

# SHORT NOTES ON INSURANCE

## Insurance law in India

*There are several insurances such as life insurance, fire insurance etc. in India and each insurance have their own provisions. Insurance law is included in the syllabus of some law colleges. In this article I've tried to gather some basic information about some common insurance policies. I've taken help from wikipedia and other websites to gather these information. Hope this article will help both students and others.*

### 1) What do you understand by the term 'insurance' ?

Insurance means an arrangement by which a company or the state undertakes to provide a guarantee of compensation for specified loss, damage, illness, or death in return for payment of a specified premium.

**Insurance** is a means of protection from financial loss. It is a form of risk management primarily used to hedge against the risk of a contingent, uncertain loss.

An entity which provides insurance is known as an insurer, insurance company, or insurance carrier. A person or entity who buys insurance is known as an insured or policyholder. The insurance transaction involves the insured assuming a guaranteed and known relatively small loss in the form of payment to the insurer in exchange for the insurer's promise to compensate the insured in the event of a covered loss. The loss may or may not be financial, but it must be reducible to financial terms, and must involve something in which the insured has an insurable interest established by ownership, possession, or preexisting relationship.

The insured receives a contract, called the insurance policy, which details the conditions and circumstances under which the insured will be financially compensated. The amount of money charged by the insurer to the insured for the coverage set forth in the insurance

policy is called the premium. If the insured experiences a loss which is potentially covered by the insurance policy, the insured submits a claim to the insurer for processing by a claims adjuster.

## **2) Discuss the essential features of contract of insurance ?**

The contract of insurance is very useful to indemnify any loss. In this light, contract of insurance is also called as contract of indemnity in which insurer indemnifies the loss incurred due to the happening or non-happening of any event depending upon contingency.

To make contract of insurance valid in the eye of law, some essential elements must be considered in its process of validity. The insurance contract, like any other contracts must satisfy the usual conditions of a contract. The essentials of insurance contracts are as follows:

### **i. Agreement**

Agreement means communication by the parties to one another of their intentions to create legal relationship. For a valid contract of insurance, there must be an agreement between the parties, i.e. one making offer or proposal and another accepting the proposal or signifying his acceptance upon proposal.

### **ii. Free consent**

There must be free consent between the parties to contract. Consent means that parties to an agreement must agree on a specific thing in the same sense or their understanding should be the same. Consent must be given by the parties thereto in a contract, freely, independently, without any fear and favor. The consent is known to be free when it is not caused by, fraud, misrepresentation, mistakes and other undue influences .

### **iii. Components to contract**

The parties in an agreement must be legally competent to enter into the contract. It means both parties in the insurance contract must be age of majority, possess sound mind and not disqualified by any law of the country. It clears that a person who is minor, lunatics, idiot and alike cannot enter into a insurance contract. The contract entered into by these will be declared as void.

### **iv. Lawful object**

In insurance contract, the object of the contract must be lawful as in other types of contracts. The agreement must not relate to a thing which is contrary to the provision of any law or has expressly been forbidden by any law. It must not be of such nature that if

permitted, it implies injury to the person or property of other or immoral or opposed to public policy.

#### **v. Lawful consideration**

There must be due and lawful consideration in the insurance contract. The consideration, for which the contract is entered and created by the parties, must be lawful. To establish legal relationship, to create obligation between them and to make it enforceable by law there must be lawful consideration.

#### **vi. Compliance with legal formalities**

To make an agreement valid, prescribed legal formalities of writing, registration, etc. must have been observed. In the contract of insurance, the agreement between parties must be in written form and duly signed by both parties, properly attested by witness and registered otherwise, it may not be enforced by the court.

### **3) What is meant by the term Risk ?**

A risk that is specified in an insurance policy is a contingency which might or might not occur. The policy promises to reimburse the person who suffers a loss resulting from the risk for the amount of damage done up to the financial limits of the policy.

### **4) Discuss the various types of Risk ?**

There are different types of risks — only some are preventable, and only certain types of risk are insurable Risk can be categorized as to what causes the risk, and to whom it affects.

**Pure risk** is a risk in which there is only a possibility of loss or no loss—there is no possibility of gain. Pure risk can be categorized as personal, property, or legal risk. Pure risk is insurable, because the law of large numbers can be applied to estimate future losses, which allows insurance companies to calculate what premium to be charged based on expected losses.

static risks are more predictable, and, therefore, more insurable. **Dynamic risks** change with time, making them less predictable and less insurable.

**Personal risks** are risks that affect someone directly, such as illness, disability, or death. **Property risk** affects either personal or real property. Thus, a house fire or car theft are examples of property risk.

**Legal risk** (aka **liability risk**) is a particular type of personal risk that you will be sued because of neglect, malpractice, or causing willful injury either to another person or to someone else's property.

**Speculative risk** differs from pure risk because there is the possibility of profit or loss, such as investing in financial markets. Most speculative risks are uninsurable, because they are undertaken willingly for the hope of profit.

because they affect many people. **Particular risk** is a risk that affects particular individuals, such as robbery or vandalism. Insurance companies generally insure some fundamental risks, such as hurricane or wind damage, and most particular risks. In the case of fundamental risks that are insured, insurance companies help to reduce their risk of great financial loss by limiting coverage in a specific geographic area and by the use of reinsurance,

**Fundamental risk** is a risk, such as an earthquake or terrorism, that can affect many people at once. **Economic risks**, such as unemployment, are also fundamental risks which is the purchase of insurance from other companies to cover their potential losses. However, private insurers do not insure many fundamental risks, such as unemployment.

## 5) How it is related to insurance policy ?

An **insurable risk** is a risk that meets the ideal criteria for efficient insurance. The concept of insurable risk underlies nearly all insurance decisions.

or a risk to be insurable, several things need to be true:

- The insurer must be able to charge a premium high enough to cover not only claims expenses, but also to cover the insurer's expenses. In other words, the risk cannot be catastrophic, or so large that no insurer could hope to pay for the loss.
- The nature of the loss must be definite and financially measurable. That is, there should not be room for argument as to whether or not payment is due, nor as to what amount the payment should be.
- The loss should be random in nature, else the insured may engage in adverse selection (antiselection).

Insurance is not effective for risks that are not insurable risks. For example, risks that are too large cannot be insured, or the premiums would be so high as to make purchasing the insurance infeasible. Also, risks that are not measurable, if insured, will be difficult if not impossible for the insurer to quantify, and thus they cannot charge the correct premium. They will need to charge a conservatively high premium in order to mitigate the risk of paying too large a claim. The premium will thus be

higher than ideal, and inefficient. Passing of risk involves both party to the contract. The general rule is that unless otherwise agreed, risk passes with title. An agreement to the contrary may be either expressed or implied.

**EXCEPTIONS TO THE GENERAL RULE:** (A) **RISK INCIDENTAL TO TRANSIT:** The law provided that where the seller undertakes to make delivery of the goods to the buyer, risk attendant to the system of transportation or voyage contemplated will be borne by the buyer unless the parties agreed to the contrary. This is referred to as insurable risk. (B) **RISK ATTRIBUTABLE TO FAULT OF EITHER PARTY:** Any damage or loss which arises as a result of the fault or neglect of the seller or the buyer or their respective agents as the case may be shall be borne by that party at fault. (C) **GOODS PERISHING:** Goods perish not only when they cease to exist physically but also when they cease to exist in a commercial sense, e.g. fresh milk gone sour.

### ***6) Nature and Scope of Marine Insurance***

The nature and scope of marine insurance is determined by reference to s. 6 of the Marine

Insurance Act and by the definitions of “marine adventure” and “maritime perils”.

It is a contract of indemnity but the extent of the indemnity is determined by the contract.

It relates to losses incidental to a marine adventure or to the building, repairing or launching of a ship.

A marine adventure is any situation where the insured property is exposed to maritime perils.

Maritime perils are perils consequent on or incidental to navigation.

### **S.6 MIA**

6. (1) A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the insured, in the manner and to the extent agreed in the contract, against

(a) losses that are incidental to a marine adventure or an adventure analogous to a marine adventure, including losses arising from a land or air peril incidental to

such an adventure if they are provided for in the contract or by usage of the trade;

or

(b) losses that are incidental to the building, repair or launch of a ship.

(2) Subject to this Act, any lawful marine adventure may be the subject of a contract.

### **S.2(1) “Marine Adventure”**

"marine adventure" means any situation where insurable property is exposed to maritime perils, and includes any situation where

(a) the earning or acquisition of any freight, commission, profit or other pecuniary

*Giaschi & Margolis 3 www.AdmiraltyLaw.com*

benefit, or the security for any advance, loan or disbursement, is endangered by the exposure of insurable property to maritime perils, and

(b) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils;

### **S.2(1) “Maritime Perils”**

"maritime perils" means the perils consequent on or incidental to navigation, including perils of the seas, fire, war perils, acts of pirates or thieves, captures, seizures, restraints, detentions of princes and peoples, jettisons, barratry and all other perils of a like kind and, in respect of a marine policy, any peril designated

## **7) Essentials of Life insurance contract ?**

Like any other contract, a contract of life insurance must satisfy the essentials of a valid contract. All the agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.<sup>56</sup>

### **(a) Offer and Acceptance**

The intimation of the proposer's intention to buy insurance is the 'offer', while the insurer's willingness to undertake the risk, is the acceptance. The insurer may also propose to make the contract. From whichever side the offer may be, the main fact is acceptance.

The offer in life insurance is usually made by the assured in the printed form of the proposal supplied by the insurer. In life insurance the proposal is contained in four parts, namely, (i) proposal form, (ii) medical report (iii) agent's report, and friend's report.<sup>57</sup> Generally, the acceptance of proposal is to be made by the insurer. The insurer receiving the papers containing the proposal scrutinizes them and when they are found in order he signifies his assent thereto by a letter of acceptance. Until this is sent there is no acceptance, though a cheque for the premium is sent and the money is received and retained till after the death of the insured.

### **(b) Consideration**

The law of life insurance also requires a lawful consideration for its validity as it is essential to a legal contract.<sup>58</sup> Consideration is the price for which the promise of the insurer is purchased. The payment of first premium is the consideration for the insurer and the insurer's promise to indemnify the assured from the stipulated risk in the policy is the consideration to the assured.

In case of *Raj Narain Das Mahapatra*,<sup>59</sup> it was settled that cashing of the cheque was an acceptance of the risk whether policy was issued or not.

### **(c) Competence of Parties**

The parties must be competent to enter into a contract, the parties must be of the age of majority,<sup>60</sup> of sound mind and not disqualified from contracting by any law to which any of them is subject.

Regarding the insurance contracts only those insurers can grant insurance policies who have been issued license under the Insurance Regulatory and Development Authority.<sup>62</sup>

#### **(d) Legality of Object**

A contract will be invalid if the object is illegal or against public policy. The object of life insurance contract will be legal if it is made for one's own protection or for the protection of the family against financial losses. In brief, the person desiring policy must have insurable interest in the life proposed for insurance.<sup>63</sup>

The object of an agreement is lawful unless<sup>64</sup>:

- (i) it is forbidden by law, or
- (ii) it is of such a nature, that if permitted would defeat the provisions of any law, or
- (iii) it is fraudulent
- (iv) it involves injury to person or property of another
- (v) the court regards it immoral or opposed to public policy.

In *Northern India Insurance Company v. Kanhaya Lal*,<sup>65</sup> the policy became void because the insured caused his own death before the policy has been in existence for one year.

#### **(e) Free Consent of Parties**

When parties to a contract agree on the terms and conditions of the contract in the same sense and spirit, they are said to have free consent. The consent is said to be free when it is not caused by coercion, or undue influence or fraud or misrepresentation or mistake.<sup>66</sup>

In a contract of insurance the insurer and the insured must be in genuine agreement as to the subject matter of insurance, that is, life to be insured, sum assured and term of the insurance and every other particular relating to the contract. When a person signs a proposal for insurance, he gives his free consent to the contract. The proposer should understand the

contents of proposal in the same sense and make a written declaration on the proposal. He is responsible for the proposal made by him. In *Bernarsi Das v. New India Assurance Co. Ltd.*,<sup>67</sup> a principle of law has been laid down. It is well established rule of law that in case of a person who is illiterate or who is not in a position to understand the contents of a document, the contract cannot be imposed upon him simply because he had endorsed his signature thereon.



In *Kulta Ammal v. Oriental Government Security Life Assurance Co. Ltd.*,<sup>68</sup> it was held that in case of an illiterate person it is necessary to prove the fact that he had knowledge of what was stated in the proposal.

## **8) Nature of Life insurance contract?**

The nature of contract of life insurance may be summarized under the following heads:

### **(a) Unilateral Contract**

It is that type of contract where only one party to the contract makes legally enforceable promise.<sup>52</sup> Here it is the insurer who makes an enforceable promise. The insurer can repudiate the contract of payment of full policy, but he cannot compel the insured to pay the subsequent premiums. On the other hand, if the insured continues to pay the premium, the insurer has to accept them and continue the contract.<sup>53</sup>

### **(b) Contract of Utmost Good Faith**

An insurance contract is a contract of utmost good faith and therefore, the contracting parties are placed under a special duty towards each other, not merely to refrain from active misrepresentation but to make full disclosure of all material facts within their knowledge.<sup>54</sup> It has been said that 'there is no class of documents to which the strictest good faith is more rightly required in courts of law than policies of insurance'.<sup>55</sup>

### **(c) Conditional Contract**

Life insurance is subject to the conditions and privilege provided on the back of the policy. The conditions put the obligation on a party to fulfill certain conditions before the proof of death or of disability are the parts of the contract. The conditions whether precedent or subsequent of the legal rights must be fulfilled in order to complete the contract.

### **(d) Aleatory Contract**

In such a kind of contract, no mutual exchange of equal monetary value is done. It is the happening of the contingency on which the payment is made. If death occurs only after payment of a few premiums, full policy amount is paid.

### **(e) Contract of Adhesion**

In such a contract, the terms of the contract are not arrived at by mutual negotiations. Similarly, in a life insurance contract, the contract is decided upon by the insurer only. The party on the other side has to choose between the two options, i.e. either to accept or reject the policy.

#### **(f) Contract of Certain Amount**

Life insurance contract does not provide an indemnity. It is in the nature of a contingency contract by providing for the payment of the agreed amount on the happening of the event.

#### **(g) Standard Form of Contract**

In the life insurance, all the essentials of a general contract as provided by the Indian Contract Act, 1872, for a valid contract are present.

### **9) What are the effects of Suicide in Life insurance policy?**

For every insurance policy, there are two exclusions that dictate if and when suicide is covered.

#### **i. The Suicide Clause**

A life insurance company won't pay death benefits if the policyholder commits suicide within a specific period of time after their policy takes effect. In most states, that period is two years.

However, after those two years are up, **the suicide clause no longer applies**. If the policyholder commits suicide after the clause has expired, their life insurance claim typically can't be contested. Their beneficiaries will likely receive the full payout.

#### **ii. The Contestability Clause**

Like the suicide clause, the "contestability period" is a two-year window from the date that a life insurance policy takes effect. It says that if a policyholder dies within those first two years, their insurer has the right to investigate their cause of death. During this time, the insurance company can obtain an autopsy report, medical reports, and interviews with family and friends of the deceased.

## **Suicide Clause Vs. Contestability Clause**

The suicide clause deals strictly with what insurers might call "intentional self-destruction" or "death by one's own hand." If a policyholder commits suicide within the time period dictated by the exclusion, the insurer will look for proof that their death was intentional. If it was, beneficiaries won't receive a payout.

On the other hand, the contestability clause applies to any death that happens in the first two years of a policy start date, whether or not it was intentional. Say, for instance, that you die of lung cancer. Your insurer will look through your medical report to see if you have a history of smoking. If you do, and you didn't disclose that to your insurance company, they have a right to cancel your death benefits.

## **Why Exclude Suicide Coverage?**

Insurance policies include a suicide provision to protect insurers. Without the exclusion, a policyholder could buy a policy with the intention of committing suicide. As soon as their policy took effect, they could take their own life, and their beneficiaries would receive the policy's full payout.

That might seem like an outrageous scenario, that someone could be so desperate to ease their family's financial struggles that they'd actually take their own life. But it's happened. Loss of a job, rising debt, a death in the family -- these events might be so devastating, the promise of a life insurance benefit could be the deciding factor for committing suicide. The suicide clause tries to curb that incentive.

## **10) Basic characteristics of Fire insurance ?**

### **Fire Insurance Definition**

Fire insurance means insurance against any loss caused by fire. Section 2(61) of the Insurance Act defines fire insurance as follows: "Fire insurance business means the business of effecting, otherwise than incidentally to some other class of business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies."

## What is 'Fire'?

The term fire in a Fire Insurance Policy is interpreted in the literal and popular sense. There is fire when something burns. In English cases it has been held that there is no fire unless there is ignition. *Stanley v. Western Insurance Co.* Fire produces heat and light but either of them alone is not fire. Lighting is not fire. But if lighting ignites something, the damage may be covered by a fire-policy. The same is the case with electricity.

## Characteristics of Fire Insurance

1. Fire insurance is a *contract of indemnity*. The insurer is liable only to the extent of the actual loss suffered. If there is no loss there is no liability even if there is a fire.
2. Fire insurance is a contract of good faith. The policy-holder and the insurer must disclose all the material facts known to them.
3. Fire insurance policy is usually made for one year only. The policy can be renewed according to the terms of the policy.
4. The contract of insurance is embodied in a policy called the fire policy. Such policies usually cover specific properties for a specified period.
5. **Insurable Interest:** A fire policy is valid only if the policy-holder has an insurable interest in the property covered. Such interest must exist at the time when the loss occurs. In English cases it has been held that the following persons have insurable interest for the purposes of fire insurance- owner; tenants, bailees, including carriers; mortgages and charge-holders.
6. In case of several policies for the same property, each insurer is entitled to contribution from the others. After a loss occurs and payment is made, the insurer is subrogated to the rights and interests of the policy-holder. An insurer can reinsure a part of the risk.
7. Fire policies cover losses caused proximately by fire. The term loss by fire is interpreted liberally. Example: A woman hid her jewellery under the coal in her fireplace. Later on she forgot about the jewellery and lit the fire. The jewellery was damaged. Held, she could recover under the fire policy.
8. Nothing can be recovered under a fire policy if the fire is caused by a *deliberate act* of policy-holder. In such cases the policy-holder is liable to criminal prosecution.
9. Fire policies generally contain a condition that the insurer will not be liable if the fire is caused by riot, civil disturbances, war and explosions. In the absence of any specific expectation the insurer is liable for all losses caused by fire, whatever may be the causes of the fire.
10. Assignment: According to English law a policy of fire insurance can be assigned only with the consent of the insurer. In India such consent is not necessary and the policy can be assigned as a chose-in-action under the Transfer of Property Act.

The insurer is bound when notice is given to him. But the assignee cannot be recovering damages unless he has an insurable interest in the property at the time when the loss occurs. A stranger cannot sue on a fire policy.

11. **Payment of Claims:** Fire policies generally contain a clause providing that upon the occurrence of fire the insurer shall be immediately notified so that the insurer can take steps to salvage the remainder of the property and can also determine the extent of the loss. Insurance companies keep experts on their staff of value the loss. If in a policy there is an intentional over valuation of the property by the policy-holder, the policy may be avoided on the ground of fraud.

### **11) Property insurance**

People have an insurable interest in their property up to the value of the property, but no more. The principle of indemnity dictates that the insured be compensated for a loss of property, but not paid more than what the property was worth. A lender who grants a mortgage on the security of a house has an insurable interest in that house, but only up to the amount outstanding on the loan.

### **12) Discuss the salient features of Public Liability Insurance Act 1991 ?**

#### **Salient Features**

It is a modified version of public liability (Industrial) policy and the term 'handling' is wide enough to include baileys or any other intermediaries and transport operators. The transport operators who transport substances like liquefied petroleum Gas, certain acids, hexane and other toxic substances are required to compulsorily obtain Public liability policy.

### **13) Public Liability Insurance Act,1991**

Public Liability Insurance Act,1991 is **to provide the compensation for damages to victims of an accident of handling any hazardous substance** or It is also calls, **to save the owner of production/storage of hazardous substance from hefty penalties**. This is done by providing compulsory insurance for third party liability. As from the name of the act, it is Public Liability.

First time owner is put on anvil to provide the compensation/relief, when death or injury to any person (please note-other than a workman) or damage to any property has resulted from an accident of hazardous substance.

Actually **the owner shall buy one or more insurance policies before he/she starts handling any hazardous substance.** When any accidents come in knowledge of Collector, then he/she verify the occurrence of accident and order for relief as he/she deems fit.

The **only restriction** that is put on Public Liability Insurance Act is that the **application for relief should within five years of the occurrence of the accident.**

When Collector finds the guilty, the **insurer (means person or insurance company) is required to pay amount as deems to be fit as per law within a period of thirty days of the date of announcement of the award.** The Owner shall also pay the relief as Collector deems fit because it is duty of owner to keep the hazardous material safe in his custody. The amount is normally deposited in account of “**Relief Fund**” and Collector arrange the relief to pay from the Relief Fund.

The **Collector shall have all the powers of Civil Court** for the purpose of taking **evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects** and for such other purposes as may be prescribed.

Where an offence has been **committed by any Department of Government** in case of hazardous chemical, **the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be punished.**

Insurance policy taken out by an owner shall not be for a **amount less than the amount of the paid-up capital** of the under taking handling any hazardous substance and owned or controlled by that owner and more than the amount, not exceeding fifty crore rupees, as may be prescribed. “Paid-up capital” in this sub-section means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contracts of insurance.

### **Contribution of owner to the Environmental Relief Fund:**

An owner shall contribute to the Environmental Relief fund a sum equal to the premium payable to the insurer and every contribution to the Environmental Relief Fund shall be payable to the insurer, together with the amount of premium.

### **Powers of Collector:**

1. The Collector may follow such summary procedure for conducting an inquiry on an application for relief under the Act, as he thinks fit.
2. The Collector shall have all the powers of a Civil Court for the following purposes namely:-

1. summoning and enforcing the attendance of any person and examining him on oath.
2. requiring the discovery and production of documents;
3. receiving evidence on affidavits;
4. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
5. issuing commissions for the examining of witness or documents;
6. dismissing an application for default or proceeding ex-parte;
7. setting aside any order of dismissal of any application for default or any order passed by it exparte;
8. inherent powers of a civil court as-served under section 151 of the Code of Civil Procedure, 1908.

### **Jurisdiction of Court of India :**

**No court shall take cognizance of any offence** under this Act **except** on a complaint made by

1. Any authority or office or person authorized by Central Government.
2. Any person after giving notice but should not less than 60 days for the alleged offence and of his intention to make a complaint to the Central Government or the authority or officer authorized as mentioned above.

### **Advisory Committee**

The Central Government constitutes an Advisory Committee for the cases/matters relating to the insurance policy under this Act:

1. The Advisory Committee shall consist of–
  - 3 officers nominated by Central Government;
  - 2 persons on behalf of insurers;
  - 2 persons on behalf of owners ; and
  - 2 persons from amongst the experts of insurance or hazardous substances, to be appointed by the Central Government.

**Chairperson** shall be one of the **member nominated by Govt of India.**

### **Amount of Compensation**

1. Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.
2. For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500.
3. For permanent total or permanent partial disability or other injury or sickness, the relief will be
  1. reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and
  2. cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.
4. For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months provided the victim has been hospitalised for a period of exceeding 3 days and is above 16 years of age.

#### **14) SOCIAL INSURANCE**

**Social insurance** is any government-sponsored program with the following four characteristics:

- the benefits, eligibility requirements and other aspects of the program are defined by statute;
- explicit provision is made to account for the income and expenses (often through a trust fund);
- it is funded by taxes or premiums paid by (or on behalf of) participants (but additional sources of funding may be provided as well); and
- the program serves a defined population, and participation is either compulsory or so heavily subsidized that most eligible individuals choose to participate.

Social insurance has also been defined as a program whose risks are transferred to and pooled by an often government organisation legally required to provide certain benefits.

#### **15) Similarities between social insurance and private insurance**

Typical similarities between social insurance programs and private insurance programs include:

- Wide pooling of risks;



- Specific definitions of the benefits provided;
- Specific definitions of eligibility rules and the amount of coverage provided;
- Specific premium, contribution or tax rates required to meet the expected costs of the system.<sup>1</sup>

Social insurance programs share four characteristics: they have well-defined eligibility requirements and benefits, have provisions for program income and expenses, are funded by taxes or premiums paid by participants, and have mandatory or heavily subsidized participation.

- Social insurance programs differs from welfare programs in that they take participant contributions into account. Welfare benefits are based on need, not contributions.
- Social Security, Medicare, and unemployment insurance are three well-known social insurance programs in the United States.

## 16) HEALTH INSURANCE

**Health insurance** is insurance against the risk of incurring medical expenses among individuals. By estimating the overall risk of health care and health system expenses, among a targeted group, an insurer can develop a routine finance structure, such as a monthly premium or payroll tax, to ensure that money is available to pay for the health care benefits specified in the insurance agreement. The benefit is administered by a central organization such as a government agency, private business, or not-for-profit entity. According to the Health Insurance Association of America, health insurance is defined as "coverage that provides for the payments of benefits as a result of sickness or injury. It includes insurance for losses from accident, medical expense, disability, or accidental death and dismemberment"

## 17)INSURANCE MARKET

**Marketing.** Insurers will often use **insurance** agents to initially **market** or underwrite their customers. Agents can be captive, meaning they write only for one company, or independent, meaning that they can issue policies from several companies.

The insurance industry of India consists of 52 insurance companies of which 24 are in life insurance business and 28 are non-life insurers. Among the life insurers, Life Insurance Corporation (LIC) is the sole public sector company.

### **Indian insurance market**

Out of 28 non-life insurance companies, there are six public sector insurers, which include two specialised insurers namely Agriculture Insurance Company Ltd for Crop Insurance and Export Credit Guarantee Corporation of India for Credit Insurance. Moreover, there are 5 private sector insurers are registered to underwrite policies exclusively in Health, Personal Accident and Travel insurance segments. They are Star Health and Allied Insurance Company Ltd, Apollo Munich Health Insurance Company Ltd, Max Bupa Health Insurance Company Ltd, Religare Health Insurance Company Ltd and Cigna TTK Health Insurance Company Ltd.

In addition to 52 insurance companies, there is sole national re-insurer, namely, General Insurance Corporation of India. Other stakeholders in Indian Insurance market include approved insurance agents, licensed Corporate Agents, Brokers, Common Service Centres, Web-Aggregators, Surveyors and Third Party Administrators servicing Health Insurance claims.

Insurance Laws (Amendment) Act, 2015 provides for enhancement of the Foreign Investment Cap in an Indian Insurance Company from 26% to an Explicitly Composite Limit of 49% with the safeguard of Indian Ownership and Control.

## **18) UTMOST GOOD FAITH**

**Utmost good faith** is a common law principle (sometimes called *Uberrimae Fidei*). The principle means that every person who enters into a contract of insurance has a legal obligation to act with **utmost good faith** towards the company offering the insurance.

What is the 'Doctrine Of Utmost Good Faith'

The doctrine of utmost good faith is a minimum standard that requires both the buyer and seller in a transaction act honestly toward each other and not mislead or withhold critical information from one another. The doctrine of utmost good faith applies to many common financial transactions. It is also known in its Latin form as "*uberrimae fidei*."

### **BREAKING DOWN 'Doctrine Of Utmost Good Faith'**

In the insurance market, the doctrine of utmost good faith requires the party seeking insurance discloses all relevant personal information. For example, if you are applying for life insurance, you are required to disclose any previous health problems you may have had. Likewise, the insurance agent selling you the coverage must disclose the critical information you need to know about your contract and its terms.

The doctrine of utmost good faith provides general assurance that the parties involved in a transaction are being truthful and acting in an ethical way. This can include ensuring all relevant information is available to both parties while negotiations are taking place or amounts are being determined.

### Uses of the Doctrine of Utmost Good Faith

Aside from the aforementioned use in the insurance market, good faith may also be exercised while completing various financial transactions. This can include when a business or individual seeks financing from banking institutions, or when a financial institution provides a fee estimate as a real estate loan is in process.

Often, estimates provided by certain service providers are made in good faith. In this context, it refers to the fact the service provider, such as a plumber or electrician, is confident in the cost estimate based on the known factors surrounding the transaction, in this case a repair. It is considered good faith only, and not legally bonding, as it acknowledges that not all variables are known. Certain issues may not be discoverable, by the service provider or the person requesting service, until certain work has begun.

### Repercussions for Violations of Good Faith

Depending on the nature of the transaction, violations of the doctrine of good faith can result in a variety of consequences. Most commonly, whatever contract was drawn based on inaccurate information, caused by intentional misinformation or failure to disclose, may cause the contract to become null and void.

## 19) INSURABLE INTEREST

**Insurable interest** exists when an insured person derives a financial or other kind of object (or in the case of a person, their continued survival). A person has an insurable interest in something when loss of or damage to that thing would cause the person to suffer a financial or other kind of loss. Typically, insurable interest is established by ownership, possession, or direct relationship. For example, people have insurable interests in their own homes and vehicles, but not in their neighbors' homes and vehicles, and certainly not those of strangers.

The "factual expectancy test" and "legal interest test" are the two major concepts of insurable interest. benefit from the continuous existence, without impairment or damage, of the insured

# EXAM QUESTION SOLUTIONS

## 1. What do you mean by Insurance contract? Elaborate the various types of insurance

### Answer:

In insurance, the insurance policy is a contract (generally a standard form contract) between the insurer and the insured, known as the policyholder, which determines the claims which the insurer is legally required to pay. In exchange for an initial payment, known as the premium, the insurer promises to pay for loss caused by perils covered under the policy language.

Insurance contracts are designed to meet specific needs and thus have many features not found in many other types of contracts. Since insurance policies are standard forms, they feature boilerplate language which is similar across a wide variety of different types of insurance policies.<sup>[1]</sup>

The insurance policy is generally an integrated contract, meaning that it includes all forms associated with the agreement between the insured and insurer.<sup>[2]:10</sup> In some cases, however, supplementary writings such as letters sent after the final agreement can make the insurance policy a non-integrated contract.<sup>[2]:11</sup> One insurance textbook states that generally "courts consider all prior negotiations or agreements ... every contractual term in the policy at the time of delivery, as well as those written afterward as policy riders and endorsements ... with both parties' consent, are part of the written policy".<sup>[3]</sup> The textbook also states that the policy must refer to all papers which are part of the policy.<sup>[3]</sup> Oral agreements are subject to the parol evidence rule, and may not be considered part of the policy if the contract appears to be whole. Advertising materials and circulars are typically not part of a policy.<sup>[3]</sup> Oral contracts pending the issuance of a written policy can occur.<sup>[3]</sup>

### General features

The insurance contract or agreement is a contract whereby the insurer promises to pay benefits to the insured or on their behalf to a third party if certain defined events occur. Subject to the "fortuity principle", the event must be uncertain. The uncertainty can be either as to when the event will happen (e.g. in a life insurance policy, the time of the insured's death is uncertain) or as to if it will happen at all (e.g. in a fire insurance policy, whether or not a fire will occur at all).<sup>[4]</sup>

- Insurance contracts are generally considered contracts of adhesion because the insurer draws up the contract and the insured has little or no ability to make material changes to it. This is interpreted to mean that the insurer bears the burden if there is any ambiguity in any terms of the contract. Insurance policies are sold without the policyholder even seeing a copy of the contract.<sup>[2]:27</sup> In 1970 Robert Keeton suggested that many courts were actually applying 'reasonable expectations' rather than interpreting ambiguities, which he called the 'reasonable expectations doctrine'. This doctrine has been controversial, with some courts adopting it and others explicitly rejecting it.<sup>[5]</sup> In several jurisdictions, including California, Wyoming, and Pennsylvania, the insured is bound by clear and conspicuous terms in the contract even if the evidence suggests that the insured did not read or understand them.<sup>[6][7][8]</sup>
- Insurance contracts are aleatory in that the amounts exchanged by the insured and insurer are unequal and depend upon uncertain future events.<sup>[9][10]</sup> In contrast, ordinary non-insurance contracts are commutative in that the amounts (or values) exchanged are usually intended by the parties to be roughly equal.<sup>[9][10]</sup> This distinction is particularly important in the context of exotic products like finite risk insurance which contain "commutation" provisions.
- Insurance contracts are unilateral, meaning that only the insurer makes legally enforceable promises in the contract. The insured is not required to pay the premiums, but the insurer is required to pay the benefits under the contract if the insured has paid the premiums and met certain other basic provisions.<sup>[11]</sup>
- Insurance contracts are governed by the principle of utmost good faith (uberrima fides) which requires both parties of the insurance contract to deal in good faith and in particular it imparts on the insured a duty to disclose all material facts which relate to the risk to be covered.<sup>[12]</sup> This contrasts with the legal doctrine that covers most other types of contracts, caveat emptor (let the buyer beware). In the United States, the insured can sue an insurer in tort for acting in bad faith.

## Structure

- Insurance contracts were traditionally written on the basis of every single type of risk (where risks were defined extremely narrowly), and a separate premium was calculated and charged for each. Only those individual risks expressly described or "scheduled" in the policy were covered; hence, those policies are now described as "individual" or "schedule" policies.<sup>[13]</sup> This system of "named perils"<sup>[14]</sup> or "specific perils"<sup>[15]</sup> coverage proved to be unsustainable in the context of the Second Industrial Revolution, in that a typical large conglomerate might have dozens of types of risks to insure against. For example, in 1926, an insurance industry spokesman noted that a bakery would have to buy a separate policy for each of the following risks: manufacturing operations, elevators, teamsters, product liability, contractual liability (for a spur track connecting the bakery to a nearby railroad), premises liability (for a retail store), and owners' protective

liability (for negligence of contractors hired to make any building modifications).<sup>[13]</sup>

- In 1941, the insurance industry began to shift to the current system where covered risks are initially defined broadly in an "all risk"<sup>[16]</sup> or "all sums"<sup>[17]</sup> insuring agreement on a general policy form (e.g., "We will pay all sums that the insured becomes legally obligated to pay as damages..."), then narrowed down by subsequent exclusion clauses (e.g., "This insurance does not apply to...").<sup>[18]</sup> If the insured desires coverage for a risk taken out by an exclusion on the standard form, the insured can sometimes pay an additional premium for an endorsement to the policy that overrides the exclusion.
- Insurers have been criticized in some quarters for the development of complex policies with layers of interactions between coverage clauses, conditions, exclusions, and exceptions to exclusions. In a case interpreting one ancestor of the modern "products-completed operations hazard" clause,<sup>[19]</sup> the Supreme Court of California complained:

“ The instant case presents yet another illustration of the dangers of the present complex structuring of insurance policies. Unfortunately the insurance industry has become addicted to the practice of building into policies one condition or exception upon another in the shape of a linguistic Tower of Babel. We join other courts in decrying a trend which both plunges the insured into a state of uncertainty and burdens the judiciary with the task of resolving it. We reiterate our plea for clarity and simplicity in policies that fulfill so important a public service. <sup>[20]</sup>

## **Parts of an insurance contract**

- Declarations - identifies who is an insured, the insured's address, the insuring company, what risks or property are covered, the policy limits (amount of insurance), any applicable deductibles, the policy period and premium amount.<sup>[21][22]</sup> These are usually provided on a form that is filled out by the insurer based on the insured's application and attached on top of or inserted within the first few pages of the policy.
- Definitions - Defines important terms used in the rest of the policy.<sup>[23]</sup>
- Insuring agreement - Describes the covered perils, or risks assumed, or nature of coverage. This is where the insurance company makes one or more express promises to indemnify the insured.<sup>[24][25]</sup>
- Exclusions - Takes coverage away from the insuring agreement by describing property, perils, hazards or losses arising from specific causes which are not covered by the policy.
- Conditions - These are specific provisions, rules of conduct, duties, and obligations which the insured must comply with in order for coverage to incept, or

must remain in compliance with in order to keep coverage in effect. If policy conditions are not met, the insurer can deny the claim.<sup>[26][23]</sup>

- Policy form - The definitions, insuring agreement, exclusions, and conditions are typically combined into a single integrated document called a policy form, coverage form, or coverage part. When multiple coverage forms are packaged into a single policy, the declarations will state as much, and then there may be additional declarations specific to each coverage form. Traditionally, policy forms have been so rigidly standardized that they have no blank spaces to be filled in. Instead, they always expressly refer to terms or amounts stated in the declarations. If the policy needs to be customized beyond what is possible with the declarations, then the underwriter attaches endorsements or riders.
- Endorsements - Additional forms attached to the policy that modify it in some way, either unconditionally or upon the existence of some condition.<sup>[27][28]</sup> Endorsements can make policies difficult to read for no lawyers; they may revise, expand, or delete clauses located many pages earlier in one or more coverage forms, or even modify each other. Because it is very risky to allow nonlawyer underwriters to directly rewrite policy forms with word processors, insurers usually direct underwriters to modify them by attaching endorsements preapproved by counsel for various common modifications.
- Riders - A rider is used to convey the terms of a policy amendment and the amendment thereby becomes part of the policy. Riders are dated and numbered so that both insurer and policyholder can determine provisions and the benefit level. Common riders to group medical plans involve name changes, change to eligible classes of employees, change in level of benefits, or the addition of a managed care arrangement such as a Health Maintenance Organization or Preferred Provider Organization (PPO).<sup>[29]</sup>
- Jackets - The term has several distinct and confusing meanings. In general, it refers to some set of standard boilerplate provisions which accompanies all policies at the time of delivery. Some insurers refer to a package of standard documents shared across an entire family of policies as a "jacket." Some insurers extend this to include policy forms, so that the only parts of the policy not part of the jacket are the declarations, endorsements, and riders. Other insurers use the term "jacket" in a manner closer to its ordinary meaning: a binder, envelope, or presentation folder with pockets in which the policy may be delivered, or a cover sheet to which the policy forms are stapled or which is stapled on top of the policy. The standard boilerplate provisions are then printed on the jacket itself.

## **Different Types of Insurance**

Certain terms are usefully defined at the outset. Insurance is a contract of reimbursement. For example, it reimburses for losses from specified perils, such as fire, hurricane, and earthquake. An insurer is the company or person who promises to reimburse. The insured

(sometimes called the assured) is the one who receives the payment, except in the case of life insurance, where payment goes to the beneficiary named in the life insurance contract. The **premium** is the consideration paid by the insured—usually annually or semiannually—for the insurer’s promise to reimburse. The contract itself is called the policy. The events insured against are known as risks or perils.

Regulation of insurance is left mainly in the hands of state, rather than federal, authorities. Under the McCarran-Ferguson Act, Congress exempted state-regulated insurance companies from the federal antitrust laws. Every state now has an insurance department that oversees insurance rates, policy standards, reserves, and other aspects of the industry. Over the years, these departments have come under fire in many states for being ineffective and “captives” of the industry. Moreover, large insurers operate in all states, and both they and consumers must contend with fifty different state regulatory schemes that provide very different degrees of protection. From time to time, attempts have been made to bring insurance under federal regulation, but none have been successful.

We begin with an overview of the types of insurance, from both a consumer and a business perspective. Then we examine in greater detail the three most important types of insurance: property, liability, and life.

An **insurance entity** is an economic entity that allows the sharing and transfer of risks. Types of insurance can be classified according to the perils insured or by the type of insurance program. There is also a primary distinction between private and social insurance.

**Private insurance** protects individuals, businesses, and other organizations against the particular risks that they are subject to. This type of insurance is funded by premiums paid by the insured to the insurance company. Private insurance is voluntary and the insurance is acquired through contract.

**Social insurance**, on the other hand, is usually compulsory and is funded by the government directly, and indirectly by the taxpayers. The benefits of social insurance are determined by law, and the benefits are usually only sufficient to maintain a minimum standard specified by law. The largest and most prominent examples of social insurance programs in the United States are the Social Security and Medicare programs

### **Public and Private Insurance**

Sometimes a distinction is made between public and private insurance. Public (or social) insurance includes Social Security, Medicare, temporary disability insurance, and the like, funded through government plans. Private insurance plans, by contrast, are all types



of coverage offered by private corporations or organizations. The focus of this chapter is private insurance.

## **Types of Insurance for the Individual**

### **Life Insurance**

Life insurance provides for your family or some other named beneficiaries on your death. Two general types are available: term insurance provides coverage only during the term of the policy and pays off only on the insured's death; whole-life insurance provides savings as well as insurance and can let the insured collect before death.

### **Health Insurance**

Health insurance covers the cost of hospitalization, visits to the doctor's office, and prescription medicines. The most useful policies, provided by many employers, are those that cover 100 percent of the costs of being hospitalized and 80 percent of the charges for medicine and a doctor's services. Usually, the policy will contain a deductible amount; the insurer will not make payments until after the deductible amount has been reached. Twenty years ago, the deductible might have been the first \$100 or \$250 of charges; today, it is often much higher.

### **Disability Insurance**

A disability policy pays a certain percentage of an employee's wages (or a fixed sum) weekly or monthly if the employee becomes unable to work through illness or an accident. Premiums are lower for policies with longer waiting periods before payments must be made: a policy that begins to pay a disabled worker within thirty days might cost twice as much as one that defers payment for six months.

### **Homeowner's Insurance**

A homeowner's policy provides insurance for damages or losses due to fire, theft, and other named perils. No policy routinely covers all perils. The homeowner must assess his needs by looking to the likely risks in his area—earthquake, hailstorm, flooding, and so on. Homeowner's policies provide for reduced coverage if the property is not insured for at least 80 percent of its replacement costs. In inflationary times, this requirement means that the owner must adjust the policy limits upward each year or purchase a rider that automatically adjusts for inflation. Where property values have dropped substantially, the owner of a home (or a commercial building) might find savings in lowering the policy's insured amount.

## **Automobile Insurance**

Automobile insurance is perhaps the most commonly held type of insurance. Automobile policies are required in at least minimum amounts in all states. The typical automobile policy covers liability for bodily injury and property damage, medical payments, damage to or loss of the car itself, and attorneys' fees in case of a lawsuit.

## **Other Liability Insurance**

In this litigious society, a person can be sued for just about anything: a slip on the walk, a harsh and untrue word spoken in anger, an accident on the ball field. A personal liability policy covers many types of these risks and can give coverage in excess of that provided by homeowner's and automobile insurance. Such umbrella coverage is usually fairly inexpensive, perhaps \$250 a year for \$1 million in liability.

## **Types of Business Insurance**

### **Workers' Compensation**

Almost every business in every state must insure against injury to workers on the job. Some may do this through self-insurance—that is, by setting aside certain reserves for this contingency. Most smaller businesses purchase workers' compensation policies, available through commercial insurers, trade associations, or state funds.

### **Automobile Insurance**

Any business that uses motor vehicles should maintain at least a minimum automobile insurance policy on the vehicles, covering personal injury, property damage, and general liability.

### **Property Insurance**

No business should take a chance of leaving unprotected its buildings, permanent fixtures, machinery, inventory, and the like. Various property policies cover damage or loss to a company's own property or to property of others stored on the premises.

### **Malpractice Insurance**

Professionals such as doctors, lawyers, and accountants will often purchase malpractice insurance to protect against claims made by disgruntled patients or clients. For doctors, the cost of such insurance has been rising over the past thirty years, largely because of larger jury awards against physicians who are negligent in the practice of their profession.

### **Business Interruption Insurance**

Depending on the size of the business and its vulnerability to losses resulting from damage to essential operating equipment or other property, a company may wish to purchase insurance that will cover loss of earnings if the business operations are interrupted in some way—by a strike, loss of power, loss of raw material supply, and so on.

### **Liability Insurance**

Businesses face a host of risks that could result in substantial liabilities. Many types of policies are available, including policies for owners, landlords, and tenants (covering liability incurred on the premises); for manufacturers and contractors (for liability incurred on all premises); for a company's products and completed operations (for liability that results from warranties on products or injuries caused by products); for owners and contractors (protective liability for damages caused by independent contractors engaged by the insured); and for contractual liability (for failure to abide by performances required by specific contracts).

Some years ago, different types of individual and business coverage had to be purchased separately and often from different companies. Today, most insurance is available on a package basis, through single policies that cover the most important risks. These are often called multiperil policies.

## 2. Write an essay on History of Insurance business in India

### Answer:

In India, insurance has a deep-rooted history. It finds mention in the writings of Manu ( *Manusmrithi* ), Yagnavalkya ( *Dharmasastra* ) and Kautilya ( *Arthasastra* ). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire, floods, epidemics and famine. This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers' contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular.

1818 saw the **advent of life insurance business in India** with the establishment of the Oriental Life Insurance Company in Calcutta. This Company however failed in 1834. In 1829, the Madras Equitable had begun transacting life insurance business in the Madras Presidency. 1870 saw the enactment of the British Insurance Act and in the last three decades of the nineteenth century, the Bombay Mutual (1871), Oriental (1874) and Empire of India (1897) were started in the Bombay Residency. This era, however, was dominated by foreign insurance offices which did good business in India, namely Albert Life Assurance, Royal Insurance, Liverpool and London Globe Insurance and the Indian offices were up for hard competition from the foreign companies.

In 1914, the Government of India started publishing returns of Insurance Companies in India. The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life business. In 1928, the Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. In 1938, with a view to protecting the interest of the Insurance public, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.

The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number of insurance companies and the level of competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalize insurance business.

An Ordinance was issued on 19<sup>th</sup> January, 1956 nationalising the Life Insurance sector and Life Insurance Corporation came into existence in the same year. The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies—245 Indian and foreign insurers in all. The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector.

The **history of general insurance dates** back to the Industrial Revolution in the west and the consequent growth of sea-faring trade and commerce in the 17<sup>th</sup> century. It came to India as a legacy of British occupation. General Insurance in India has its roots in the establishment of Triton Insurance Company Ltd., in the year 1850 in Calcutta by the British. In 1907, the Indian Mercantile Insurance Ltd, was set up. This was the first company to transact all classes of general insurance business.

1957 saw the formation of the General Insurance Council, a wing of the Insurance Association of India. The General Insurance Council framed a code of conduct for ensuring fair conduct and sound business practices.

In 1968, the Insurance Act was amended to regulate investments and set minimum solvency margins. The Tariff Advisory Committee was also set up then.

In 1972 with the passing of the General Insurance Business (Nationalisation) Act, general insurance business was nationalized with effect from 1<sup>st</sup> January, 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commence business on January 1<sup>st</sup> 1973.

This millennium has seen insurance come a full circle in a journey extending to nearly 200 years. The process of **re-opening of the sector** had begun in the early 1990s and the last decade and more has seen it been opened up substantially. In 1993, the Government set up a committee under the chairmanship of RN Malhotra, former Governor of RBI, to propose recommendations for reforms in the insurance sector. The objective was to complement the reforms initiated in the financial sector. The committee submitted its report in 1994 wherein , among other things, it recommended that the private sector be permitted to enter the insurance industry. They stated that foreign companies be allowed to enter by floating Indian companies, preferably a joint venture with Indian partners.

Following the recommendations of the Malhotra Committee report, in 1999, the Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry. The IRDA was incorporated as a statutory body in April, 2000. The key objectives of the IRDA include promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums, while ensuring the financial security of the insurance market.

The IRDA opened up the market in August 2000 with the invitation for application for registrations. Foreign companies were allowed ownership of up to 26%. The Authority has the power to frame regulations under Section 114A of the Insurance Act, 1938 and

has from 2000 onwards framed various regulations ranging from registration of companies for carrying on insurance business to protection of policyholders' interests.

In December, 2000, the subsidiaries of the General Insurance Corporation of India were restructured as independent companies and at the same time GIC was converted into a national re-insurer. Parliament passed a bill de-linking the four subsidiaries from GIC in July, 2002.

Today there are 31 general insurance companies including the ECGC and Agriculture Insurance Corporation of India and 24 life insurance companies operating in the country.

The **insurance sector is a colossal one** and is growing at a speedy rate of 15-20%. Together with banking services, insurance services add about 7% to the country's GDP. A well-developed and evolved insurance sector is a boon for economic development as it provides long- term funds for infrastructure development at the same time strengthening the risk taking ability of the country.

### **3. Define life insurance contract. Discuss the settlement of claim under the same**

#### **Answer:**

#### **Life insurance**

Life insurance may be defined as the contract in writing whereby the insurer, in consideration for a small amount of premium, undertakes to pay a certain amount of money or annuity, either on the death of the person or on the expiry of the specified time period. The premium may be paid annually, quarterly or monthly but it must be paid on a regular basis.

Life insurance is not a contract of indemnity because sum assured is always payable and only the time period of payment is uncertain.

#### **Importance of life insurance policy**

Protection against risks: Life insurance provides protection to the family after the death of the insured. In case of premature death, the amount is paid to the dependents of the insured.

Provision for old age: A person can make provisions for old age by taking a life policy. The holder feels financially secured and can enjoy economic independence after retirement. You must have seen the movie, "Race" where two brothers want to kill each other just for getting the insurance amount.

Thrift and savings: Premium is generally paid in installments and thus, it encourages the people to save their money.

Investment: Life insurance is a good method of investment. He can build funds for higher education of his children, for building a residential house.

Tax savings: As per the Income Tax act, the amount invested in the life insurance policy is exempted from tax. Thus, it reduces the financial burden on the person.

Employment generation: Life insurance companies provide employment to million of people as agents and various other posts. Thus, it is good opportunity for self-employment

## **Types of life insurance policies**

### ***Whole life policy***

This policy continues throughout the life time of the insured. The premium is payable as long as the insured is alive. The amount of the policy is payable to his nominees who are then called "beneficiaries". We have had many cases of the son killing his father or his mother just to get the amount. The amount of premium is generally less in this policy. It is mainly taken to support the family members after one's death.

### ***Endowment policy***

This policy is taken for a specified time period. The sum insured is payable on the expiry of the time period. This is the most famous form of life insurance which is mainly taken to manage one's old age so that he does not have to depend on his family members.

### ***Joint life policy***

It is a policy taken up jointly on the lives of two or more persons. On the death of any one, the sum insured is payable to the surviving holders of the policy. This type of policy may be obtained by husband and wife, partners of a firm etc.

### ***Group insurance policy***

An employer may take up one policy on the lives of all his employees instead of taking separately. The policy specifies the amount for each employee. The sum assured is payable to the family members of the employee. If the employee survives, he gets the money for his retired life.

## **Procedure for taking life insurance policy**

**Proposal:** The person who wants to get a life insurance policy has to first of all obtain the prescribed form from the agent or directly through the company. The proposal form should contain the information concerning *name, address, professions, date of birth, family history, health status etc.*

**Medical examination:** On receipt of duly filled form, the proposal has to appear before the doctor approved by the insurance company for medical examination. After medical examination, the doctor prepares a full report on the health of the proposer and sends it to the insurance company. The insurance company evaluates the extent of risk from such report.



- **Proof of age:** The proposer is required to mention his date of birth in the proposal form. He has to submit a satisfactory proof of his age to the company. Birth certificates and high school certificate are generally accepted.
- **Acceptance of proposal:** If the proposal is good and the medical report is satisfactory, the insurance company will accept the proposal. It will also determine the amount of the premium on the basis of the age and the policy taken. The insurance company will ask the proposer to make the first payment of the premium.
- **Payment of premium:** The proposer will pay the first premium as per the notice. He receives the First premium receipt. The risk cover begins on the payment of the premium.
- **Issue of policy:** Now the insurance company issues the policy which is stamped and signed by the authorized authorities. It is then sent to the insured through registered post.

### **Clauses of life insurance policy**

- **Assignment:** Assignment of a policy means the transfer of rights and liabilities to a third person. A policy may be assigned at any time before its , maturity.
- **Nomination:** Nomination means stating the name of the person in the policy who shall receive the amount after the death of the policy holder. The person is called the nominee. In case the policy matures in the life time of the insured, the amount of the policy is paid to the insured and not the nominee.
- **Surrender value:** If the policy holder wants to discontinue the policy, he may surrender the policy to the insurance company. Surrender value is calculated on the basis of the total amount of premium paid the period for which the policy has been in operation.
- **Days of grace:** A policy holder is allowed to pay premium within certain days after the due date. In case of monthly premium, 15 days of grace are assured, and in quarterly and yearly payment, 30 days of grace are allowed. If the policy holder dies within the days of grace without the payment of premium, the amount of the premium is deducted from the policy.

## **Procedure for settlement of claim**

- Notice of death: The beneficiary of the policy must send a notice of death of the insured to the company. The death date, the cause of death and policy number must be mentioned.
- Death certificate: On receiving the notice of death, the insurance company will send a claim form. The claimant should fill the form carefully and then submit it. The following documents should be attached to the form;
  - Death certificate.
  - Police report in case of unnatural death
  - Original policy
  - Identity certificate
- Proof of life: In case the policy is not nominated in the name of the claimant, he will have to obtain a certificate of title of property of the deceased from a court of law.
- Payment: When all the legal formalities are completed, the insurance company will send a discharge form to the claimant. The form should be duly filled in, duly stamped and returned to the insurance company. After the scrutiny of the discharge form, the insurance company will send the cheque to the claimant through registered post.

## **4. Write a detailed note on Marine Insurance contract**

### **Answer:**

#### **What is Marine Insurance?**

Ans. 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 the losses incidental to marine adventure.[1]

#### **What is Lawful Marine Adventure?**

Every lawful marine adventure may be the subject of a contract of marine insurance.[2]  
“An adventure analogous to a marine adventure” includes an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit.[3]

#### **What is a Contract of Marine Insurance?**

A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses the losses incident to marine adventure.

#### **What are the elements of a Contract of Marine Insurance?**

Its basic elements include those what are the essentials of every contract-:

1. Proposal- The insurance applicant at the time of approaching the company prepares a slip accompanied by other documents which is considered the proposal.
2. Acceptance- The insurer accepts the slip and agrees to issue a marine insurance policy forming a big part of the legal contract.
3. Consideration- The premium is the consideration and is paid at the time of the contract.
4. Policy Issuance- The insurer issues the policy after the premium is paid.
5. Insurable Interest- Dealt with in questions below.
6. Warranties- Warranties are those statements by which the policyholder promises to fulfil or not to fulfil certain conditions.
7. Other Important aspects- The contract must be based on principle of Utmost Good Faith as well as Doctrine of Subrogation (Policyholder should not get more than actual loss or damage).

## **What are Mixed Sea and Land Risks?**

A contract of marine insurance may, by its express terms, or by usage of trade, be extended to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage. Where a ship in course of building or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined

## **What are the requirements of taking a Marine Insurance Policy?**

1. Contract of Insurance.
2. Contract includes an insurable interest in the subject matter having some value.
3. It is not a contract by way of wagering.
4. Policy must be following provisions under the Act.[5]

Section 6 of Marine Insurance Act, 1963-:

Avoidance of wagering contracts.

(1) Every contract of marine insurance by way of wagering is void.

(2) A contract of marine insurance is deemed to be a wagering contract: —

(a) where the assured has not an insurable interest as defined by this Act, and the contract is entered with no expectation of acquiring such an interest; or

(b) where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself, or “without benefit of salvage to the insurer”, or subject to any other like term: Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer

## **What is Insurable Interest?**

(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property,

or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.[6]

The Act declares all marine insurance policies as void where insurable interest doesn't apply at the time of loss.

The "quintessence" of interest is that-:

1. There should be a physical object exposed to the sea hazards and dangers.
2. The assured should stand in some relationship to that object, in consequence of which he benefits by its preservation or is prejudiced by its loss.[7]
3. Insured, thus must stand in a legal relationship to the property.[8]
4. This Act doesn't give an exhaustive definition nor is it possible to give an exhaustive definition of "insurable interest".

### **What is Attachment of Interest or Where the interest must attach?**

(1) The assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected: Provided that, where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

### **What are some cases of Insurable Interest?**

1. Defeasible or contingent interest. — Where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.[11]
2. Partial interest. —A partial interest of any nature is insurable.[12]
3. —The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.[13]
4. Master's and seamen's wages. —The master or any member of the crew of a ship has an insurable interest in respect of his wages.[14]
5. Advance freight. —In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.[15]

## **What is “Assignment of Interest”?**

Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect. But the provisions of this section do not affect transmission of interest by operation of law.[16]

## **What are some terms used in marine insurance to explain damage or loss?**

1. L. V. O. (Total Loss of Vessels Only): This is the minimal coverage package in marine insurance, which covers only the loss of cargo resulting from total loss of vessels.
2. L. O. (Total Loss Only): This covers the total loss of insured cargo whether the total vessel is lost.
3. P. A. (Free of Particular or Average): This is in similar to General Average i.e. this covers the risk of loss due to the voluntary sacrifice of ships or its materials due to the perils of the sea.
4. A (With Average): This covers risk against stranded, fire, collisions and sunk. Here the insurance company pays all the damage incurred fully.

## **How is the Insurance Valued?**

Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows: —

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions, and stores for the officers and crew, money advanced for seamen’s wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole. The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; in the case of a ship driven by power other than steam includes also the machinery and fuels and engine stores, if owned by the assured; and in the case of a ship engaged in a special trade, includes also the ordinary fittings requisite for that trade.

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance.

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole.

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.[17]

A voyage policy on goods is an insurance of the adventure, as well as an insurance on the goods themselves.[18]

### **Should the contract be embodied in policy?**

A contract of marine insurance shall not be admitted in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.[19]

### **What are the essentials of a marine policy?**

According to Section 25 of Marine Insurance Act, 1963, a marine policy must include-:

- 1) the name of the assured, or of some person who effects the insurance on his behalf;
- (2) the subject-matter insured, and the risk insured against;
- (3) the voyage, or period of time, or both, as the case may be, covered by the insurance;
- (4) the sum or sums insured;
- (5) the name or names of the insurer or insurers.

### **What are the conditions regarding designation and subject matter of the marine policy?**

The subject-matter insured must be designated in a marine policy with reasonable certainty.

- (2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

## 5. Write a detailed note on Life Insurance contract

### Answer:

**Insurance contracts** are agreements between **insurance** company and **insured** for the purpose of transferring from the **insured** to the insurer, a part of the risk of loss arising out of contingent event. Therefore all the provisions of **Indian Contract Act** of 1872, in general are applicable to **insurance contracts** also.

### Benefits of Life Insurance

- 1. Risk Coverage:** Insurance provides risk coverage to the insured family in form of monetary compensation in lieu of premium paid.
- 2. Difference plans for different uses:** Insurance companies offer a different type of plan to the insured depending on his need for insurance. More benefits come with the more premium.
- 3. Cover for Health Expenses:** These policies also cover hospitalization expenses and critical illness treatment.
- 4. Promotes Savings/ Helps in Wealth creation:** Insurance policies also come with the saving plan i.e. they invest your money in profitable ventures.
- 5. Guaranteed Income:** Insurance policies come with the guaranteed sum assured amount which is payable on happening of the event.
- 6. Loan Facility:** Insurance companies provide the option to the insured that they can borrow a certain sum of amount. This option is available on selected policies only.
- 7. Tax Benefits:** Insurance premium is tax deductible under section 80C of the income tax Act, 1961.

### 2. Types of Life Insurance Policies

#### 1. Term insurance plan

As the name says Term insurance plan are those plan that is purchased for a fixed period of time, say 10, 20 or 30 years. As these policies don't carry any cash value their policies do not carry any maturity benefits, hence their policies are cheaper as compared to other policies. This policy turns beneficial only on the occurrence of the event.

#### 2. Endowment policy



The only difference between the term insurance plan and the endowment policy is that endowment policy comes with the extra benefit that the policyholder will receive a lump sum amount in case if he survives until the date of maturity. Rest details of term policy are same and also applicable to an endowment policy.

### **3. Unit Linked Insurance Plan**

These plans offer policyholder to build wealth in addition to life security. Premium paid into this policy is bifurcated into two parts, one for the purpose of Life insurance and another for the purpose of building wealth. This plan offers to partially withdraw the amount.

### **4. Money Back Policy**

This policy is similar to endowment policy, the only difference is that this policy provides many survival benefits which are allotted proportionately over the period of the policy term.

### **5. Whole Life Policy**

Unlike other policies which expire at the end of a specified period of time, this policy extends up to the whole life of the insured. This policy also provides the survival benefit to the insured. In this type of policy, the policyholder has an option to partially withdraw the sum insured. Policyholder also has the option to borrow sum against the policy.

### **6. Annuity/ Pension Plan**

Under this policy, the amount collected in the form of a premium is accumulated as assets and distributed to the policyholder in form of income by way of annuity or lump sum depending on the instruction of insured.

### **3. Claim Settlement Process**

On the happening of the event, the beneficiary is required to send claim intimation form to the insurance company as soon as possible. Claim intimation should contain details such as Date, Place, and Cause of Death. On successful submission of claim intimation form, an insurance company can ask for additional information about

1. Certificate of Death
2. Copy of Insurance Policy
3. Legal Evidence of title in case insured has not appointed a beneficiary

#### 4. Deeds of assignment

On successful submission of all the document, the insurance company shall verify the claim and settle the same.

#### 4. Principles of Life Insurance?

Life insurance is based on a number of principles that are tailored to meet market conditions and ensure insurance companies make profits, while offering security policies to insured individuals.

**There are broadly four major insurance principles applied in India, these being:**

- **Insurable Interest** – This principle pertains to the level of interest an individual is expected to have in a particular policy. The interest could be a family bond, a personal relationship and so on. Based on the interest level, an insurance company can choose to accept or reject an application in order to protect the misuse of a policy.
- **Law of large numbers** – This is a theory that ensures long-term stability and minimises losses in the long run when experiments are done with large numbers.
- **Good faith** – Purchasing an insurance is entering into a contract between company and individual. This should be done in good faith by providing all relevant details with honesty. Covering any information from the insurance company may result in serious consequences for the individual in the future. This being said, the insurer must explain all aspects of a policy and ensure that there are no unexplained or hidden clauses and that the applicant is made aware of all terms and conditions.
- **Risk & Minimal loss** – Insurance is a risky and companies have to do business and make profits keeping in mind the risk factor. The principle of minimal risk states that the insured individual is expected to take necessary action to limit him/her self from any hazards. This includes following a healthy lifestyle, getting a regular health check-up and more.

#### 5. Points to Consider for Life Insurance

- **Research:** As an applicant for life insurance, there are numerous policy options at your fingertips to choose from. It is essential that you do your research before making an informed decision on purchasing a life insurance policy, as it can help you save money and receive maximum benefits.
- **Read terms and conditions:** The terms and conditions of an insurance plan contain all relevant information regarding the particular policy. Make sure that you

read the fine print in detail and completely understand it before purchasing an insurance policy of your choice.

- **Remember lock-in period:** There are instances when individuals purchase insurance policies without making an informed decision and later realise that they are unhappy with the insurance policy. In such scenarios, some insurance companies offer a lock-in time frame, which is a short time usually 15 days where a policyholder can return the policy to the insurer and purchase another in case they were unsatisfied with the initial purchase.
- **Consider premium payment options:** Almost all insurance providers offer premium payment options consisting of annual, semi-annual, quarterly or on monthly basis. It is essential that you opt for Electronic Check System (ECS) payment that will periodically debit your bank account with the required insurance amount. Also, you can choose from a schedule that will allow you to make a premium payment with the convenience of interval payments.
- **Don't Mask Information:** There are times where individuals try to hide information when filling out the insurance application form. All personal credentials and medical history must be accurately presented to the insurance company. Misinformation can cause serious issues when trying to make claims later on.

## 6. Life Insurance Companies in India

Some of the prominent life insurance companies in India are:

1. LIC – Life insurance corporation of India
2. SBI Life Insurance
3. ICICI Prudential Life Insurance
4. HDFC Standard Life Insurance
5. Bajaj Allianz Life Insurance
6. Max Life Insurance
7. Birla Sun Life Insurance
8. Kotak Life Insurance

We all are uncertain of the future and although no one wishes anything unfortunate to happen to them, we should be prepared for unforeseen circumstances. Having a life insurance policy is a financial cushion that makes sure your family is well protected. A life insurance policy hence is a very small investment compared to the greater peace of mind it will bring you.

## 6. Write a detailed note on Fire Insurance contract

### Answer:

A contract of Insurance comes into being when a person seeking insurance protection enters into a contract with the insurer to indemnify him against loss of property by or incidental to fire and or lightening, explosion, etc. This is primarily a contract and hence as is governed by the general law of contract. However, it has certain special features as insurance transactions, such as utmost faith, insurable interest, indemnity, subrogation and contribution, etc. these principles are common in all insurance contracts and are governed by special principles of law.

### **FIRE INSURANCE:**

According to S. 2(6A), “fire insurance business” means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence, customarily included among the risks insured against in fire insurance business.

According to Halsbury, it is a contract of insurance by which the insurer agrees for consideration to indemnify the assured up to a certain extent and subject to certain terms and conditions against loss or damage by fire, which may happen to the property of the assured during a specific period. Thus, fire insurance is a contract whereby the person, seeking insurance protection, enters into a contract with the insurer to indemnify him against loss of property by or incidental to fire or lightning, explosion etc. This policy is designed to insure one’s property and other items from loss occurring due to complete or partial damage by fire.

In its strict sense, a fire insurance contract is one:

1. Whose principle object is insurance against loss or damage occasioned by fire.
2. The extent of insurer’s liability being limited by the sum assured and not necessarily by the extent of loss or damage sustained by the insured: and
3. The insurer having no interest in the safety or destruction of the insured property apart from the liability undertaken under the contract.

## **LAW GOVERNING FIRE INSURANCE**

There is no statutory enactment governing fire insurance, as in the case of marine insurance which is regulated by the Indian Marine Insurance Act, 1963. the Indian Insurance Act, 1938 mainly dealt with regulation of insurance business as such and not with any general or special principles of the law relating fire of other insurance contracts. So also the General Insurance Business (Nationalization) Act, 1972. in the absence of any legislative enactment on the subject , the courts in India have in dealing with the topic of fire insurance have relied so far on judicial decisions of Courts and opinions of English Jurists.

In determining the value of property damaged or destroyed by fire for the purpose of indemnity under a policy of fire insurance, it was the value of the property to the insured, which was to be measured. Prima facie that value was measured by reference of the market value of the property before and after the loss. However such method of assessment was not applicable in cases where the market value did not represent the real value of the property to the insured, as where the property was used by the insured as a home or, for carrying business. In such cases, the measure of indemnity was the cost of reinstatement. In the case of *Lucas v. New Zealand Insurance Co. Ltd.*[1] where the insured property was purchased and held as an income-producing investment, and therefore the court held that the proper measure of indemnity for damage to the property by fire was the cost of reinstatement.

## **INSURABLE INTEREST**

A person who is so interested in a property as to have benefit from its existence and prejudice by its destruction is said to have insurable interest in that property. Such a person can insure the property against fire.

The interest in the property must exist both at the inception as well as at the time of loss. If it does not exist at the commencement of the contract it cannot be the subject-matter of the insurance and if it does not exist at the time of the loss, he suffers no loss and needs no indemnity. Thus, where he sells the insured property and it is damaged by fire thereafter, he suffers no loss.

## **RISKS COVERED UNDER FIRE INSURANCE POLICY**

The date of conclusion of a contract of insurance is issuance of the policy is different from the acceptance or assumption of risk. Section 64-VB only lays down broadly that the insurer cannot assume risk prior to the date of receipt of premium. Rule 58 of the Insurance Rules, 1939 speaks about advance payment

of premiums in view of sub section (!) of Section 64 VB which enables the insurer to assume the risk from the date onwards. If the proposer did not desire a particular date, it was possible for the proposer to negotiate with insurer about that term. Precisely, therefore the Apex Court has said that final acceptance is that of the assured or the insurer depends simply on the way in which negotiations for insurance have progressed. Though the following are risks which seem to have covered Fire Insurance Policy but are not totally covered under the Policy. Some of contentious areas are as follows:

**FIRE:** Destruction or damage to the property insured by its own fermentation, natural heating or spontaneous combustion or its undergoing any heating or drying process cannot be treated as damage due to fire. For e.g., paints or chemicals in a factory undergoing heat treatment and consequently damaged by fire is not covered. Further, burning of property insured by order of any Public Authority is excluded from the scope of cover.

**LIGHTNING :** Lightning may result in fire damage or other types of damage, such as a roof broken by a falling chimney struck by lightning or cracks in a building due to a lightning strike. Both fire and other types of damages caused by lightning are covered by the policy.

**AIRCRAFT DAMAGE:** The loss or damage to property (by fire or otherwise) directly caused by aircraft and other aerial devices and/ or articles dropped there from is covered. However, destruction or damage resulting from pressure waves caused by aircraft traveling at supersonic speed is excluded from the scope of the policy.

**RIOTS, STRIKES, MALICIOUS AND TERRORISM DAMAGES:** The act of any person taking part along with others in any disturbance of public peace (other than war, invasion, mutiny, civil commotion etc.) is construed to be a riot, strike or a terrorist activity. Unlawful action would not be covered under the policy.

**STORM, CYCLONE, TYPHOON, TEMPEST, HURRICANE, TORNADO, FLOOD and INUNDATION:** Storm, Cyclone, Typhoon, Tempest, Tornado and Hurricane are all various types of violent natural disturbances that are accompanied by thunder or strong winds or heavy rainfall. Flood or Inundation occurs when the water rises to an abnormal level. Flood or inundation should not only be understood in the common sense of the terms, i.e., flood in river or lakes, but also accumulation of water due to choked drains would be deemed to be flood.

**IMPACT DAMAGE:** Impact by any Rail/ Road vehicle or animal by direct

contact with the insured property is covered. However, such vehicles or animals should not belong to or owned by the insured or any occupier of the premises or their employees while acting in the course of their employment.

**SUBSIDENCE AND LANDSLIDE INCULUDING ROCKSIDE:** Destruction or damage caused by Subsidence of part of the site on which the property stands or Landslide/ Rockslide is covered. While Subsidence means sinking of land or building to a lower level, Landslide means sliding down of land usually on a hill.

A fire insurance is a contract under which the insurer in return for a consideration (premium) agrees to indemnify the insured for the financial loss which the latter may suffer due to destruction of or damage to property or goods, caused by fire, during a specified period. The contract specifies the maximum amount , agreed to by the parties at the time of the contract, which the insured can claim in case of loss. This amount is not , however , the measure of the loss. The loss can be ascertained only after the fire has occurred. The insurer is liable to make good the actual amount of loss not exceeding the maximum amount fixed under the policy.

A fire insurance policy cannot be assigned without the permission of the insurer because the insured must have insurable interest in the property at the time of contract as well as at the time of loss. The insurable interest in goods may arise out on account of (i) ownership, (ii) possession, or (iii) contract. A person with a limited interest in a property or goods may insure them to cover not only his own interest but also the interest of others in them. Under fire insurance, the following persons have insurable interest in the subject matter:-

Owner

Mortgagee

Pawnee

Pawn broker

Official receiver or assignee in insolvency proceedings

Warehouse keeper in the goods of customer

A person in lawful possession e.g. common carrier, wharfinger, commission agent.

The term 'fire' is used in its popular and literal sense and means a fire which has 'broken bounds'. 'Fire' which is used for domestic or manufacturing purposes is not fire as long as it is confined within usual limits. In the fire insurance policy, 'Fire' means the production



of light and heat by combustion or burning. Thus, fire, must result from actual ignition and the resulting loss must be proximately caused by such ignition. The phrase 'loss or damage by fire' also includes the loss or damage caused by efforts to extinguish fire.

**The types of losses covered by fire insurance are:-**

- Goods spoiled or property damaged by water used to extinguish the fire.
- Pulling down of adjacent premises by the fire brigade in order to prevent the progress of flame.
- Breakage of goods in the process of their removal from the building where fire is raging e.g. damage caused by throwing furniture out of window.
- Wages paid to persons employed for extinguishing fire.

**The types of losses not covered by a fire insurance policy are:-**

- loss due to fire caused by earthquake, invasion, act of foreign enemy, hostilities or war, civil strife, riots, mutiny, martial law, military rising or rebellion or insurrection.
- loss caused by subterranean (underground) fire.
- loss caused by burning of property by order of any public authority.
- loss by theft during or after the occurrence of fire.
- loss or damage to property caused by its own fermentation or spontaneous combustion e.g. exploding of a bomb due to an inherent defect in it.
- loss or damage by lightening or explosion is not covered unless these cause actual ignition which spread into fire.

**A claim for loss by fire must satisfy the following conditions:-**

- The loss must be caused by actual fire or ignition and not just by high temperature.
- The proximate cause of loss should be fire.
- The loss or damage must relate to subject matter of policy.
- The ignition must be either of the goods or of the premises where goods are kept.
- The fire must be accidental, not intentional. If the fire is caused through a malicious or deliberate act of the insured or his agents, the insurer will not be liable for the loss.

**Types of Fire Insurance Policies:-**

- **Specific policy:-** is a policy which covers the loss up to a specific amount which is less than the real value of the property. The actual value of the property is not taken into consideration while determining the amount of indemnity. Such a policy is not subject to 'average clause'. 'Average clause' is a clause by which the insured is called upon to bear a portion of the loss himself. The main object of the clause is

to check under-insurance, to encourage full insurance and to impress upon the property owners to get their property accurately valued before insurance. If the insurer has inserted an average clause, the policy is known as "Average Policy".

- **Comprehensive policy:-** is also known as 'all in one' policy and covers risks like fire, theft, burglary, third party risks, etc. It may also cover loss of profits during the period the business remains closed due to fire.
  
- **Valued policy:-** is a departure from the contract of indemnity. Under it the insured can recover a fixed amount agreed to at the time the policy is taken. In the event of loss, only the fixed amount is payable, irrespective of the actual amount of loss.
  
- **Floating policy:-** is a policy which covers loss by fire caused to property belonging to the same person but located at different places under a single sum and for one premium. Such a policy might cover goods lying in two warehouses at two different locations. This policy is always subject to 'average clause'.
  
- **Replacement or Re-instatement policy:-** is a policy in which the insurer inserts a re-instatement clause, whereby he undertakes to pay the cost of replacement of the property damaged or destroyed by fire. Thus, he may re-instate or replace the property instead of paying cash. In such a policy, the insurer has to select one of the two alternatives, i.e. either to pay cash or to replace the property, and afterwards he cannot change to the other option.

## 7. Write a detailed note on Health Insurance contract

### Answer:

**Health insurance in India** is a growing segment of India's economy. In 2011, 3.9%<sup>[1]</sup> of India's gross domestic product was spent in the health sector. According to the World Health Organization (WHO), this is among the lowest of the BRICS (Brazil, Russia, India, China, South Africa) economies. Policies are available that offer both individual and family cover. Out of this 3.9%, health insurance accounts for 5-10% of expenditure, employers account for around 9% while personal expenditure amounts to an astounding 82%.<sup>[2]</sup> In the year 2016, the NSSO released the report “Key Indicators of Social Consumption in India: Health” based on its 71st round of surveys. The survey carried out in the year 2014 found out that, more than 80% of Indians are not covered under any health insurance plan, and only 18% (government funded 12%) of the urban population and 14% (government funded 13%) of the rural population was covered under any form of health insurance.<sup>[3]</sup>

### History

Launched in 1986,<sup>[4]</sup> the health insurance industry has grown significantly mainly due to liberalization of economy and general awareness. According to the World Bank, by 2010, more than 25%<sup>[5]</sup> of India's population had access to some form of health insurance. There are standalone health insurers along with government sponsored health insurance providers. Until recently, to improve the awareness and reduce the procrastination for buying health insurance, the General Insurance Corporation of India and the Insurance Regulatory and Development Authority (IRDA) had launched<sup>[6]</sup> an awareness campaign for all segments of the population.

### Types of policies

Health insurance in India typically pays for only inpatient hospitalization and for treatment at hospitals in India. Outpatient services were not payable under health policies in India. The first health policies in India were Mediclaim Policies. In Year 2000, Government of India liberalized insurance and allowed private players into the insurance sector. The advent of private insurers in India saw the introduction of many innovative products like family floater plans, top-up plans, critical illness plans, hospital cash and top up policies.

The health insurance sector hovers around 10% in density calculations. One of the main reasons for the low penetration and coverage of health insurance is the lack of competition in the sector. IRDA which is responsible for insurance policies in India can create health circles, similar to telecom circles to promote competition.<sup>[7]</sup>

Health insurance plans in India today can be broadly classified into these categories:

Health insurance plans in India today can be broadly classified into these categories:

- **Hospitalization**

Hospitalization plans are indemnity plans that pay cost of hospitalization and medical costs of the insured subject to the sum insured. The sum insured can be applied on a per member basis in case of *individual health policies* or on a floater basis in case of *family floater policies*. In case of floater policies the sum insured can be utilized by any of the members insured under the plan. These policies do not normally pay any cash benefit. In addition to hospitalization benefits, specific policies may offer a number of additional benefits like maternity and newborn coverage, day care procedures for specific procedures, pre- and post-hospitalization care, domiciliary benefits where patients cannot be moved to a hospital, daily cash, and convalescence.

There is another type of hospitalization policy called a *top-up policy*. Top up policies have a high deductible typically set a level of existing cover. This policy is targeted at people who have some amount of insurance from their employer. If the employer provided cover is not enough people can supplement their cover with the top-up policy. However, this is subject to deduction on every claim reported for every member on the final amount payable.

- **Family Floater Health Insurance:**

Family health insurance plan covers entire family in one health insurance plan. It works under assumption that not all member of a family will suffer from illness in one time. It covers hospital expense which can be pre and post. Most of health insurance companies in India offering family insurance have good network of hospitals to benefit the insurer in time of emergency.

- **Pre-Existing Disease Cover Plans:**

It offers covers against disease that policyholder had before buying health policy. Pre-Existing Disease Cover Plans offers cover against pre-existing disease e.g diabetes, kidney failure and many more. After Waiting period of 2 to 4 years it gives all covers to insurer.

- **Senior Citizen Health Insurance:**

As name suggest These kind of health insurance plans are for older people in the family. It provide covers and protection from health issues during old age. According to IRDA guidelines, each insurer should provide cover up to the age of 65 years.

- **Maternity Health Insurance:**

Maternity health insurance ensures coverage for maternity and other additional expenses. It takes care of both pre and post natal care, baby delivery (either normal or caesarean). Like Other Insurance, The maternity insurance provider have wide range of network hospitals and takes care of ambulance expense.

- **Hospital daily cash benefit plans:**

Daily cash benefits is a defined benefit policy that pays a defined sum of money for every day of hospitalization. The payments for a defined number of days in the policy year and may be subject to a deductible of few days.

- **Critical illness plans:**

These are benefit based policies which pay a lumpsum (fixed) benefit amount on diagnosis of covered critical illness and medical procedures. These illness are generally specific and high severity and low frequency in nature that cost high when compared to day to day medical / treatment need. e.g. heart attack, cancer, stroke etc. Now some insurers have come up with option of staggered payment of claims in combination to upfront lumpsum payment.

- **Pro active plans:**

Some companies like Cigna TTK offer Pro active living programs. These are designed keeping in mind the Indian market and provide assistance based on medical, behavioural and lifestyle factors associated with chronic conditions. These services aim to help customers understand and manage their health better.

- **Disease specific special plans:**

Some companies offer specially designed disease specific plans like Dengue Care. These are designed keeping in mind the growing occurrence of viral diseases like

Dengue in India which has become a cause of concern and thus provide assistance based on medical needs, behavioural and lifestyle factors associated with such conditions. These plans aim to help customers manage their unexpected health expenses better and at a very minimal cost.

## Key aspects of health insurance

### Payment options

- **Direct Payment or Cashless Facility:** Under this facility, the person does not need to pay the hospital as the insurer pays directly to the hospital. Under the cashless scheme, the policyholder and all those who are mentioned in the policy can undertake treatment from those hospitals approved by the insurer.
- **Reimbursement at the end of the hospital stay:** After staying for the duration of the treatment, the patient can take a reimbursement from the insurer for the treatment that is covered under the policy undertaken.

### Cost and duration

- **Policy price range:** Insurance companies offer health insurance from a sum insured of ₹5000/-<sup>[8]</sup> for micro-insurance policies to a higher sum insured of ₹50 lacs and above. The common insurance policies for health insurance are usually available from ₹1 lac to ₹5 lacs.
- **Duration:** Health insurance policies offered by non-life insurance companies usually last for a period of one year. Life insurance companies offer policies for a period of several years.

### Tax benefits

Under Section 80D of the Income-tax Act the insured person who takes out the policy can claim for tax deductions.<sup>[9]</sup>

₹25,000 for self, spouse and dependent children.

₹50,000/- for parents.

## **8. Elucidate the compensation ,powers and function of Insurance Regulatory and Development Authority (IRDA)**

**Answer:**

### **Introduction**

Insurance Regulatory and Development Authority of India Act was passed by the Parliament in the year December 1999. The Act received President's approval in the year January 2000. The Act intends to protect the interest of the insurance policy holders. It also aims to encourage and ensure the systematic growth of the insurance industry. The Insurance Regulatory and Development Authority is a statutory body formed by the Insurance Regulatory and Development Authority of India Act, 1999.

### ***What do we mean by Insurance?***

Insurance is a monetary instrument, which reduces the financial burden in the events of eventualities, and provides a financial safety. A certain type of loss can be covered by paying a small premium. In case of loss, the Insurance Company will pay a certain amount of money, which will help in reducing the financial burden.

### ***Insurance Products***

There are a variety of Insurance products to cater to the different needs of different people. The customer has a lot of options to choose from depending on their needs. The customer is nowadays in place to analyze and compare the policies of various companies with one another and choose the best amongst them. The insurance industry has a large market to target. The Insurance products act more as a protection tool than as a way to save tax. As there is more demand from the customer for new, beneficial and improved insurance products, there is a healthy competition amongst the insurers. This acts as a boon to the customer. Improved products along with attractive schemes have been designed by the public sector to give tough competition to the private sector.

The market is full of different kinds of insurance products. Price, service and products are the main factors that differentiate one product from another. No Company can introduce a new product before taking a prior approval from Insurance Regulatory and Development Authority.

## **Insurance Regulatory and Development Authority of India**

### ***Composition of the Authority***

The Authority Comprises of the following members mentioned below;-

1. The Authority comprises of chairman, whole time members and part time members and together they act as a group of members and work jointly not individually like Controller of Insurance.
2. The Authority will continue to work even in cases of death or resignation.
3. The Authority is a body corporate with perpetual succession and a common seal.
4. The Authority has the power to sue or can be sued in its own name.

### ***Powers & Functions of the Authority***

Section 14 of the Insurance Regulatory and Development Authority of India Act, 1999 states the powers and functions of the IRDA. The power and functions of the Authority are as follows:

1. The Authority aims to protect the interest of the insurance policyholders in the matters related to surrender value of the policy, settlement of insurance claims, insurable interest, nomination by policy holders etc.
2. The authority gives the Certificate of Registration to the applicant. It can also renew, modify, withdraw, suspend or even cancel the registration of the applicant
3. The Authority states the qualifications, code of conduct and practical training for the intermediaries and insurance agents.
4. The Authority promotes the efficiency in the conduct of the business of insurance.
5. The Authority states the code of conduct for surveyors and loss assessors.
6. The Authority promotes and controls the professional organizations that are connected with the insurance business. It levies fees and charges for carrying the purpose of this Act.
7. The Authority has the power to call for information, conduct investigation, audit and enquiry of the insurers, insurance intermediaries and organization connected with the business of insurance.
8. The Authority controls and regulate the rates, gains terms and conditions that are offered by the insurers with respect to the general insurance business.
9. The investment of funds by the insurance companies are regulated by the Authority.
10. The Authority regulates the margin of solvency.
11. The Authority provides dispute resolution between the insurers and insurance intermediaries.
12. The Authority controls the working of Tariff Advisory Committee.



13. The Authority lay down the percentage of premium income of the insurer to fund the schemes for promoting and controlling the professional organizations.
14. The Authority lay down the percentage of life insurance and general insurance business that can be carried out by the insurer in the rural or social sector.

### ***Role of Insurance Regulatory and Development Authority (IRDA)***

1. To protect the interest of and ensure just treatment to insurance policy holders.
2. To encourage and ensure the systematic growth of the insurance industry so as to benefit the common man and help in bringing economic growth.
3. To set, promote, monitor and apply high standards of integrity, fair dealing, financial viability and capability of those it regulates.
4. To ensure clarity, preciseness, transparency while dealing with the insurance policy holder. The Authority ensure that correct information about the products and services is passed on to the policy holders along with making them aware of their responsibilities.
5. To provide dispute resolution mechanism and ensure speedy settlement of genuine claims. The Authority must check insurance scams and other misconducts.
6. To take suitable steps against circumstances where set standards do not prevail or inappropriately enforced.
7. To bring about the optimal amount of self-regulation in day-to-day activities of the industry reliable with the requirements of the prudential regulation.

### **Effect of Insurance Regulatory and Development Authority (IRDA)**

#### ***Effect on Regulation of Insurance Industry***

Insurance Regulatory and Development Authority regulates the Insurance sector. It aims to protect the interest of the insurance policy holders. It also encourages and ensure the systematic growth of the insurance industry.

#### ***Effect over protection of policyholders***

IRDA has great impact over the protection of policyholders. The Authority aims to provide fair treatment to all the policyholders.

#### ***Effect over Awareness about Insurance***

IRDA is taking steps to increase awareness amongst the masses about the benefits of insurance. There is a separate Consumer education website of IRDA to educate people about insurance.

### ***Effect over Insurance Market***

There is a drastic effect of Insurance Regulatory and Development Authority over insurance market. IRDA regulates the insurance market and ensure the systematic and speedy growth of the insurance market.

### ***Effect over Development of Insurance Product***

All the insurance companies must take approval from Insurance Regulatory and Development Authority before launching any new product or before making any changes in the existing product or withdrawing a product. The insurers who wishes to launch a new product or make changes to the existing product or withdrawing a product shall submit an application to the Authority in the prescribed form along with the necessary details and reasons for the change reasons. The authority may ask for additional information if required. If no information is asked for then the insurer can start selling the product. The insurer can introduces the new product after allowing it for 60 days for non-life and 30 days for life for clearance by IRDA. This might be delayed due to lack of details about the product, which is necessary to assess the product before approval is given by the Authority.

### ***Effect on Competition between Private and Public sector***

As there is more demand from the customer for new, beneficial and improved insurance products, there is a healthy competition amongst the insurers. This acts as a boon to the customer. Improved products along with attractive schemes has been designed by the public sector to give tough competition to the private sector.

### ***Effect over Banks and Post Offices***

With the increasing awareness amongst people about the benefits of insurance, the flow of funds have shifted to the insurance industry from Banks and Post Offices. Insurance has become a medium for not only covering losses and risks but has also become a popular way to save tax.

### **Bhopal Gas tragedy – Importance of Insurance**

#### ***A Story of Industrial Disaster vis-à-vis Insurance Protection***

In 1970, Union Carbide India Ltd (UCIL) established a pesticide manufacturing plant in Bhopal. Pesticides are substances, which shield crops from being damaged by pests. Pesticides are toxic chemicals. In December 3, 1984, a fatal gas, namely, Methyl Isocyanate (MIC) started leaking from a tank at UCIL Bhopal plant. Due to leakage of

this fatal gas, approximately 3,800 people lost their lives and many other suffered other health related ailments.

Human life is precious and nothing can compensate the loss of a life. The company was bound to pay compensation to the dependents of the victims to lost their lives. UCIL had to compensate for the damages caused.

Even though human life is invaluable but this situations like these Insurance acts as a big relief. Insurance helps to recover the losses to some extent as the resulting financial liabilities could be transferred to the insurer. Insurance acts as a preventive measure for the unforeseen events, which reduces the financial burden.

Ultimately, an Act was introduced to provide damages to the sufferers of the accidents, which has resulted due to the handling of hazardous chemicals. The Act is Public Liability Insurance Act, 1991, which is applicable to all the owners, related with the manufacturing or handling of the hazardous substance.

Workmen Compensation Act, 1923 also provide compensation to employees in case of injury at the workplace. The employer is liable to pay compensation to the injured employee in case of mishappening. The amount of compensation depends on various factors like nature of the injury, age of the employee, the average monthly wage of the employee.

Furthermore, if the victims who died in the Bhopal gas tragedy had their lives insured, their families would have received some amount of money as help. Money cannot compensate anyone's life but it can surely act as some support to tide over their loss. In today's time of uncertainty, everyone must take the benefit of insurance.

## **Conclusion**

Indian economy is growing rapidly. There are several new players in the insurance industry, which has opened new opportunities and has contributed the employment generation. Insurance awareness is very important at different levels of the society. Individuals should know the importance and the consequent benefits of insurance. In order to achieve higher levels of penetration and spread of insurance among larger sections of the population, the insurance companies should pay more concentration on the rural communities rather than the urban and the higher segment of the society. With IRDA in place, the insurance sector is regulated and the interest of the policyholders is ensured. IRDA also has to bring necessary changes whenever required in consultation with the stakeholders.

## **9. Elucidate the salient features of the personal injuries (Compensation Insurance) Act 1963**

### **Answer:**

The Personal Injuries (Compensation Insurance) Act, 1963 enacted as the employer must hold the liability and responsibility to pay the compensation to the employee as workmen where the workmen sustained personal injuries in the course of employment and employer has to provide workmen the insurance against the liability. Act came in to force by the date as Central Government by notification appoints. Act consists of 24 Sections in brief and extends to the whole of India. The Act describes the term which is of major importance under the Act it called as partial disablement and total disablement. Partial disablement means the disablement for the temporary nature or permanent nature which reduces the earning capacity of workmen who employed in any employment at the time of injury. Total disablement speaks where the disablement of workmen whether temporary or permanent nature it makes the worker incapable for all the work which he is engaged at the time of injury been sustained. Permanent total disablement had been result of every injury or combination of several injuries where the percentage or result of such injuries amounts to hundred percentages as specified in the Schedule.

The Act defines Workmen in Section 3 of the Act and it means the person referred to as workmen who employed in any employment or class of employment as referred in Defence of India Rules, 1962, Factories Act, 1948, Mines Act, 1952, Plantations Labour Act, 1951 or any workmen who employed by the Central Government by notification in the official Gazette. The Act limits the right to receive compensation payable to the workmen as specified in Section 5 and any person who employed as workmen in Government office has right to receive the further amount which describes as the amount of compensation which payable under the Act.

Amount of compensation which payable to workmen differs from the condition of workmen to workmen who regard to the total disablement, partial disablement or death of the workmen as specified in Section 7. Central Government by notification in the Official Gazette initiated a Scheme which known as the Personal Injuries (Compensation Insurance) Scheme. Where the Scheme initiated for the purpose where the Central Government undertakes the workmen and liabilities of insuring the employers against liabilities incurred under the Scheme.

Every employer or workmen be entitled to the compulsory insurance to whom the Act applicable. Under Section 9 of Act specifies the limit for compulsory insurance as it entitled to every workmen as specified in the Act but after the commencement of the Act

it specifies that the wages of the workmen should not be exceeded fifteen thousand of rupees. The information specified in Section 9 of the Act shall not be bound on by the Government. The Central Government by notification has the authority to employ any person to act as it agent to carry out the functions as laid in the Act and to pay the persons as remuneration. As the Act laid down to protect the workmen or employee as specified and only the Central Government has the authority to employ any agents and no other employee or persons take care of insurance as specified in Section 12.

Central Government after appropriation made initiated Personal Injuries (Compensation Insurance) Fund as specified in Section 13, all the sums received by the Central Government by means of payment, premium or composition be transferred to the Fund and no payment be made to the workmen who employed in discharge of liability made under the Act. Under Section 14 any person who authorized under Central Government has power to obtain information relating to the accounts, books from any employer regarding to the proper layment of requirements of Act and scheme under the Act and any person who fails to comply with the information be punishable. Where any employer who made default or failed to insure the payment of compensation be liable to pay the amount with the penalty as specified in the Section 16. No suit or legal proceedings could be initiated or maintainable against the Central Government, or person acting as a agent as Act laid for the purpose in good faith. Central Government has authority and power to make rules and every rule which made should be included must need to be laid before the house of Parliament.

### **Personal Injuries (Compensation Insurance) Act, 1963 Chapter IV - Bare Act**

#### **Act Info:**

- (1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether the requirements of this Act and of the Scheme have been complied with require any employer to submit to him such accounts books or other documents or to furnish to him such information or to give such certificates as he may reasonably think necessary.
- (2) Whoever willfully obstructs any person in the exercise of the powers under this Section or fails without reasonable excuse to comply with any request made there under shall, in respect of each occasion on which any such obstruction or failure takes place be punishable with fine which may extend to one thousand rupees.
- (3) Whoever in purporting to comply with his obligations under this section knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees.

## **Section 15 - Recovery of premium unpaid**

(1) Without prejudice to the provisions of sub-section (2) of Section. 9, where any person has failed to insure as or to the full amount required by this Act and the Scheme and has thereby evaded the payment by way of premium of any money which he would have had to pay in accordance with the provisions of the Scheme but for such failure, an officer authorised in this behalf by the Central Government, may determine the amount payment of which has been so evaded and the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub-section (2).

(2) Any sum payable in accordance with the provisions of the Scheme by way of premium on a policy of insurance issued under the Scheme and any amount determined as payable under sub-section (1) shall be recoverable as an arrear of land revenue.

(3) Any person against whom a determination is made under sub-section (1) may, within the prescribed period, appeal against such determination to the Central Government whose decision shall be final.

## **Section 16 - Payment of compensation where an employer has failed to insure**

Where an employer has failed to take out a policy of insurance as required by sub-section (1) of Sec. 9, or having taken out a policy of insurance as required by that sub-section, has failed to make the payments by way of premium thereon which are subsequently due from him in accordance with provisions of the Scheme, payment of any compensation for the payment of which he is liable under this Act may be made out of the Fund, and the sum so paid together with a penalty of such amount not exceeding the sum so paid as may be determined by an officer authorised in this behalf by the Central Government shall be recoverable from the employer as an arrear of land revenue for payment into the Fund.

## **Section 17 - Limitation of prosecution**

No prosecution for any offence punishable under this Act shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government.

## **Section 18 - Composition of offences**

Any offence punishable under sub-section (2) of Sec. 9 may either before or after the institution of the prosecution, be compounded by the Central Government or

by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be thinks fit.

### **Section 19 - Power of Magistrate to impose any sentence**

Where any offence against this Act is tried by a Presidency Magistrate or a Magistrate of the first class, then notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898)<sup>1</sup>, the Magistrate trying the offence may pass any sentence authorised by this Act.

### **Section 20 - Bar of legal proceedings**

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil Court against the Central Government or a person acting as its agent under Sec. 11 for the refund of any money paid or purporting to have been paid by way of premium on a policy of insurance taken out or purporting to have been taken out under this Act.

### **Section 21 - Power to exempt employers**

The Central Government shall exempt any employer from the provisions of this Act on the employer's request, if satisfied that he has before the commencement of this Act entered into a contract with insurers substantially covering the liabilities imposed on him by this Act, for so long as that contract continues.

### **Section 22 - Power to make rules**

(1) The Central Government may by notification make rules to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may prescribe--

(a) the principles to be followed in ascertaining the total wages bill of an employer, including provision for the exclusion there from of certain categories of wages or of certain elements included in the definition of wages;

(b) the form of the policies of insurance referred to in sub-section (2) of Section 8;

- (c) the period referred to in Clause. (g) of sub- section (5) of Sec. 8;
- (d) the date and the period referred to in sub- section (1) of Sec. 9;
- (e) the form of and the manner of preparing and publishing the account referred to in sub-section (5) of Sec. 13;
- (f) the periods referred to in sub-section (3) of Sec. 15;
- (g) any other matter which has to be or may be prescribed.

### **Section 23 - Power to remove difficulties**

If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether any compensation is payable under this Act or to the amount thereof the Central Government may, by order make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the decision of the Central Government, in such cases, shall be final.

### **Section 24 - Scheme to be laid before both Houses of Parliament**

Every Scheme and every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament while, it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or the rule or both Houses agree that the Scheme or the rule should not be made, the Scheme or the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme or the rule.



## 10. Enumerate the fundamental principles of insurance contract

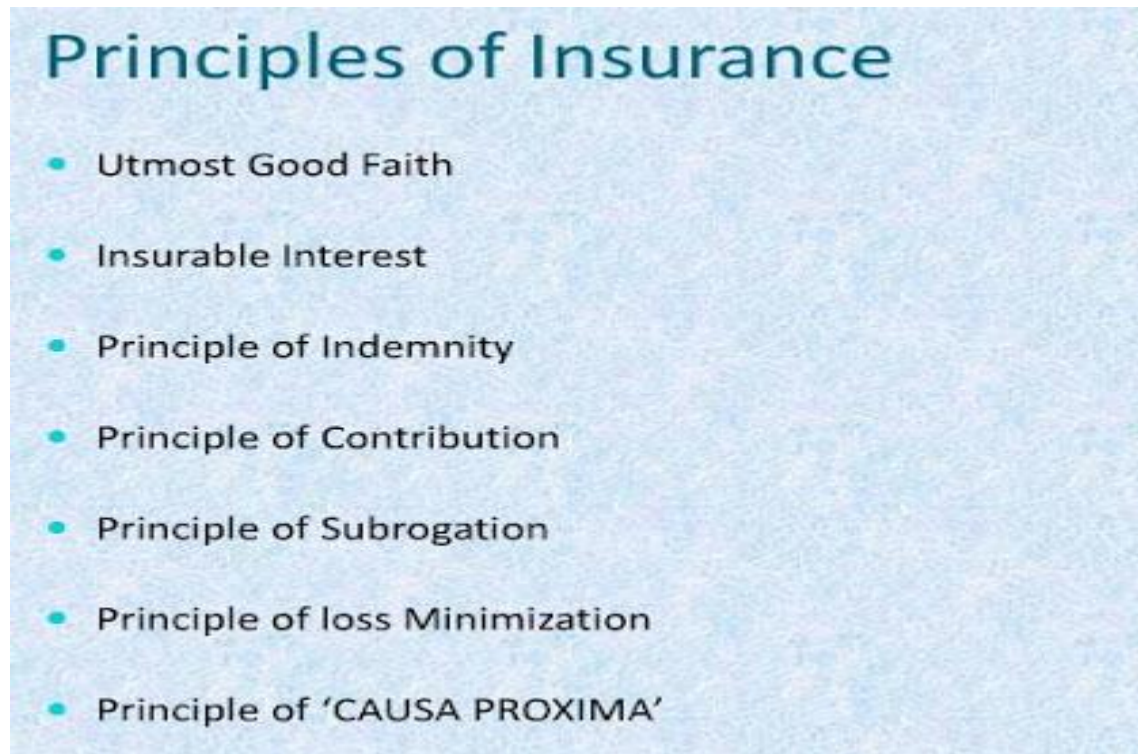
### Answer

The main objective of every insurance contract is to give financial security and protection to the insured from any future uncertainties. Insured must never ever try to misuse this safe financial cover.

Seeking profit opportunities by reporting false occurrences violates the terms and conditions of an insurance contract. This breaks trust, results in breaching of a contract and invites legal penalties

An insurer must always investigate any doubtful insurance claims. It is also a duty of the insurer to accept and approve all genuine insurance claims made, as early as possible without any further delays and annoying hindrance

### Seven Principles of Insurance With Examples



## 1. Principle of Uberrimae fidei (Utmost Good Faith)

### Utmost Good Faith

- Both the parties i.e. the insured and the insurer should a good faith towards each other.
- The insurer must provide the insured complete ,correct and clear information of subject matter.
- The insurer must provide the insured complete ,correct and clear information regarding terms and conditions of the contract.
- This principle is applicable to all contracts of insurance i.e. life, fire and marine insurance.

Principle of *Uberrimae fidei* (a Latin phrase), or in simple english words, the Principle of **Utmost Good Faith**, is a very basic and first primary principle of insurance. According to this principle, the insurance contract must be signed by both parties (i.e insurer and insured) in an absolute good faith or belief or trust.

The person getting insured must willingly disclose and surrender to the insurer his complete true information regarding the subject matter of insurance. The insurer's liability gets void (i.e legally revoked or cancelled) if any facts, about the subject matter of insurance are either omitted, hidden, falsified or presented in a wrong manner by the insured.

The principle of **Uberrimae fidei** applies to all types of insurance contracts

## 2. Principle of Insurable Interest

### Insurable Interest

- The insured must have insurable interest in the subject matter of insurance.
- In life insurance it refers to the life insured.
- In marine insurance it is enough if the insurable interest exists only at the time of occurrence of the loss
- In fire and general insurance it must be present at the time of taking policy and also at the time of the occurrence of loss.
- The owner of the party is said to have insurable interest as long as he is the owner of the it.
- It is applicable to all contracts of insurance.

The principle of insurable interest states that the person getting insured must have insurable interest in the object of insurance. A person has an insurable interest when the physical existence of the insured object gives him some gain but its non-existence will give him a loss. In simple words, the insured person must suffer some financial loss by the damage of the insured object.

**For example :-** The owner of a taxicab has insurable interest in the taxicab because he is getting income from it. But, if he sells it, he will not have an insurable interest left in that taxicab.

From above example, we can conclude that, ownership plays a very crucial role in evaluating insurable interest. Every person has an insurable interest in his own life. A merchant has insurable interest in his business of trading. Similarly, a creditor has insurable interest in his debtor.



### 3. Principle of Indemnity

#### Principle of Indemnity

- Indemnity means a guarantee or assurance to put the insured in the same position in which he was immediately prior to the happening of the uncertain event. The insurer undertakes to make good the loss.
- It is applicable to fire ,marine and other general insurance.
- Under this the insurer agrees to compensate the insured for the actual loss suffered.

Indemnity means security, protection and compensation given against damage, loss or injury.

According to the principle of indemnity, an insurance contract is signed only for getting protection against unpredicted financial losses arising due to future uncertainties. Insurance contract is not made for making profit else its sole purpose is to give compensation in case of any damage or loss.

In an insurance contract, the amount of compensations paid is in proportion to the incurred losses. The amount of compensations is limited to the amount assured or the actual losses, whichever is less. The compensation must not be less or more than the actual damage. Compensation is not paid if the specified loss does not happen due to a particular reason during a specific time period. Thus, insurance is only for giving protection against losses and not for making profit

### 4. Principle of Contribution

#### Principle of Contribution

- The principle is a corollary of the principle of indemnity.
- It is applicable to all contracts of indemnity.
- Under this principle the insured can claim the compensation only to the extent of actual loss either from any one insurer or all the insurers.

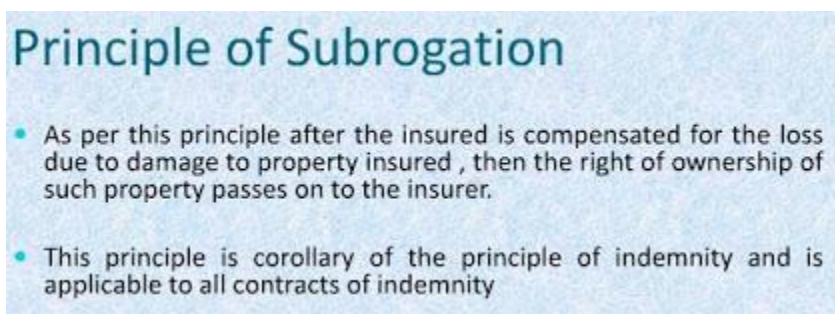
Principle of Contribution is a corollary of the principle of indemnity. It applies to all contracts of indemnity, if the insured has taken out more than one policy on the same subject matter. According to this principle, the insured can claim the compensation only to the extent of actual loss either from all insurers or from any one insurer. If one insurer

pays full compensation then that insurer can claim proportionate claim from the other insurers.

**For example :-** Mr. John insures his property worth \$ 100,000 with two insurers "AIG Ltd." for \$ 90,000 and "MetLife Ltd." for \$ 60,000. John's actual property destroyed is worth \$ 60,000, then Mr. John can claim the full loss of \$ 60,000 either from AIG Ltd. or MetLife Ltd., or he can claim \$ 36,000 from AIG Ltd. and \$ 24,000 from Metlife Ltd.

So, if the insured claims full amount of compensation from one insurer then he cannot claim the same compensation from other insurer and make a profit. Secondly, if one insurance company pays the full compensation then it can recover the proportionate contribution from the other insurance company.

## 5. Principle of Subrogation



Subrogation means substituting one creditor for another.

Principle of Subrogation is an extension and another corollary of the principle of indemnity. It also applies to all contracts of indemnity

According to the principle of subrogation, when the insured is compensated for the losses due to damage to his insured property, then the ownership right of such property shifts to the insurer.

This principle is applicable only when the damaged property has any value after the event causing the damage. The insurer can benefit out of subrogation rights only to the extent of the amount he has paid to the insured as compensation.

**For example :-** Mr. John insures his house for \$ 1 million. The house is totally destroyed by the negligence of his neighbour Mr. Tom. The insurance company shall settle the claim of Mr. John for \$ 1 million. At the same time, it can file a law suit against Mr. Tom for \$ 1.2 million, the market value of the house. If insurance company wins the case and collects \$ 1.2 million from Mr. Tom, then the insurance company will retain \$ 1 million (which it has already paid to Mr. John) plus other expenses such as court fees. The balance amount, if any will be given to Mr. John, the insured.

## 6. Principle of Loss Minimization

### Principle of Loss of Minimization

Under this principle it is the duty of the insured to take all possible steps to minimize the loss to the insured property on the happening of uncertain event.

According to the Principle of Loss Minimization, insured must always try his level best to minimize the loss of his insured property, in case of uncertain events like a fire outbreak or blast, etc. The insured must take all possible measures and necessary steps to control and reduce the losses in such a scenario. The insured must not neglect and behave irresponsibly during such events just because the property is insured. Hence it is a responsibility of the insured to protect his insured property and avoid further losses.

**For example :-** Assume, Mr. John's house is set on fire due to an electric short-circuit. In this tragic scenario, Mr. John must try his level best to stop fire by all possible means, like first calling nearest fire department office, asking neighbours for emergency fire extinguishers, etc. He must not remain inactive and watch his house burning hoping, "Why should I worry? I've insured my house."

## 7. Principle of Causa Proxima (Nearest Cause)

### Principle of 'Causa Proxima'

- The loss of insured property can be caused by more than one cause in succession to another.
- The property may be insured against some causes and not against all causes.
- In such an instance, the proximate cause or nearest cause of loss is to be found out.
- If the proximate cause is the one which is insured against, the insurance company is bound to pay the compensation and vice versa.

Principle of *Causa Proxima* (a Latin phrase), or in simple english words, the Principle of Proximate (i.e Nearest) Cause, means when a loss is caused by more than one causes, the proximate or the nearest or the closest cause should be taken into consideration to decide the liability of the insurer.

The principle states that to find out whether the insurer is liable for the loss or not, the proximate (closest) and not the remote (farthest) must be looked into.

**For example :-** A cargo ship's base was punctured due to rats and so sea water entered and cargo was damaged. Here there are two causes for the damage of the cargo ship - (i) The cargo ship getting punctured because of rats, and (ii) The sea water entering ship through puncture. The risk of sea water is insured but the first cause is not. The nearest cause of damage is sea water which is insured and therefore the insurer must pay the compensation.

However, in case of life insurance, the principle of **Causa Proxima** does not apply. Whatever may be the reason of death (whether a natural death or an unnatural death) the insurer is liable to pay the amount of insurance.

## **11. Define assignment .Elucidate the concept of assignment in different insurance policies**

**Answer:**

### **WHAT IS ASSIGNMENT?**

Assignment refers to the transfer of certain or all (depending on the agreement) rights to another party. The party which transfers its rights is called an assignor, and the party to whom such rights are transferred is called an assignee. Assignment only takes place after the original contract has been made. As a general rule, assignment of rights and benefits under a contract may be done freely, but the assignment of liabilities and obligations may not be done without the consent of the original contracting party.

The liability on a contract cannot be transferred so as to discharge the person or estate of the original contractor unless the creditor agrees to accept the liability of another person instead of the first.[

#### **Illustration**

P agrees to sell his car to Q for Rs. 100. P assigns the right to receive the Rs. 100 to S. This may be done without the consent of Q. This is because Q is receiving his car, and it does not particularly matter to him, to whom the Rs. 100 is being handed as long as he is being absolved of his liability under the contract. However, notice may still be required to be given. Without such notice, Q would pay P, in spite of the fact that such right has been assigned to S. S would be a sufferer in such case.

In this case, that condition is being fulfilled since P has assigned his right to S. However, P may not assign S to be the seller. P cannot just transfer his duties under the contract to another. This is because Q has no guarantee as to the condition of S's car. P entered into the contract with Q on the basis of the merits of P's car, or any other personal qualifications of P. Such assignment may be done with the consent of all three parties – P, Q, S, and by doing this, P is absolved of his liabilities under the contract.

#### **1.1. Effect of Assignment**

Immediately on the execution of an assignment of an insurance policy, the assignor forgoes all his rights, title and interest in the policy to the assignee. The premium or loan interest notices etc. in such cases will be sent to the assignee.[ii] However, the existence of obligations must not be assumed, when it comes to the assignment. It must be accompanied by evidence of the same. The party asserting such a personal obligation must prove the existence of an express assumption by clear and unequivocal proof.[iii]



Assignment of a contract to a third party destroys the privity of contract between the initial contracting parties. New privity is created between the assignee and the original contracting party. In the illustration mentioned above, the original contracting parties were P and Q. After the assignment, the new contracting parties are Q and S.

## **1.2. Revocation of Assignment**

Assignment, once validly executed, can neither be revoked nor canceled at the option of the assignor. To do so, the insurance policy will have to be reassigned to the original assignor (the insured).

## **1.3. Exceptions to Assignment**

There are some instances where the contract cannot be assigned to another.

- Express provisions in the contract as to its non-assignability – Some contracts may include a specific clause prohibiting assignment. If that is so, then such a contract cannot be assigned. Assignability is the rule and the contrary is an exception.[iv]
- Contracts which are of a personal nature – Rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment.[v]
- *Pensions, PFs, military benefits etc.*

### **Illustration**

Under a contract with a painter named P to paint for D, P cannot assign it to anyone else, since D engaged P for the latter's specific qualities as a painter. A unique relationship had been created between P and D.

## **1.4. Enforcing a Contract of Assignment**

From the day on which notice is given to the insurer, the assignee becomes the beneficiary of the policy even though the assignment is not registered immediately. It does not wait until the giving of notice of the transfer to the insurer.[vi] However, no claims may lie against the insurer until and unless notice of such assignment is delivered to the insurer.

If notice of assignment is not provided to the obligor, he is discharged if he pays to the assignor. Assignee would have to recover from the assignor. However, if the obligor pays the assignor in spite of the notice provided to him, he would still be liable to the assignee.

The following two illustrations make the point amply clear:

## *Illustrations*

1. Seller A assigns its right to payment from buyer X to bank B. Neither A nor B gives notice to X. When payment is due, X pays A. This payment is fully valid and X is discharged. It will be up to B to recover it from A
2. Seller A assigns to bank B its right to payment from buyer X. B immediately gives notice of the assignment to X. When payment is due, X still pays A. X is not discharged and B is entitled to oblige X to pay a second time.

An assignee doesn't stand in better shoes than those of his assignor. Thus, if there is any breach of contract by the obligor to the assignee, the latter can recover from the former only the same amount as restricted by counter claims, set offs or liens of the assignor to the obligor.

The acknowledgment of notice of assignment is conclusive proof of, and evidence enough to entertain a suit against an assignor and the insurer respectively who haven't honoured the contract of assignment.

### **1.5. Assignment under various laws in India**

There is no separate law in India which deals with the concept of assignment. Instead, several laws have codified it under different laws. Some of them have been discussed as follows:

#### ***1.5.1. Under the Indian Contract Act***

There is no express provision for the assignment of contracts under the Indian Contract Act. Section 37 of the Act provides for the duty of parties of a contract to honour such contract (unless the need for the same has been done away with). This is how the Act attempts to introduce the concept of assignment into Indian commercial law. It lays down a general responsibility on the "representatives" of any parties to a contract that may have expired before the completion of the contract. (Illustrations to Section 37 in the Act).

An exception to this may be found from the contract, e.g. contracts of a personal nature. Representatives of a deceased party to a contract cannot claim privity to that contract while refusing to honour such contract. Under this Section, "representatives" would also include within its ambit, transferees and assignees.[vii]

**Section 41 of the Indian Contract Act** applies to cases where a contract is performed by a third party and not the original parties to the contract. It applies to cases of assignment.[viii] A promisee accepting performance of the promise from a third person cannot afterwards enforce it against the promisor.[ix] He cannot attain double satisfaction

of its claim, i.e., from the promisor as well as the third party which performed the contract. An essential condition for the invocation of this Section is that there must be actual performance of the contract and not of a substituted promise.

### ***1.5.2. Under the Insurance Act***

The creation of assignment of life insurance policies is provided for, under Section 38 of the Insurance Act, 1938.

- Endorsement has to be made on the policy or on a separate document, signed by assignor (or agent authorized by him), attested by at least one witness specifying the fact of the assignment. The assignment is complete and effectual with the execution of such a document. However, it will not be operative against the insurer (no assignee has the right to sue for any policy amount from the insurer) unless the above-mentioned endorsement or separate policy has been delivered to the insurer.
- When the insurer receives the endorsement or notice, the fact of assignment shall be recorded with all details (date of receipt of notice – also used to prioritise simultaneous claims, the name of assignee etc). Upon request, and for a fee of an amount not exceeding Re. 1, the insurer shall grant a written acknowledgment of the receipt of such assignment, thereby conclusively proving the fact of his receipt of the notice or endorsement. Now, the insurer shall recognize only the assignee as the legally valid party entitled to the insurance policy.

### ***1.5.3. Under the Transfer of Property Act***

Indian law as to assignment of life policies before the Insurance Act, 1938 was governed by Sections 130, 131, 132 and 135 of the Transfer of Property Act 1882 under Chapter VIII of the Act – Of Transfers of Actionable Claims. Section 130 of the Transfer of Property Act states that nothing contained in that Section is to affect Section 38 of the Insurance Act.

#### ***1) Section 130 of the Transfer of Property Act***

An actionable claim may be transferred only by fulfilling the following steps:

- Execution of an instrument
- In writing
- Signed by a transferor (or his authorized agent)

The transfer will be complete and effectual as soon as such an instrument is executed. No particular form or language has been prescribed for the transfer. It does not depend on giving notice to the debtor.

The proviso in the section protects a debtor (or other person), who, without knowledge of the transfer pays his creditor instead of the assignee. As long as such payment was without knowledge of the transfer, such payment will be a valid discharge against the transferee. When the transfer of any actionable claim is validly complete, all rights and remedies of transferor would vest now in the transferee. Existence of an instrument in writing is a *sine qua non* of a valid transfer of an actionable claim.[x]

### ***II) Section 131 of the Transfer Of Property Act***

This Section requires the notice of transfer of actionable claim, as sent to the debtor, to be signed by the transferor (or by his authorized agent), and if he refuses to sign it, a signature by the transferee (or by his authorized agent). Such notice must state both the name and address of the transferee. This Section is intended to protect the transferee, to receive from the debtor. The transfer does not bind a debtor unless the transferor (or transferee, if transferor refuses) sends him an express notice, in accordance with the provisions of this Section.

### ***III) Section 132 of the Transfer Of Property Act***

This Section addresses the issue as to who should undertake the obligations under the transfer, i.e., who will discharge the liabilities of the transferor when the transfer has been made complete – would it be the transferor himself or the transferee, to whom the rest of the surviving contract, so to speak, has been transferred.

This Section stipulates, that the transferee himself would fulfill such obligations. However, where an actionable claim is transferred with the stipulation in the contract that transferor himself should discharge the liability, then such a provision in the contract will supersede Ss 130 and 132 of this Act. Where the insured hypothecates his life insurance policies and stipulates that he himself would pay the premiums, the transferee is not bound to pay the premiums.[xi]

## **FACILITIES SECURED BY INSURANCE POLICIES – HOW ASSIGNMENT COMES INTO THE PICTURE**

Many banks require the borrower to take out or deposit an insurance policy as security when they request a personal loan or a business loan from that institution. The policy is used as a way of securing the loan, ensuring that the bank will have the facility repaid in the event of either the borrower's death or his deviations from the terms of the facility agreement.

Along with the deposit of the insurance policy, the policyholder will also have to assign the benefits of the policy to the financial institution from which he proposes to avail a

facility. The mere deposit, without writing, or passing of any document of title to such a claim, does not create any equitable charge.[xii]

## **ETHICS OF ASSIGNING LIFE INSURANCE POLICY TO LENDERS**

The purpose of taking out a life insurance policy on oneself, is that in the event of an untimely death, near and dear ones of the deceased are not left high and dry, and that they would have something to fall back on during such traumatic times. Depositing and assigning the rights under such policy document to another, would mean that there is a high chance that benefits of life insurance would vest in such other, in the event of unfortunate death and the family members are prioritized only second. These are not desirable circumstances where the family would be forced to cope with the death of their loved one coupled with the financial crisis.

Thus, there is a need to examine the ethics of:

- The customer assigning his life insurance policy
- The bank accepting such assignment

The customer should be cautious before assigning his rights under life insurance policies. By “cautious”, it is only meant that he and his dependents and/or legal heirs should be aware of the repercussions of the act of assigning his life insurance policy. It is conceded that no law prohibits the assignment of life insurance policies.

In fact, **Section 38 of the Insurance Act, 1938**, provides for such assignments. Judicial cases have held life insurance policies as property more than a social welfare measure.[xiii] Further, the bank has no personal relationship with any customer and thus has no moral obligation to not accept such assignments of life insurance.

However, the writer is of the opinion that, in dealing with the assignment of life insurance policies, utmost care and caution must be taken by the insured when assigning his life insurance policy to anyone else.

## **CURRENT STAND OF ICICI REGARDING FACILITIES SECURED BY INSURANCE POLICY, WITH SPECIFIC REFERENCE TO ASSIGNMENT OF OBLIGATIONS**

This Section seeks to address and highlight the manner in which ICICI Bank drafts its security documents with regard to the assignment of obligations. The texts placed in quotes in the subsequent paragraphs are verbatim extracts from the security document as mentioned.

## **Composite Document for Corporate and Realty Funding**

### **“8. CHARGING CLAUSE**

*The Mortgagor doth hereby:*

*iii) Assign and transfer unto the Mortgagee all the Bank Accounts and all rights, title, interest, benefits, claims and demands whatsoever of the Mortgagor in, to, under and in respect of the Bank Accounts and all monies including all cash flows and receivables and all proceeds arising from Projects and Other Projects\_\_\_\_\_, insurance proceeds, which have been deposited / credited / lying in the Bank Accounts, all records, investments, assets, instruments and securities which represent all amounts in the Bank Accounts, both present and future (the “Account Assets”, which expression shall, as the context may permit or require, mean any or each of such Account Assets) to have and hold the same unto and to the use of the Mortgagee absolutely and subject to the powers and provisions herein contained and subject also to the proviso for redemption hereinafter mentioned;*

*(v) Assign and transfer unto the Mortgagee all right, title, interest, benefit, claims and demands whatsoever of the Mortgagors, in, to, under and/or in respect of the Project Documents (including insurance policies) including, without limitation, the right to compel performance thereunder, and to substitute, or to be substituted for, the Mortgagor thereunder, and to commence and conduct either in the name of the Mortgagor or in their own names or otherwise any proceedings against any persons in respect of any breach of, the Project Documents and, including without limitation, rights and benefits to all amounts owing to, or received by, the Mortgagor and all claims thereunder and all other claims of the Mortgagor under or in any proceedings against all or any such persons and together with the right to further assign any of the Project Documents, both present and future, to have and to hold all and singular the aforesaid assets, rights, properties, etc. unto and to the use of the Mortgagee absolutely and subject to the powers and provisions contained herein and subject also to the proviso for redemption hereinafter mentioned.”*

### **ICICI Bank’s Standard Terms and Conditions Governing Consumer Durable Loans**

#### **“INSURANCE**

- 2. In the event the Borrower is covered under an Insurance Policy as specified in the Application Form, the Borrower shall forthwith assign all monies payable by the Insurance Company to the Borrower and all rights, title, benefits and interest of the Borrower under the policy in favor of ICICI Bank till such time as the entire dues from the Borrower have been paid to the satisfaction of ICICI Bank. For the purpose of such assignment, the Borrower shall provide the Insurance Policy and*

*such other documents as may be required by ICICI Bank from time to time. The Borrower shall provide copies of authorizations from the Insurance Company acknowledging the assignment in favor of ICICI Bank.*

*The Borrower further agrees that upon any monies becoming due under the policy, the same shall be paid by the Insurance Company to ICICI Bank without any reference / notice to the Borrower, but not exceeding the principal amount outstanding under the Insurance Policy. The Borrower specifically acknowledges that in all cases of claim, the Insurance Company will be solely liable for settlement of the claim, and he/she will not hold ICICI Bank responsible in any manner whether for compensation, recovery of compensation, processing of claims or for any reason whatsoever.*

*The Borrower shall not effect any change in the nomination without the prior written consent of ICICI Bank. In the event of the Facility being terminated, for any reason whatsoever, all payments of premium made by ICICI Bank on behalf of the Borrower shall automatically and ipso facto cease to be available from such date of cessation of the Facility. In such event, the Borrower shall be liable to pay all dues remaining outstanding to ICICI Bank. ICICI Bank may at any time (at its sole discretion without giving any prior notice thereof) modify, suspend, withdraw or cancel these payments and there will be no binding obligation on ICICI Bank to continue.”*

Reference has been made only to assignment of assets, rights, benefits, interests, properties etc. No specific reference has been made to the assignment of obligations of the assignor under such insurance contract.

## **THE ISSUE FACED BY ICICI BANK**

Where ICICI Bank accepts insurance policy documents of customers as security for a loan, in the light of the fact that the documents are silent about the question of assignment of obligations, are they assigned to ICICI Bank? Where there is hypothecation of a life insurance policy, with a stipulation that the mortgagor (assignor) should pay the premiums, and that the mortgagee (assignee) is not bound to pay the same, Sections 130 and 132 do not apply to such cases.[xiv] With rectification of this issue, ICICI Bank can concretize its hold over the securities with no reservations about its legality.

## **RISKS INVOLVED**

This section of the paper attempts to explore the many risks that ICICI Bank is exposed to, or other factors which worsen the situation, due to the omission of a clause detailing the assignment of obligations by ICICI Bank.

## **Practices of Other Companies**

The practices of other companies could be a risk factor for ICICI Bank in the light of the fact that some of them expressly exclude assignment of obligations in their security documents.

There are some companies whose notice of assignment forms contain an exclusive clause dealing with the assignment of obligations. It states that while rights and benefits accruing out of the insurance policy are to be assigned to the bank, obligations which arise out of such policy documents will not be liable to be performed by the bank. Thus, they explicitly provide for the only assignment of rights and benefits and never the assignment of obligations.

## **Possible Obligation to Insurance Companies**

By not clearing up this issue, ICICI Bank could be held to be obligated to the insurance company from whom the assignor took the policy, for example, with respect to insurance premiums which were required to be paid by the assignor. This is not a desirable scenario for ICICI Bank. In case of default by the assignor in the terms of the contract, the right of ICICI Bank over the security deposited (insurance policy in question) could be fraught in the legal dispute.

## **Possible litigation**

Numerous suits may be instituted against ICICI Bank alleging a violation of the Indian Contract Act. Some examples include allegations of concealment of fact, fraud etc. These could be enough to render the existing contract of assignment voidable or even void.

## ***Contra Proferentem***

This doctrine applies in a situation when a provision in the contract can be interpreted in more than one way, thereby creating ambiguities. It attempts to provide a solution to interpreting vague terms by laying down, that a party which drafts and imposes an ambiguous term should not benefit from that ambiguity. Where there is any doubt or ambiguity in the words of an exclusion clause, the words are construed more forcibly against the party putting forth the document, and in favour of the other party.[xv]

The doctrine of contra proferentem attempts to protect the layman from the legally knowledgeable companies which draft standard forms of contracts, in which the former stands on a much weaker footing with regard to bargaining power with the latter. This doctrine has been used in interpreting insurance contracts in India.[xvi]



If litigation ensues as a result of this uncertainty, there are high chances that the Courts will tend to favour the assignor and not the drafter of the documents.

## **POSSIBLE DEFENSES AGAINST DISPUTES FOR THE SECURITY DOCUMENTS AS THEY ARE NOW**

This section of the paper attempts to give defences which the Bank may raise in case of any disputes arising out of silence on the matter of assignability of obligations.

### **Interpretation of the Security Documents**

UNIDROIT principles expressly provide a method for interpretation of contracts.[xvii] The method consists of utilizing the following factors:

- **Preliminary negotiations between the parties**

The negotiations between parties prior to entering into the facility agreement can be used as evidence. The Bank has never represented to the assignee that it would undertake obligations of the assignor. The latter has nothing to warrant the understanding it had regarding the same.

- **Practices which the parties have established between themselves**

ICICI Bank has been accepting insurance policies assigned to it as security for a facility since a long time. It has never been the practice of ICICI Bank to undertake obligations when insurance policies have been assigned to it.

- **The conduct of the parties subsequent to the conclusion of the contract**

This defence relates to the concept of estoppel embodied in Section 115 of the Indian Evidence Act, 1872. According to the Section, when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representatives, to deny the truth of that thing.

If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.[xviii] Subsequent conduct may be relevant to show that the contract exists, or to show variation in the terms of the contract, or waiver, or estoppel.[xix]

Where the meaning of the instrument is ambiguous, a statement subsequently interpreting such instrument is admissible.[xx] In the present case, where the borrower has never raised any claims with regard to non assignability of obligations on him, and has consented to the present conditions and relations with ICICI Bank, he cannot be allowed to raise any claims with respect to the same.

Internationally, the doctrine of post contractual conduct is invoked for such disputes. It refers to the acts of parties to a contract after the commencement of the contract. It stipulates that where a party has behaved in a particular manner, so as to induce the other party to discharge its obligations, even if there has been a variation from the terms of the contract, the first party cannot cite such variation as a reason for its breach of the contract.

Where the parties to a contract are both under a common mistake as to the meaning or effect of it, and therefore embark on a course of dealing on the footing of that mistake, thereby replacing the original terms of the contract by a conventional basis on which they both conduct their affairs, then the original contract is replaced by the conventional basis. The parties are bound by the conventional basis. Either party can sue or be sued upon it just as if it had been expressly agreed between them.[xxi]

Thus, where the relations between the assignor and the assignee have never evidenced any acts or intention to act in furtherance of assignability of obligations on the assignee, the assignor cannot state the same.

- **The nature and purpose of the contract**

The importance of consensus ad idem has been concretized by various case laws in India. Further, if the stipulations and terms are uncertain and the parties are not ad idem there can be no specific performance, for there was no contract at all.[xxii]

In the present case, the minds of the assignor and assignee can be said to have not met while entering into the assignment. The assignee never had any intention of undertaking any obligations of the assignor. In *Hartog v Colin & Shields*,[xxiii] the defendants made an offer to the plaintiffs to sell hare skins, offering to pay a price per pound instead of per piece.

The usual trade practice and previous negotiations indicated that the price was payable per piece, but the plaintiffs accepted the offer anyway. In their suit for non-delivery, it was held that the plaintiffs ought to have known that the offer did not express the true intention of the defendants, and the contract was therefore

void. In the present case, it has been neither the practice of ICICI Bank, nor its intention, to undertake obligations of the assignor, in an assignment contract.

- **The meaning is commonly given to terms and expressions in the trade concerned**

In interpreting a contract not specific in its wording, it is necessary to take into consideration the custom of the place and the usual and customary manner of fulfilling like contracts in arriving at what was the reasonable expectation of the parties to the contract at the time it was made.[xxiv] Evidence of general trade practice is admissible to determine any matter in case of any ambiguity. No prudent banking institution will undertake any kind of obligation, originally to be fulfilled by the assignor. This is the general practice of many financial institutions.

- **Usages**

This is similar to the defence of general trade practice as has been discussed in Section 6(e) above. Trade usages are capable of both filling in the gaps in the contract and interpreting the contract's terms.[xxv] Where a particular word or phrase has a particular meaning in that industry, in the absence of anything to indicate the contrary, it will be interpreted as that meaning itself. The more general and well established a usage is, the stronger is the inference that a party knew or had reason to know of it.

## **AVOIDING THESE RISKS**

To concretize ICICI Bank's stand on the assignment of obligations in the matter of loans secured by insurance policies, the relevant security documents could be amended to include such a clause.

For instances where loans are secured by life insurance policies, a standard set by the American Banker's Association (ABA) has been followed by many Indian commercial institutions as well.[xxvi] The ABA is a trade association in the USA representing banks ranging from the smallest community bank to the largest bank holding companies. ABA's principal activities include lobbying, professional development for member institutions, maintenance of best practices and industry standards, consumer education, and distribution of products and services.[xxvii]

There are several ICICI security documents which have included clauses denying any assignment of obligations to it. An extract of the deed of hypothecation for vehicle loan has been reproduced below:

*“3. In further pursuance of the Loan Terms and for the consideration aforesaid, the Hypothecator hereby further agrees, confirms, declares and undertakes with the Bank as follows:*

*(i)(a) The Hypothecator shall at its expenses keep the Assets in good and marketable condition and, if stipulated by the Bank under the Loan Terms, insure such of the Assets which are of insurable nature, in the joint names of the Hypothecator and the Bank against any loss or damage by theft, fire, lightning, earthquake, explosion, riot, strike, civil commotion, storm, tempest, flood, erection risk, war risk and such other risks as may be determined by the Bank and including wherever applicable, all marine, transit and other hazards incidental to the acquisition, transportation and delivery of the relevant Assets to the place of use or installation. The Hypothecator shall deliver to the Bank the relevant policies of insurance and maintain such insurance throughout the continuance of the security of these presents and deliver to the Bank the renewal receipts / endorsements / renewed policies therefore and till such insurance policies / renewal policies / endorsements are delivered to the Bank, the same shall be held by the Hypothecator in trust for the Bank. The Hypothecator shall duly and punctually pay all premia and shall not do or suffer to be done or omit to do or be done any act, which may invalidate or avoid such insurance. In default, the Bank may (but shall not be bound to) keep in good condition and render marketable the relevant Assets and take out / renew such insurance. Any premium paid by the Bank and any costs, charges and expenses incurred by the Bank shall forthwith on receipt of a notice of demand from the Bank be reimbursed by the Hypothecator and/or Borrower to the Bank together with interest thereon at the rate for further interest as specified under the Loan Terms, from the date of payment till reimbursement thereof and until such reimbursement, the same shall be a charge on the Assets... ”*

The inclusion of such a clause in all security documents of the Bank can avoid the problem of assignability of obligations in insurance policies used as security for any facility sanctioned by it.

## **CONCLUSION**

An assignment of securities is of utmost importance to any lender to secure the facility, without which the lender will not be entitled to any interest in the securities so deposited.

In this paper, one has seen the need for assignment of securities of a facility. Risks involved in not having a separate clause dealing with non assignability of obligations have been discussed. Certain defences which ICICI Bank may raise in case of the dispute have also been enumerated along with solutions to the same.

## 12. Explain the term risk and state its place under the life, marine and fire insurance

### Answer:

#### Definition of Fire Insurance

Fire Insurance refers to an insurance agreement in which the one party (insurance company or insurer) agrees to indemnify another party (insured), up to a specified amount against the loss of assets, i.e. goods and property, incurred to the latter due to fire, for an adequate consideration, in the form of premium.

There are two conditions which are to be satisfied, to claim for loss by fire, discussed as under:

- The actual fire caused to the subject matter.
- The fire occurred is accidental and not deliberate and the cause of the fire is irrelevant.

Fire insurance is usually taken for one year, and after the completion of the term, it expires automatically. However, one can renew the fire insurance policy every year, by the timely payment of the premium, in a single instalment.

In this type of insurance, the insurer cannot claim the amount exceeding the value of property lost or damaged due to fire or the policy amount, whichever is less. In addition to this, the loss or damage by fire also covers the loss or damages occurred to extinguish the fire, so as to reduce the loss.

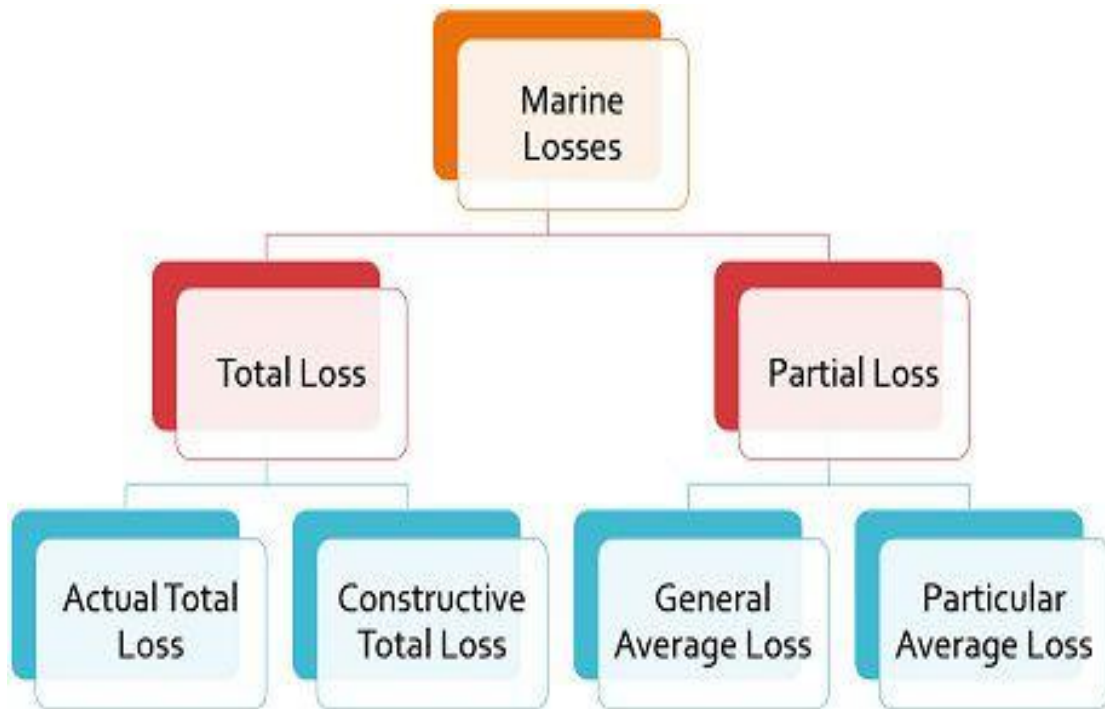
#### Definition of Marine Insurance

Marine insurance, as the name itself gives a brief description, is a type of insurance contract in which the insurer enters into a contract with the ship or cargo owner, and commits to indemnify the latter against the risks related to marine adventure, on the payment of premium.

The term 'marine adventure' includes collision of a ship with other ship or rocks, sinking or burning of the ship and its cargo, stranding of the ship etc. The different types of marine insurance are as under:

- **Cargo insurance:** The form of insurance in which the risk to the cargo on the ship is covered is called as cargo insurance. It is prone to risks that occur due to act of God, fire, enemies, etc.
- **Hull insurance:** When the ship is prone to risks that arise out of an act of God, fire, enemies, etc. then the shipowner can take hull insurance, to cover these risks.
- **Freight insurance:** Freight insurance is taken when the owner of goods commits to pay the freight charges if the cargo is delivered to the port in a safe manner, and it destroys on the way. In such a situation, the shipping company is going to lose the freight.

The losses in case of marine insurance are divided into two categories, as presented below:



## Key Differences Between Fire Insurance and Marine Insurance

The difference between fire insurance and marine insurance are discussed in the points given below:

1. Fire insurance can be defined as a contract in which the insurance company promises to indemnify the insured, in case of any loss or damage caused to the property covered in the contract, of the insured, due to fire. On the other hand, by the term 'marine insurance', we mean an insurance in which the insurance company undertakes to compensate the insured in case of any loss to the ship or cargo, because of sea danger.
2. In fire insurance, the insurable interest must be present both at the time of taking policy and when the loss occurs. As against, in case of marine insurance, the insurable interest must be there only at the time of loss.
3. • Fire insurance covers risks due to fire and associated risks. Conversely, marine insurance covers sea perils.
4. • The claim in case of fire insurance is the amount insured, or the actual loss sustained whichever is less. In contrast, the compensation would be the cost of the goods plus a reasonable margin, i.e. 10-15% for anticipated profits.
5. • In fire insurance contract, the moral responsibility of the insured is an important condition, whereas if we talk about marine insurance, there is no clause relating to the moral responsibility of the ship or cargo owner.

6. The amount of the policy cannot exceed the value of subject matter covered under the fire insurance contract. On the contrary, the market value of the ship or cargo would be the policy amount in case of marine insurance.

### **Conclusion**

Fire insurance is the most popular insurance, that offers protection to the insured against any uncertain loss or destruction of the assets, arising out of the fire. On the contrary, marine insurance is the oldest type of insurance, in which the insurer agrees to indemnify the insured, against transit losses to any sea voyage.

# WRITE SHORT NOTE

## 1. Risk

### Answer

**Risk** can be defined as the "**uncertainty regarding a loss.**" Losses, such as auto damage due to an accident or negligence regarding your property, can give rise to a liability risk. The loss involved with these risks is the lessening or disappearance of value.

Insurance companies have the right to deny insurance, or issue you a non-standard policy if they decide that your situation poses a risk too high for their definition of **standard risk**.

The law that requires an insurance company to reveal the source of any third-party information that caused it to deny or issue a nonstandard policy is known as **The Fair Credit Reporting Act**.

### TYPES OF RISK

There are different types of risk. The most important types of risk include:

- (i) Pure Risk
- ii) Speculative Risk
- (iii) Particular Risk
- (iv) Fundamental Risk
- (v) Static Risk
- (vi) Dynamic Risk.

### PURE RISK

Pure risk is a situation that holds out only the possibility of loss or no loss or no loss. For example, if you buy a new textbook, you face the prospect of the book being stolen or not being stolen. The possible outcomes are loss or no loss. Also, if you leave your house in the morning and ride to school on your motorcycle you cannot be sure whether or not you will be involved in an accident, that is, you are running a risk. There is the uncertainty of loss. Your motorcycle may be damaged or you may damage another person's property or injured another person. If you are involved in any one of these situations, you will suffer loss. But if you come back home safely without any incident, then you will suffer no loss. So in pure risk, there is only the prospect of loss or no loss. There is no prospect of gain or profit under pure risk. You derive no gain from the fact that your house is not



burnt down. If there is no fire incident, the status quo would be maintained, no gain no loss, or a break-even situation. Therefore, it is only the pure risks that are insurable.

### **Different Types of Pure Risk**

Both the individual and business firms face different types of pure risks that pose great threat to their financial securities. The different types of pure risks that we face can be classified under any one of the followings:

- (i) *Personal risks*
- (ii) *Property risks*
- (iii) *Liability risks*

### **Personal Risks**

Personal risks are those risks that directly affect an individual.

Personal risks detrimentally affect the income earning power of an individual. They involve the likelihood of sudden and complete loss of income, or financial assets sharp increase in expenses or gradual reduction of income or financial assets and steady rise in expenses. Personal risks can be classified into four main types:

- (i) *Risk of premature death*
- (ii) *Risk of old age*
- (iii) *Risk of sickness*
- (iv) *Risk of unemployment*

#### ***Risk of Premature Death***

It is generally believed that the average life span of a human being is 70 years. Therefore, anybody who dies before attaining age 70 years could be regarded as having died prematurely. Premature deaths usually bring great financial and economic insecurity to dependants. In most cases, a family breadwinner who dies prematurely has children to educate, dependants to support, **mortgage loan** to pay. In addition, if the family bread-winner dies after a protracted illness, then the medical cost may still be there to settle and of course the burial expenses must have to be met. By the time all these costs are settled, the savings and financial assets of the family head may have been seriously depleted or possibly completely spent or sold off and still leaving a balance of debt to be settled.

The death of family head could render some families destitute and sometimes protracted illness could so much drain the financial resources of some families and impoverish them even before the death of the family breadwinner.

When a family breadwinner dies, the human-life value of the breadwinner would be lost forever. This loss is usually very considerable and creates great financial and economic insecurity. What is a human life value? A human life value is the present value of the share of the family in the earnings of the family head.

### ***Risk of Old Age***

The main risk of old age is the likelihood of not getting sufficient income to meet one's financial needs in old age after retirement. In retirement, one would not be able to earn as much as before and because of this, retired people could be faced with serious financial and economic insecurity unless they have built up sufficient savings or acquired sufficient financial assets during their active working lives from which they could start to draw in old age.

Even some of the workers who make sufficient savings for old age would still have to contend with the corrosive effect of inflation on such savings. High rate of inflation can cause great financial and economic distress to retired people as it may reduce their real incomes.

### ***Risk of Poor Health***

Everybody is facing the risk of poor health. It is only when people are healthy, that they can meaningfully engage themselves in any productive activity and earn full economic income. Poor health can bring serious financial and economic distress to an individual. For example, without good health, nobody can gainfully engage himself in any serious economic undertaking and maximize his economic income.

A sudden and unexpected illness or accident can result in high medical bills. Therefore, poor health will result in loss of earned income and high medical expenses. And unless the person has adequate personal accident and health insurance cover or has made adequate financial arrangements for income from other sources to meet these expenses, the person will be financially unsecured.

### ***Risk of Unemployment***

The risk of unemployment is a great threat to all those who are working for other people or organizations in return for wages or salaries. The risk equally poses a great threat to all those who are still in school or undergoing courses of vocational training with the notion of taking up a salaried job after the training period. Self-employed persons, whose services or products are no longer in demand, could also be faced with the problem of unemployment.

Unemployment is a situation where a person who is willing to work and is looking for work to do cannot find work to do. Unemployment always brings financial insecurity to people. This financial insecurity could come in many ways, among which are:

- (i) The person would lose his or her earned income. When this happens, he will suffer some financial hardship unless he has previously built up adequate savings on which he can now start to draw.
- (ii) If the person fails to secure another employment within reasonable period of time, he may fully deplete his savings and expose himself to financial insecurity.
- (iii) If he secures a part-time job, the pay would obviously be smaller than the full-time pay and this entails a reduction of earned income. This would also bring financial insecurity.

### **SPECULATIVE RISK**

Speculative risk is a situation that holds out the prospects of loss, gain, or no loss no gain (break-even situation). Speculative risks are very common in business undertakings. For example, if you establish a new business, you would make a profit if the business is successful and sustain loss if the business fails.

If you buy shares in a company you would make a gain if the price of the shares rises in the stock market, and you would sustain a loss if the price of the shares falls in the market. If the price of the shares remains unchanged, then, you would not make a profit or sustain a loss. You break-even. Gambling is a good example of speculative risk. Gambling involves deliberate creation of risk in the expectation of making a gain. There is also the possibility of sustaining a loss. A person betting \$500 on the outcome of the next weekend English Premier League Match faces both the possibility of loss and of gain and of no loss, no gain. Most speculative risks one dynamic risk with the exception of gambling situations.

Other examples of speculative risk include taking parts in a football pool, exporting to a new market, betting on horse race or motor race.

Speculative risks are no subject of insurance, and then are therefore not normally insurable. They are voluntarily accepted because of their two-dimensional nature of gain or loss.

<b>Pure Risk</b>	<b>Speculative Risk</b>
<p>Pure risk is a risk where there is only the possibility of a loss or you maintain a status quo. Only pure risks are insurable.</p>	<p>Speculative risk is a risk where both profit and loss are possible. Speculative risks are not normally insurable.</p> <p>The few exceptions of speculative risks are insurable firms that insure their institutional portfolio of investments against loss.</p>
<p>Although there are some exceptions of pure risks which are not insurable.</p>	<p>Speculative risks are not generally easily predictable. So, the law of large numbers cannot be easily applied to speculative risk.</p> <p>However, gambling is one exception of speculative risks to which the law of large numbers can easily be efficiently applied.</p> <p>Society may benefit from a speculative risk if a loss occurs. For example, a firm may develop a new invention for producing a commodity more cheaply. As a result of this, a competitor may be forced out of the market into bankruptcy. In this situation, the society will benefit since the products are produced more efficiently and at lower cost to consumers, even though competitor has been forced into bankruptcy.</p> <p>Speculative risks are more voluntarily accepted because of its two-dimensional nature of gain or loss.</p>
<p>Pure risk are generally easily predictable than speculative risks. So the application of the law of large numbers can be more easily applied to pure risk.</p>	
<p>Society will not benefit from a pure risk if a loss occurs. For example, if a flood or earthquake devastates a region, society will not benefit from such devastation.</p>	
<p>Pure risk is not voluntarily accepted.</p>	

## **Liability Risks**

Most people in the society face liability risk. The law imposes on us a duty of care to our neighbour and to ensure that we do not inflict bodily injury on them. If anyone breaches this duty of care, the law would punish him accordingly. For example, if you injure your neighbour or damage his property, the law would impose fines on you and you may have to pay heavy damages.

Unfortunately, one can be found liable for breach of duty of care in different ways and the best security seems to be the purchase of liability insurance cover.

Liability Risks have two peculiarities:

- (i) Under liability risk, the amount of loss that can be involved has no maximum upper limit.

The wrong doer can be sued for any amount. For example, while riding on your bicycle valued \$500, you negligently cause serious bodily injury to another person, that person can sue you for any amount of money, say \$5000, N10,000 or even more depending on the nature of the injury.

In contrast, if the bicycle value at \$500 is completely damaged by another person, the maximum amount of compensation (indemnity) that would be paid to you for the loss of the bicycle is just \$500, that is, the actual value of the bicycle.

- ii. Under liability risks your future income and assets may be attached to settle a high court fines if your present income and assets are inadequate to pay the judgment debt. When this happens, your financial and economic security would be greatly endangered.

## **Property Risks**

Property owners face the risk of having their property stolen, damaged or destroyed by various causes. A property may suffer direct loss, indirect loss, losses arising from extra expenses of maintaining the property or losses brought about by natural disasters.

Natural disasters such as flood, earthquake, storm, fire etc can bring about enormous property losses as well as taking several human lives. The occurrence of any of these disasters can seriously undermine the financial security of the affected individual, particularly if such properties are not unsecured.

## **Direct Loss**

Direct loss is that loss which flows directly from the unsecured peril. For example, if you insure your house against fire, and the house is eventually destroyed by fire, then the physical damage to the property is known as direct loss.

## **Indirect Loss or Consequential Loss**

Indirect or consequential loss is a loss that arises because of a prior occurrence of another loss. Indirect loss flows directly from an earlier loss suffered. The loss is the consequence of some other loss. It arises as an additional loss to the initial loss suffered. For example, if a factory that has a fire policy suffers a fire damage, some physical properties like building, machinery maybe destroyed. The loss of these properties flows directly from the insured peril (fire). The physical damage to the properties is known as direct fire loss.

But in addition to the physical damage to the properties, the firm may stop production for several months to allow for the rebuilding of the damaged of the premises and replacement of damaged equipment, during which no profit would be earned.

This loss of profit is a consequential loss. It Is not directly brought about by fire but flows directly from the physical damage brought about by fire and hence indirectly from the fire incident. Other examples of consequential loss are the loss of the use of the building and the loss of a market.

## **Extra Expenses**

Alternative arrangement may have to be made to rend a temporary premises, pending the repairs or reinstatement of the damaged building, and it may also be necessary to rent, hire or lease a machine in order to keep production going so as not to disappoint customers and in the process lose market to competitors. The expenses incurred in securing the alternative premises, an renting, hiring or leasing a machine are referred to as extra expenses. These expenses may not have been insured if there has been no fire damage.

## **FUNDAMENTAL RISK**

A fundamental risk is a risk which is non-discriminatory in its attack and effect. It is impersonal both in origin and consequence. It is essentially, a group risk caused by such phenomena like bad economy, inflation unemployment, war, political instability, changing customs, flood, draught, earthquake, weather (e.g. harmattan) typhoon, tidal waves etc. They affect large proportion of the population and in some cases they can

affect the whole population e.g. weather (harmattan for example). The losses that flow from fundamental risks are usually not caused by a particular individual and the impact of their effects falls generally on a wide range of people or on everybody. Fundamental risk arise from the nature of the society we live in or from some natural occurrences which are beyond the control of man.

The striking peculiarity of fundamental risk is that its incidence is non-discriminatory and falls on everybody or most of the people. The responsibility of dealing with fundamental risk lies with the society rather than the individual. This is so because, fundamental risks are caused by conditions which are largely beyond human's control and are not the fault of anyone in particular. The best means of handling fundamental risk is the social insurance, as private insurance is very inappropriate. Although, it is on record that some fundamental risk, like earthquake, flood are being handle by private insurance.

## **PARTICULARS RISKS**

A particular risk is a risk that affects only an individual and not everybody in the community. The incidence of a particular risk falls on the particular individual affected. Particular risk has its origin in individual events and its impact is localized (felt locally). For example, if your textbook is stolen, the full impact of the loss of the book is felt by you alone and not by the entire members of the class. You bear the full incidence of the loss. The theft of the book therefore is a particular risk.

If your shoes are stolen, the incidence of the loss falls on you and not on any other person. Particular risks are the individual's own responsibility, and not that of that society or community as a whole. The best way to handle particular risk by the individual is the purchase of insurance cover.

## **STATIC RISK**

Static risks are risks that involve losses brought about by irregular action of nature or by dishonest misdeeds and mistakes of man. Static losses are present in an economy that is not changing (static economy) and as such, static risks are associated with losses that would occur in an unchanging economy. For example, if all economic variables remain constant, some people with fraudulent tendencies would still go out steal, embezzle funds and abuse their positions. So some people would still suffer financial losses. These losses are brought about by causes other than changes in the economy. Such as perils of nature, and the dishonesty of other people.

Static losses involve destruction of assets or change in their possession as a result of dishonesty. Static losses seem to appear periodically and as a result of these they are generally predictable. Because of their relative predictability, static risks are more easily

taken care of, by insurance cover then are dynamic risks. Example of static risk include theft, arson assassination and bad weather. Static risks are pure risks.

## **DYNAMIC RISK**

Dynamic risk is risks brought about by changes in the economy. Changes in price level, income, tastes of consumers, technology etc (which is examples of dynamic risk) can bring about financial losses to members of the economy. Generally dynamic risks are the result of adjustments to misallocation of resources. In the long run, dynamic risks are beneficial to the society. For example, technological change, which brings about a more efficient way of mass producing a higher quality of article at a cheaper price to consumers than was previously the case, has obviously benefited the society.

Dynamic risk normally affects a large number of individuals, but because they do not occur regularly, they are more difficult to predict than static risk.

## **DIFFERENCE BETWEEN DYNAMIC RISK AND STATIC RISK**

<b>Static Risk</b>	<b>Dynamic Risk</b>
Most static risks are pure risks	They are mainly speculative risks.
They are easily predictable	2. They are not easily predictable
The society derives no benefit or gain from static risk. Static risks are always harmful.	3. The society derives some benefits from dynamic risk.
Static risks are present in an unchanging economy.	4. Dynamic risks are only present in a changing economy
Static risks affect only individuals or very few individuals.	5. Dynamic risk affect large number of Individuals.



## 2. Re Insurance and Double Insurance

### Answer:

The term insurance can be described as an arrangement through which the risk of loss can be shifted from one party (insured) to another (insurer), by paying a specified sum, at definite intervals, i.e. premium. **Double insurance** is a form of insurance, wherein the individual/company insures a particular property with more than one insurer or with multiple policies from the same insurer.

Double insurance is not exactly same as **reinsurance**, as it is a transfer of risk on a policy by the insurance company, by insuring the same with another insurer. So, there exist a fine line of differences between double insurance and reinsurance, which are explained in this article.

### Content: Double Insurance Vs Reinsurance

1. Comparison Chart
2. Definition
3. Key Differences
4. Conclusion

#### Comparison Chart

Basis for Comparison	Double Insurance	Reinsurance
Meaning	Double insurance refers to a situation in which the same risk and subject matter, is insured more than once.	Reinsurance implies an arrangement, wherein the insurer transfer a part of risk, by insuring it with another insurance company.
Subject	Property	Original insurer's risk
Compensation	It can be claimed with all insurers.	It can be claimed from the original insurer, who will claim the same from reinsurer.
Loss	Loss will be shared by all the insurers in proportion of the sum insured.	The reinsurer will only be liable for the proportion of reinsurance.
Aim	To assure the benefit of insurance	To reduce the risk of the insurer
Interest of insured	Insurable interest	No interest

Basis for Comparison	Double Insurance	Reinsurance
Consent of insured	Necessary	Not necessary

### Definition of Double Insurance

Double insurance is described as an insurance arrangement in which a particular subject or risk is insured with multiple insurance policies of the same insurer, or with multiple insurers, for the same period. It is made to attain security and satisfaction, which the insurers will make good the loss occurred to the insured.

In the event of loss, the insured can claim compensation from all the insurers under the concerned policies. However, the total amount of compensation cannot exceed the actual loss incurred to him, and so the insurers will contribute, in the proportion of the sum insured.

### Definition of Reinsurance

Reinsurance is a product offered by insurance companies to other insurance companies to cover large losses. When an insurance company is not capable of bearing the entire loss arising out of the insurance provided to the insured, then it can go for reinsurance, in which a part of the risk is reinsured, with another insurer.

Usually, the insurance company chooses reinsurance, when the insurance amount is high, and a single insurance company cannot bear it easily.

The original insurer cedes (gives) a proportion of its business to another insurer, in essence, the risk is signed and accepted by that insurance company. In finer terms, reinsurance is a contract between the ceding company (original insurer that shifts a part of the risk) and the reinsurer, for sharing the risk of the insurance policy, in exchange for a share of the insurance premium.

In the event of loss, the amount of claim will be borne in the proportion, they've agreed to share the risk of loss.

### Key Differences Between Double Insurance and Reinsurance

The difference between double insurance and reinsurance are discussed in the following points in detail:

1. Double insurance is understood as insurance wherein the property or asset, is insured with many insurers or under multiple insurance policies with the same insurer. Conversely, reinsurance can be defined as the arrangement that helps insurance company to transfer the risk on the insurance policy to another insurer.
2. In double insurance, the subject matter of the insurance arrangement is the property, for which the policy is taken from various insurers. On the other hand, in reinsurance, the reinsurance is taken for the original insurer's risk.
3. When it comes to compensation, the insured can claim all the insurers, in case of double insurance. As against, in reinsurance, the insured can claim compensation from the original insurer, who in turn claim compensation from the reinsurer.
4. In double insurance, the actual amount of loss incurred will be shared by all the insurers, in the proportion of the sum insured. Unlike, in reinsurance, the reinsurer will be liable for part of risk reinsured by the ceding company.
5. While double insurance ensures the benefits of insurance, reinsurance is concerned with reducing the insurer's risk liability.
6. In double insurance, the insured has an insurable interest in the insurance contract. On the contrary, in reinsurance, the original insured has no interest in reinsurance.
7. Double insurance is possible only when the insured gives his consent for it. In contrast, in reinsurance the consent of the insured is not required.

## **Conclusion**

Insurance is a contract between the insured and insurer, wherein the latter takes the responsibility to make good the loss occurred to the former, in exchange for the premium. Double insurance and reinsurance sound same, but they are different in the sense that double insurance is taken by the insured himself, whereas reinsurance is an agreement between two insurers, to cover a part of the risk, so it is taken by the insurer.

### **3. Theft Policy**

**Answer:**

**4. Assignement**

**5. Contributory negligence**

**6. Fire Insurance**

**7. Agriculture insurance**

**8. Health Insurance**

**9. Marine Perils**

**10. Personal Injuries(Compensation Insurance) Act  
1963**

**11. Fatal Accident Act 1855**

**12. Mediclaim**

**13. Contract of indemnity**

**14. Double and Re-insurance.**

**15. Voyage Deviation**

**16. Group Life Insurance**

