,000/£12,000x £6,000 = £3,000

Motor and workmen's compensation

- Employees hurt in employers vehicle in course of employment could be a motor claim and workmen's compensation claim.
- It is agreed that the claim will be workmen's compensation claim and no contribution from motor insurer.

THE END