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## **LAW OF INSURANCE**

### **Introduction**

Man faces many risks in his life to his life and property thought his 'life'. Risk is uncertainty of financial loss. Losses certainly occur to him. The law of insurance saves him from losses. An insurance system is developed and well organized system of redistribution of the costs of losses by collecting a premium payment from every participant in that system.

Insurance is a contractual arrangement whereby one party agrees to compensate another party for losses. The party agreeing to pay for the losses is called the 'insurer'. The party who will receive the payment for loss, and who pays little premium for that in advance is called the "insured". The payment that the insurer received is called a "premium". The insurance contract is called a "policy". Insured transfers his exposure to loss to the insurer by payment of premium or premiums and by purchasing an insurance policy. The law of insurance is a branch of the law of contracts. Like a contract in a law of contracts, the parties to the contract of insurance also have the duties and rights against each other. The contract of insurance creates rights and duties on both of them.

### **Definition of Insurance**

1. E.W. Patterson – Insurance is a contract by which one party for the consideration assumes a particular risk of the other party and promises to pay him or his nominee ascertain sum of money on a specified contingency.
2. The contract of insurance is a contract whereby one party (the insurer) promises in return for a money consideration (the premium) to pay to the other party (the insured) money on the happening of an uncertain event.
3. A contract of insurance is a contract either to indemnity a person against a loss which may arise on the happening of an event or to pay a sum of money on the happening of some or any event for an agreed consideration.

## Essential Ingredients of Contract of Insurance

The following are the essential ingredients of contract of insurance.

### 1. An Insurer

For the contract of insurance there must be an insurer. An insurer may be a person or an association of person or a company. Such person, association or company must be duly registered for the purpose of carrying on the business of insurance.

### 2. An Insured

There must be a person or persons in case of group insurances to be insured by the insurers for the proposal of the contract of insurance on fulfillment of certain fixed conditions.

### 3. Subject of Insurance

The subject of insurance may be a period of life or a property to be assured.

In case of life insurance, the insured person must be physically fit or of sound health but must not be subject to incurable disease and must be declared as such by a medical practitioner such by a medical practitioner appointed by the insurer. In case of insurance of a property movable or immovable it must be free from any defect.

### 4. A Contingency

There must be a contingency for the fulfillment of the contract of insurance. It may be a period of life to expire death during the fixed period of life or an accident in case of life insurance. Theft or destruction of a movable or immovable property having been insured during the period of insured time for such occurrence.

### 5. Payment of Premiums

The insured is required to pay certain fixed amount of premium at certain regular intervals till the period of insurance

ends or the contingency occurs in the middle of such period. If the insured fails to pay the required premiums the contract of insurance comes to an end and the insured is entitled to get back certain part of the amount of premium paid in certain extent.

### **6. Payment of assured sum on occurring of the contingency**

The insured is having a duty to pay certain fixed amount of the insurance contract on happening of the contingency i.e. the expiry of the period of life or death of the insured or hurt caused to the insured or theft, destruction or damage to the property of whole or to some extent.

### **7. Execution of a formal contract of insurance**

A formal contract of insurance is to be executed by the insured accepting the conditions printed on the form of insurance company. The form of insurance company. The form must be duly filed and signed by the insured and accepted by the insured and a policy of insurance issued on receipt of such formal contract of agreement by the insurance company or association.

#### **Subject Matter of Insurance :-**

The subject matter of insurance may be any property life or liability. Thus, in fire insurance the subject matter may be a house or a factory. In case of life insurance the subject matter is life of a person and in accident the subject matter is ones liability.

#### **Nature and Characteristics of Insurance**

##### **1. A Co-operative device**

All for one and one for all is the basis for a co-operative device. So insurance is a co-operative device where a group of persons who agree to share the financial loss may be brought voluntarily or through publicity or by an agent. An insurer would be unable to compensate all the losses from his own

capital so by insuring a large number of persons he is able to pay the amount of loss.

## **2. Insurance is a valid contract**

Insurance is a kind of contract. It is valid contract between the insurer and the insured. When the insurance contract is valid then it is enforceable in the court of law.

## **3. Consideration**

Consideration is one of the essential element of contract. In contract of insurance there must be lawful consideration. This consideration is in the form of premium which the insured agrees to pay the insurer.

## **4. Risk Sharing and Risk Transfer**

Insurance is a mechanism or medium adopted to share the financial losses that might occur to an individual or his family on a happening of a specified event. The event may death of earning members of the family in the case of life insurance, fire in fire insurance and accidents in motor insurance etc. The losses arises from these events. Thus these losses are shared by the insured in the form premium. Hence risk is transferred from one individual to a group.

## **5. Compensation at occurrence of contingency**

In contract of insurance the compensation is made to the insured on the happening of contingency insured. If the contingency occurs payment is made. In a contract of life insurance the death or the expiry of the term of life is the contingency and in such contract compensation is made on the happening of death or the expiry of a term of life.

## **6. Amount of payment**

On the happening of contingency the insurer is bound to make or paid the financial loss suffered by the insured.

The amount of payment depends upon the value of loss occurred due to particular vent provided insurance is there up to that amount.

In life insurance the insurer promise to pay a fixed sum on the happening of a event. It is immaterial in life insurance what was the amount of loss at the time of contingency. But in property and general insurance the amount of loss is required to be proved.

#### **7. Insurance is not a charity or gambling**

Insurance is not a charity or gambling. Because gambling is illegal whereas insurance is legal one. It is opposite of gambling. Insurance is not possible without premium. Charity is given without consideration. It provides security and safety to an individual and to the society. That's why insurance is not a charity.

#### **8. Huge number of insured persons**

To make insurance it is essential to insure large number of persons or property because the lesser would be cost of insurance and so the lower would be premium.

In order to function successfully the insurance should be joined by a large number of person.

#### **Kinds of Insurance**

The following are the various kinds of insurance –

##### **1. Life Insurance**

Life insurance is a contract whereby the insured agrees to pay certain sums, called premium, at specified time, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions & in specified ways. Thus life insurance is a promise to pay a certain sums upon the death of assured.

### Essential Feature of Life Insurance

- i. It is a contract relating to human life
- ii. The contract provides for lumpsum money.
- iii. The amount is paid at the expiration of a certain period or on the death of a person.

### 2. Property Insurance

In property insurance the property of an individual and of the society is insured against the loss of fire, the crop is insured against unexpected decline in production, unexpected death of the animals engaged in business and theft of the property and the goods. It relate to fire, house breaking, crop insurance etc.

### 3. Fire Insurance

A Fire Insurance policy provides an insured protection against all direct loss by fire. Contract of fire insurance is a contract of indemnity. Contract of fire insurance must be utmost good faith. The object of contract of fire insurance is to place the insured as far possible in the same position in which he would be if the insured event causing the loss had not occurred. The burden of proof lies on the insured.

### 4. Marine Insurance

A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against, marine losses, that is to say the losses incidental to marine adventure.

There are several perils (danger) of the sea, which cause loss to the ships, cargos (ships load), freight (goods) and crew (group of men operating a ship). Such causes are fire, war perils, pirates, thieves, captures detainments of princes & people etc. It does not include the ordinary action of the winds and waves.

### 5. Miscellaneous Insurance

The miscellaneous insurance took the present shape at the later part of 19<sup>th</sup> century with the industrial revolution in

England. Accident insurance liability insurance and theft insurance were the important form of insurance at that time. Now insurance such as cattle insurance, crop insurance, profit insurance etc. are taking place.

## **6. Personal Insurance**

The persons insurance includes insurance of human life which may suffer loss due to death, accident and disease. Therefore, the persons insurance is further sub-classified into life insurance, persons accident insurance and health insurance.

## **7. Liability Insurance**

Employers liability insurance is one against loss arising from injury suffered by an employee in the course of his employment.

Such liability would be covered under Workmen's Compensation Act.

## **8. Motor Accident Insurance**

Under Motor Vehicle Act, 1988 as amended by Act 54 of 1994, compensation is paid on account of injury sustained permanent or partial disablement and death caused in the accident or damage to property during course of employment.

## **Difference between Contract of Insurance and Contract of Wagering**

<b>Contract of Insurance</b>	<b>Wagering Contract</b>
	<b>1. VALIDITY</b>
A contract of insurance is valid and enforceable in the court of law.	Wagering contracts are void U/Sec. 30 of The Indian Contract Act, 1872 and therefore not enforceable in the court of law.
	<b>2. RISK</b>
There are natural risk exist against the subject-matter of the contract.	There is no such risk in this type of contract.

<b>3. INDEMNITY</b>	
The insured persons gets indemnity as soon as he enters the contract of insurance.	No such indemnity can be afforded to any party.
<b>4. ASSURANCE</b>	
The object of insurance is to provide assurance to the insured and to make the good the loss he would face.	There is no such assurance to any party.
<b>5. GOOD FAITH</b>	
Utmost good faith is an essential and essence of an insurance contract. The parties, shall have to disclose the defects, fact to others before entering into contract.	It is completely absent in this type of contract.
<b>6. PROTECTION</b>	
It provides protection.	It does not provide protection.
<b>7. SUM</b>	
In case of the event occurs, the insured sum is assessed and shall be paid according to the loss caused. Example - A motor car is fully insured and is met accident. It is partly damaged. Full insurance amount shall not be paid. Only the amount will be paid to the extent of the damage.	In case of the event occurs, the winner gets full amount as per agreement. No rebate, no reduction etc. will be allowed.
<b>8. HAPPENING OF EVENT</b>	
An insured event may or may not happen at all except in life insurance.	The event is bound to happen in wagering contract.
<b>9. SOCIAL SERVICE</b>	
Insurance has become a social service in 20 <sup>th</sup> century. It is protection given to the insured person & to his family members in case of his death. If the property is destroyed in fire, the insured persons social position will not be disturbed. His loss can be compensated by this type of contracts.	It is not a social service. Moreover, it is an antisocial.

### 10. NATIONAL USE

The insurance business is nationalized in India. The revenue collected by this business is spent other development activities of the nation.

There is no such national use. This type of contracts destroys the morality, the moralities of the public.

### 11. COMPULSORY

The insurance is made compulsory in certain fields. For Ex. Cars, Ships etc. If the motor car owner does not insure his car, he will be punished under Motor Vehicles Act.

These contracts are not compulsory they are luxury, time killing and bad habits.

### 12. NEW

The law of insurance is new to human.

Wagering contracts are as old as the civilization of man started.

### 13. REMEDY

The aggrieved party can approach court of law & can seek specific relief.

As the wagering contract itself is void, the aggrieved party could not approach court of law.

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**LIFE INSURANCE**

- Q. 1 Explain the Life Insurance contract and its nature.**
- Q. 2 Define Life Insurance and explain different types of Life Insurance.**
- Q. 3 Discuss the nature of Insurance Contract.**

**Introduction**

There is no statutory definition of life insurance, but it may be defined as a contract in which the insurer, in consideration of a certain premium, either in lump sum or in any other periodical system of payments, in return agrees to pay to the assured, or to the person for whose benefit the policy is taken, a stated sum of money on the happening of a particular event contingent on the duration of human life. Thus life insurance is a promise to pay a certain sum upon the death of the assured.

**Essential Features of Life Insurance**

The essential features of Life Insurance are as follows –

1. It is a contract relating to human life.
2. There need not be an express provision that the payment is due on the death of the person.
3. The contract provides for lump sum money.
4. The amount is paid at the expiration of a certain period or on death of the person.

**Definition of Life Insurance**

1. "Life Insurance is a contract whereby the insured agrees to pay a certain sums, called premium, at specified time, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified ways."
2. "The contract of Life Insurance is a mutual agreement by which the insurer undertakes to pay a given sum to the insured or his nominee upon the happening of a particular event."

3. "Life insurance is a promise to pay a certain sum upon the death of assured."

### **Nature and Scope of Life Insurance**

Life insurance has both short range and long range advantages. It protects the potential estate of the policy holder as distinguished from acquired estate. It saves the insured from worry and makes him a little less careworn. For the purpose of insurance he has to be medically examined. By life insurance, if he prematurely dies, his family need not depend on the charity of the relatives or of the government. If he survives the period, the insurance amount will be useful in his old age & period of disablement. Life insurance is a husband's privilege, a wife's right and a child's claim.

### **Difference between Life Insurance and Other Insurance.**

<b>Life Insurance</b>	<b>Other Insurance</b>
1. A contract of insurance is valid and enforceable in the court of law.	1. Wagering contracts are void U/Sec. 30 of The Indian Contract Act, 1872 and therefore not enforceable in the court of law.
2. In life insurance the event is bound to happen sooner or later.	2. In non life insurance the event may or may not happen or occur.
3. In life insurance the policy amount payable is certain and absolute.	3. In non-life insurance viz. fire, marine etc. the policy amount payable is uncertain.
4. The life insurance is not a contract of indemnity	4. The non life insurance is a contract of indemnify.
5. Life insurance is an actionable claim, therefore it can be assigned.	5. Non-life insurance claim is not an actionable claim therefore it can't be assigned.
6. Generally the life insurance policies are for longer period.	6. Non-insurance policies are for smaller period, say one

	or two years.
7. The money shall be payable irrespective of loss. Loss can't be calculated. It is also not possible to calculate the value of human life in terms of money. The agreed amount between insurer and insured shall be payable to the legal representative in case of insured' death or if the death not occurs the amount to the insured.	7. In non-life insurance, the loss is calculated at the time of the loss and then such amounts shall be payable to the insured.
8. In life insurance premiums are fixed on the proble duration of human life.	8. In non-life insurance only the value of the subject matter is taken into consideration.

### **Kinds of Life Insurance**

In modern times, there are various forms or kinds of insurance according to the nature of terms and conditions in the different policies. The kinds of insurance as follows –

#### **1. Whole Life Insurance**

This is the original and normal form of insurance. Under this policy, the assured agrees to pay fixed premiums periodically throughout his life. The policy amount is payable on the death of the assured to his legal representatives, assigns or nominees, This is intended for the benefit of the members of the family of the assured after his death. The policy taken on whole life is called "Whole-Life Policy."

#### **2. Limited Payment Insurance**

It is a form of life insurance which requires payment of premium by insured for a specified period and after the expiry of the said period the insured is entitled to get insurance amount.

### **3. Endowment Insurance**

Under this policy, the assured agrees to pay fixed premiums periodically not throughout his life but for a term of years or until he attains a particular age say 50 or 55 years. The policy amount is payable to the assured at the end of the stipulated time. But if he dies before that time the amount is payable to his legal representative or assigns or nominees. This is intended for the benefit of assured himself in his old age if he survive or for the benefit of the members of the family if he dies before the time.

### **4. Joint-Life Insurance**

It is an insurance on the joint life of husband and wife and the money under the policy becomes payable on the death of either of them.

In this type of policy money becomes payable on the death of all but one.

In this kind of insurance two persons may take a joint life insurance from joint fund For Ex. Husband & Wife. The premium paid by them is deemed paid equally. Insurance money is paid to the survivor, if death occurs either of them.

### **5. Annuity Insurance**

The insured pays premiums for certain period for certain sum. After the expiry of such period, the insurer pays monthly or half yearly or yearly annuities to the assured till the death of the assured or till to a specified date mutually agreed.

### **6. Fixed term marriage endowment insurance**

It is a kind of endowment insurance. Under this kind of insurance the assured agreed to pay a fixed premiums periodically not throughout his life but for a term of years or until his/her girl attain the age of marriage the policy amount is payable to the assured at the end of stipulated time, but if he dies before that time the amount is payable to his legal representative or assigns or nominees.

## **7. Two years temporary insurance**

Two year temporary assurance policies issued by the life insurance corporation of India may be cited as examples of short-term policies.

## **8. Children's deferred Insurance**

It also a kind of endowment insurance such policies can be taken for the development of children.

## **9. Term Insurance**

Term policies are usually for a short period and are also called short-term policies. Two year temporary assurance policy is an example of this kind of policy.

## **10. Paid up Insurance**

A paid up policy means a reduced paid up assurance which constitute a valuable privilege to the policy holder which secures automatically to him & his dependents.

## **11. Advance Insurance**

This type of insurance is very popular now a days in India. The insured agrees with the insurer to take a policy on his life, and also the insurer agrees to advance a huge amount to the insured towards the construction of house or for purchasing a house site. The insured pays monthly premiums on his life insurance as well as the monthly installment of the loan.

### (3) EVENT INSURED AGAINST LIFE INSURANCE

#### Introduction : -

The event insured against in ordinary life insurance is the death of the life assured arising from disease or accident. It is immaterial whether the death is caused by natural or accidental caused or due to the criminal act of the third party. A contract to be valid must satisfy the element of legality of consideration and object. Court of law do not enforce contracts, the object of which are against public policy. One of the cardinal rules of legal theory based on public policy is that no man shall be allowed to take advantage his own wrong. Based on this principle in law of insurance of life, the above general rule that the legal representatives of the assured can recover on a life policy of the assured on his death, whether the death is due to natural or accidental causes including the death caused by a criminal act of a third party.

#### Exceptions : -

The following are the two exception during which the legal representative of the assured can't recover the policy amount.

1. Where death of the assured is caused due to the violation of a rule of criminal law by the assured himself; and
2. Where the death is the result of a suicide.

#### 1. Where death of the assured is caused due to the violation of a rule of criminal law by the assured himself : -

Murder is one of the most serious offences and therefore on principles of justice, equity & good conscience, the law lays down that a murderer can't inherit the property of the murdered person. Death caused by the willful misconduct of the assured himself debars the personal representatives from recovering on the assured's life policy.

The willful misconduct of the assured has always been treated as n implied exception in a policy not only in life

insurance but in other branches also. For example, in the case of fire insurance where the fire is caused by the willful misconduct of the assured, he is debarred from recovering on the policy. Similarly where a person takes a life insurance on the life of another and later kills him neither, he nor any person claiming under such assured is entitled to recover under the policy on the ground that there is implied exception or it is against public policy.

### CASE LAW – Liberty National Life Insurance Vs. Weldon

In the above case a registered nurse effected three policies from three different companies on the life of her niece without the knowledge of the parents of the life assured. The niece was a child of two years. One day the nurse visited the child's house and gave her soft drink containing arsenic as a result of which the child died within a few hours.

**Judgment :** - The nurse was prosecuted and convicted for murder. Not only this, but the insurance companies were held to pay damages to the parents of the child for their negligence in issuing policies to one who had no interest in the life of the assured.

Where the misconduct which resulted in the loss is caused by a willful act an independent third party the implied exception does not apply and the assured or his representatives are not deprived of their right to recover under the policy provided the assured is not a privy to misconduct. The major source of risk is from the willful or negligence conduct of third party. In fact, oftentimes, insurance is restored only to protect from such risk or fear. When a person is afraid that somebody may kill him, or his property may be set on fire by somebody he generally applies for insurance to save himself from the possible loss and if the assured is denied the right to recover under such policies, the very object of insurance law is defeated.

Again if the insured violates the law or commits an act punishable with a capital punishment & if he is sentenced to death he is said to have brought death on himself and the rule

of public policy that no one can make a profit out of his own wrongful or culpable conduct comes into play and debars the assured or his representatives to recover under the policy.

### **CASE LAW – Amicable Insurance Society Vs. Bolland**

In the above case a person is sentenced to death for committing the murder of another person and loses his life in execution of the sentence, it was held that all persons on whom the right to recover given by operation of law and who claim through such a convict are debarred from claiming under the policy.

Death resulting from illegal operation or death in a fight falls within the implied exception and the insurance company is absolved from liability in such cases.

### **2. Where the death is the result of a suicide :-**

The risk insured against in a life policy is death and death may be caused by disease, accident, negligence or willful act of himself or of a third party. When the event insured against namely death occurs, the insurer is liable to pay normally under the contract. When the death occurs, which is an inevitable event in the course of every human life, in all life policies, the insurer must pay. But as in other branches of insurance when the event insured against happens due to the willful and wrongful acts of the assured then the insurance company is not liable to pay policy amount or compensation. Thus an ordinary life policy covers the risk of the assured murdered by third parties and on similar grounds the commission of suicide by the insured while insane should not imply an exception to the risk and therefore can't come within the exception based on the rule that no one can benefit himself out his own wrong.

In England, it was formally thought when death was caused by the assured himself while sane, it amounted to a few *de se* i.e. a criminal act and therefore the insurance company is not liable to pay compensation during such event.

### CASE LAW – Baresford Vs. Royal Insurance Co. Ltd.

In the above case one major Rowlandson insured his life in 1925 and the sum assured was payable on his death to the executors of his estate. It was provided in the policy that if the assured shall die by his own hand, whether sane or insane, within one year from the commencement of assurance, the policy shall be void as against any person claiming the amount thereby assured. The assured paid premium for nine years. Afterwards in sound state of mind, he committed suicide in 1934. In an action on the policy the insurance company pleaded that as the assured died by his own hand, it was contrary to public policy that's why insurance company was not liable to pay the assured sum.

The trial court held that the insurance company was liable to pay compensation to the legal representatives of the assured as the policy of the company shall be void only if the assured commits suicide within one year from the date of commencement of assurance and not afterwards according to terms and conditions of policy.

But the court of appeal, after an elaborate discussion, reversed the judgment of trial court. The House of Lord in upholding the decision of the court of appeal expressed the view that, although the condition in the policy necessarily implied a positive undertaking by the company to pay even if the assured died by his own hand, sane or insane, after the expiry of one year from the date of the policy, it was contrary to public policy that a person who had committed a crime or his personal representative should be allowed to benefit by that crime.

### CASE LAW – Barradaile Vs. Hunter

In the above case there was a term in the policy that if the assured should die by his or her own hands or by hands of justice or in consequence of fight, the policy should be void. The assured threw himself into the river Thames and died. The court held that the assured died by his own hand that's why the Insurance Company was not liable to pay compensation.

### Whether suicide was a crime in India and against public policy :-

The case of Royal Insurance Co. Vs. Major Rowkindson was to show that in England suicide was a crime and against public policy and as such no liability attached to the company due to the claim arising out of the suicide of major Rowlandson.

In India also if a policy of life insurance contains and agreement to pay the sum insured, even though the assured commits suicide while sane, it must be considered as an agreement opposed to public policy within the meaning of section 23 of the Indian Contract Act and the insurers should not be made liable.

## ( 4 ) CIRCUMSTANCES AFFECTING THE RISK

### Q. 1 What are the circumstances affecting the risk?

#### Introduction

The object of insurance is to give protection against losses caused by fortuitous or accidental occurrences. These fortuitous or accidental losses occurrences are called risks, where the insurer accepts liability upon the risks in insurance contracts such risks are called "accepted risks". Where the insurer does not accept liability upon the risks in an insurance contracts, such risks are called "excepted risks". Risk is life insurance is the risk of death at an early date due to disease as distinguished from accident.

Hence in life insurance facts which tend to shorten the span of the life assured would amount to the circumstances affecting the risk and those facts are regarded as material facts for the purpose of the duty of disclosure. It is common practice for the insurers to put specific questions in the proposal form about these facts. A life insurer makes enquires regarding the following facts namely –

1. Age of the proponent
2. His family history
3. Personal Health
4. Moral history including habits of life, past and present.
5. Geographical position & occupation.

#### Circumstances affecting the Risk : -

The following are the circumstances or matters which affects the risk in life insurance.

#### 1. Age of the proponent : -

Age is an important material fact in life insurance as the rate of premium depends on the age of the assured. Once the

age is admitted by the insurer, the correctness of the age can't be questioned unless the insurer can prove that his admission was procured by the fraud of the assured. If age is not proved and admitted on the policy when issued, it should be proved by the assured during the performance of his contract. For proof of age, he may submit any of the following documents, namely -

- a. Birth Register extract from Municipal or other authentic public record.
- b. School or college certificate
- c. Passport
- d. Domicile Certificate
- e. Marriage Certificate
- f. Any other document of birth proof.

It is always desirable and convenient for the assured to get his age admitted by endorsement on the policy by proving his age either at the time when the policy is issued or as soon as possible thereafter during his lifetime. It becomes more difficult and inconvenient to prove it for the claimant after the death of the assured.

If the age is wrongfully mentioned in the policy by the insured than the becomes voidable at the option of insurer.

## **2. Family history: -**

The risk in life policies depend on longevity of the assured and heredity plays an important role in determining the longevity of a person. Therefore medical officer usually puts a number of questions about the births and deaths of brothers, sisters, parents & near relations the diseases from which they suffer the causes of their death and ages at their deaths. Family history gives a clue to the insurers as to the longevity of the assured. The assured must give correct answer regarding the family system.

### **CASE LAW – Asia Assurance Company Vs. Kartiya Devi**

In the above case it was held that when the assured suppressed the truth regarding his family history then it amounted to misrepresentation and the policy was void.

### **3. Personal Health :-**

The habits of life past and present and which tend to shorten the life must be disclosed. For example, the use of opium, tobacco or alcohol. Questions are often asked to know the habits of the assured. The duration of a man's life depends on his habits. The assured is required to disclose his bad habits if any at the time of making insurance contract if does not disclose it and died as a result of that bad habit then the insurer is not liable to pay compensation.

### **4. Geographical Position :-**

The place where the applicant lives is important as climate and environment have an effect on one's health. Unhealthy surroundings have a tendency to shorten the life. Further, the particular place may be subject to earthquake, volcanoes and floods. Therefore, the applicant must give his residential address.

### **CASE LAW – Hugunim Vs. Rayley**

In the above English case the assured gave his residential address but actually he was not there at that time, it was held that the omission of this fact was fatal to the policy and the insurance company was not liable.

### **5. Occupation :-**

Information regarding the occupation is essential to understand the nature of risk. If it is a dangerous occupation like a soldier, sailor, airman or a workman in an ammunition factory the insurers charge a higher rate of premium.

### **Section 45 of the Insurance Act :-**

Section 45 of the Insurance Act provides that the insurance contract is a contract of utmost good faith and therefore if the assured has not disclosed all the material facts, the insurance company can avoid the contract.

**CASE LAW - Mithoolal Vs. Life Insurance Corporation, AIR1962**

In the above case the Life Insurance Corporation challenged a policy after two years after its issue. It was in evidence that the assured fraudulently suppressed facts. It was held that the life insurance company was not liable.

**CASE LAW - New India Insurance Company Vs. Raghava Reddi**

In the above case it was held that a policy can't be avoided on the ground of misrepresentation unless the following facts are established by the insurer namely.

1. The statement was inaccurate or false.
2. The facts which is suppressed must be material to disclose.
3. The statement was fraudulently made.
4. The policy holder must knew at the time of making the statement that it was false.

**CASE LAW - All India General Insurance Vs. S.P. Maheshwari, AIR 1960**

In the above case it has been held that the insurance company is entitled to avoid the policy on the ground of deliberate misrepresentation about a drinking habit and non-disclosure of venereal disease.

**CASE LAW - Shata Devi Vs. LIC, AIR 1988**

In the above case five policies were taken by the husband of the plaintiff were repudiated by the LIC on the ground that the proposer knowingly suppressed the fact that he was suffering from diabetes, hypertension and that he had kidney problem. The LIC could not prove the allegations. The court therefore refused to uphold the repudiation.

**(S) THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999**

**Q. 1 What are the duties, powers and functions of the Insurance Regulatory and Development Authority.**

**Q. 2 Explain the composition of authority under the Insurance Regulatory Development Authority Act, 1999.**

### **Introduction**

The Insurance Regulator and Development Authority Act, 1999 was enacted to provide the establishment of an authority to protect the interest of holders of insurance policies, to regulate and ensure growth of the insurable industry and further to amend the Insurance Act, 1938, Life Insurance Corporation Act, 1956 and the General Insurance Business Act, 1972 to end the monopoly of the Life Insurance corporation of India and General Insurance Corporation.

### **Composition of Authority (Section 104) :-**

The Authority shall consist of the following members namely –

- a. A chairperson
- b. Not more than five whole time members.
- c. Not more than four part time members.

These are to be appointed by the Central Govt. from amongst persons of ability, integrity and standing who have knowledge or experience of life insurance, general insurance, finance, economic law, accountancy, administration or any other discipline which would in the opinion of the central Government be useful to the Authority.

Provided that the Central Government shall, while appointing the chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance & General Insurance.

### Establishment and Incorporation of Authority (Section 3) :-

1. The Central Govt. may establish an authority for the purpose of this Act called "The Insurance Regulatory & Development Authority".
2. The Authority would be a corporate body having perpetual succession and a common seal with power to acquire, hold & dispose of property, both movable and immovable and to contract and shall by the said name, sue or be sued.
3. The office of Authority shall be at such place as the Central Govt. may decide from time to time.
4. The Authority may establish offices at other places in India.

### Tenure of office of chairperson and other members (Section 5): -

1. The chairperson and every other whole time member has to hold office for a term of Five years from the date on which he enters upon his office and shall be eligible for re-appointment. But no person shall hold office as a chairperson after he has attained the age of 65 years and no person shall hold office as a whole-time members after he has attained the age of 62 years.
2. A part time member has to hold office for a term not exceeding five years from the date on which he enters upon his office.
3. A member may -
  - a. relinquish his office by giving in writing to the Central Govt. notice of not less than 3 months; or
  - b. be removed from him office in accordance with section 6 of the Act.

### Removal from office (Section 6) : -

1. The Central Govt. may remove from office any member who -
  - a. is adjudged an insolvent

- b. has become physically or mentally incapable of acting as a member; or
  - c. has been convicted for any offence.
  - d. has acquired such financial or other interest as likely to affect prejudicially his functions as a member.
  - e. has abused his position.
2. No such member shall be removed, unless he has been given a reasonable opportunity of being heard in the matter.

#### Salary and allowances of chairperson and members (Section 7) :-

The salary and allowances payable to the member other than part-time members and other terms and conditions of service of the members shall be such as may be prescribed.

#### Bar on future employment of members (Section 8) :-

According to section 8 of the Insurance Regulator and Development Authority Act, 1999 the chairperson and the whole time members shall not for a period of two years from the date on which they cease to hold office as such accept –

- a. any employment either under the central Govt. or under any stat Government.
- b. any appointment to any company in the insurable sector.

#### Administration Powers of Chairperson (Section 9) :-

The chairperson shall have the powers of general superintendence and direction in respect of all administrative matter of the Authority.

#### Meetings of Authority (Section 10) :-

1. The Authority shall meet at such time and place and shall observe such rules and procedures in regard to their business at the meetings as may be determined by regulation.

2. The chairperson or if for any reason he is unable to attend a meeting of the authority, any other members chose by the members present from amongst themselves at the meeting, shall preside at the meeting.
3. All questions which come up before any meeting of the authority shall be decided by majority of the votes.
4. The Authority may make regulations of the transaction of business at the meetings.

#### **Officers and employees of the Authority (Section 12) :-**

1. The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.
2. The terms & other conditions of service of officers and other employees of the Authority appointed by the Authority shall be governed by regulations made under this Act.

#### **Duties, Powers and Functions of Authority (Section 14) :-**

Chapter IV which contains only one section i.e. section 14 of the Insurance Regulator & Development Authority Act, 1999 deals with duties, powers and functions of Authority.

#### **Duty of Authority :-**

##### **1. Duty to regulate & promote the growth of Insurance business (Section 14(1)) :-**

Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have a duty to regulate, promote and ensure the growth of the insurance business.

#### **Power and functions of Authority :-**

The Authority has the following powers and functions namely :-

## 1. Power to issue a certificate of registration :-

The Authority has power to issue a certificate of registration to the applicant. It has not only a power of issuing a certificate of registration to the applicant but also it has also power to renew, modify, withdraw, suspend or cancel such registration.

## 2. Power to protect the interest of the policy holder :-

The Authority has the power to protect the interest of policy holders in matters relating to assigning of policy, nomination by policy holder, nomination by policy holder. It has also power to settle the insurance claims & surrender value of policy.

## 3. Power to specify qualifications for an agent :-

The Authority has power to specify requisite qualifications, code of conduct & practical training for insurance agents.

## 4. Power to specify the code of conduct for surveyors :-

Surveyors means one who survey land & the authority has power to specify the code of conduct for surveyors.

## 5. Power to promote efficiency in the conduct of insurance business :-

The Authority has to promote efficiency in the conduct of insurance business.

## 6. Power to promote & regulate the professional organizations connected with insurance business :-

The Authority has power to work for the promotion & regulations of the professional organization connected with insurance business & re-insurance business.

## 7. Power to laving fees and other charges :-

The authority has power to laving the fees & other charges for carrying on insurance business.

**8. Power to call information : -**

The Authority has power to call information from agent and other organization connected with insurance business.

**9. Power to control & regulate the rates : -**

The Authority has power to control & regulate the rates, advantages, terms & conditions that may be offered by insurers in respect of general insurance business.

**10. Power to specify the forms of books of account : -**

The Authority has power to specify the form & manner in which books of account shall be maintained & statement of accounts shall be rendered by insurers.

**11. Power to adjudicate the dispute between insurer & agent: -**

The authority has power to adjudicate the dispute between insurer and the agent.

**12. Power to exercise such powers as may be prescribed : -**

The authority has power to exercise such power as may be prescribed.

## (6) GENERAL PRINCIPLES OF LAW OF INSURANCE

### Q. 1 What are the General Principles of Law of Insurance?

#### Introduction

Insurance is a contractual arrangement whereby one party agrees to compensate another party for losses. The party agreeing to pay for the losses is called the "insurer". The party who will receive the payment for a loss, and who pays little premium for that in advance is called the "insured". The payment that the insurer received is called a premium. The insurance contract is called a 'policy'.

Insured transfers his exposure to loss to the insurer by payment of premium or premiums & by purchasing an insurance policy. The law of insurance is a branch of the law of contracts. Like a contract in the law of contracts, the parties to the contract of insurance also have the duties & rights against each other. The contract of insurance creates rights and duties on both of them.

#### Definition of Contract of Insurance : -

E.W. Patterson : - "Insurance is a contract by which one party for the consideration assumes a particular risk of the other party and promises to pay him or his nominee ascertained sum of money on a specified contingency".

#### General Principles of Law of Insurance : -

There are certain General Principles of Law of Insurance which are common in all kinds of insurance i.e. Life Insurance and non-life insurance. The following are the important General Principles of Law of Insurance : -

#### 1. Doctrine of utmost Good Faith : -

The general rule of the common law of sale is that the buyer wants to purchase goods to fulfill his needs and wishes. He purchases the goods at his needs and wishes. He purchases the goods at his own risk relying upon his own skill and

judgment. He buys the goods after satisfying himself of their quality & fitness. If the buyer makes a wrong choice the seller is not held responsible. This general is called "caveat emptor". It means the buyer beware. It is the duty of the buyer to satisfy himself before entering into the contract that the article which he buys is the one which he wants.

The General Principle of "caveat emptor" does not apply in case of contracts of insurance. It is the duty of the insured to disclose all the material facts to the insurer. A contract of insurance is a contract based upon the utmost good faith. This is called "Doctrine of utmost good faith. Good faith lies at the root of the insurance contract. The assured must disclose to the insurer, every material circumstance which is known to him.

Thus, according to the Doctrine of utmost good faith it is the duty of every insured to disclose every material fact of the subject-matter. If he omits to disclose knowingly, it leads to breach of contract.

## 2. Insurable Interest :-

According to section 10 of the Indian Contract Act, 1872 the following are the essentials of a valid contract.

- a. Free Consent
- b. The Parties must be competent.
- c. There must be Lawful object & Lawful Consideration
- d. The agreement must not expressly be declared to be void.
- e. The agreements must be in writing.

For a contract of insurance, there is another essential i.e. "insurable interest". The insured must have insurable interest in the subject matter. **For Ex.** A is the legal owner of one building B worth Rs.1,00,000/- A has insurable interest on the building B. A is the appropriate person to be benefited from the building B or he may be prejudiced by its loss or by damage thereto on B.

This principle applied to life, fire, marine and in other insurances.

Seeing in above example, one should not misunderstand that insurable interest is limited only to absolute ownership of property. In fact, insurable interest is not limited to absolute ownership, but may extend to other insurances also i.e. ownership may be absolute, partial or limited legal or equitable. It also extend to joint owners, mortgagee, trustee etc.

### Insurable Interest in Life Insurance :-

It is a general principle that a person is having Insurable Interest in his life and property. But in life insurance a person can have Insurable Interest on other due to close relationship.

**For Ex.** Husband & Wife, Parent & Child, Employer & Employees, Creditor & debtor etc. in such close relationship one person shall have Insurable Interest.

### 3. Contract of Indemnity :-

Section 124 of the Indian Contract Act, 1872 defines the term contract of indemnity. According to this section contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of any other person.

There is no contract of indemnity in a contract of life insurance. But a contract of marine insurance or fire insurance is deemed to be a contract of indemnity. In the case of life insurance, as the loss can't be indemnified against & is not caused by the conduct of the promisor or some third person, it can't be called a contract of indemnity.

Every contract of marine, fire insurance is a contract of indemnity and of indemnity only, the meaning of which is that the assured in case of a loss is to receive a full indemnity but is never to receive more.

The contract of insurance is not a contract to make a gain. The object of contract of insurance is to place the insured as far

as possible in the same position in which he would be if the insured event causing the loss had not occurred. The insurer may take more policies on the same subject matter. **For Ex.** Worth Rs. 1,00,000/- if the property is destroyed he will be indemnified with Rs. 1,00,000/- only out of all the total policies. Therefore, the insured can't make any profit from the contract of insurance.

Thus, the doctrine of indemnity does not apply to life insurance.

The doctrine of indemnity applies to fire, marine & other insurances.

If the insured has no Insurable Interest in the subject matter, he need not be indemnified. Because he need not be indemnified. Because he does not lose anything, as he has no insurable interest.

#### 4. Proximate Cause : -

There are several perils, which can destroy the life and properties, **For Ex.** Fire, Earthquake, explosion, war, flood etc. The assured choose some of them or any of them to be indemnified. The insurer shall be liable only if the perils mentioned in the policy occur with proximate cause. He is not liable for the loss caused due to remoteness. The principle is well famous in the law of insurance with the maxim "cause proxima non remota spectator". It means proximate and not the remote cause shall be taken as the cause of loss. This doctrine is common to all contracts of insurance.

In shorter it can be said that proximate cause the active, efficient cause that sets in motion a train of event which brings about a result, without the intervention of any force started & working actively from a new & independent source.

The English court formulated some general rules and test for determining the proximate cause as follows : -