INSURANCE

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The insurance is a contract where by:

- Certain sum ,called premium is charged in consideration .
- Against the payment of said premium, a large sum is guaranteed to be paid by the insurer.
- The amount will be made in a certain definite sum i.e. the loss or the policy amount, whichever is less.
- The payment is made only upon the happening of a contingency.

ESSENTIALS OF AN INSURANCE CONTRACT

- **Offer and acceptance**
- **Intention to create legal relationship**
- **Parties competent to make contract**
- **Free consent**
- **Lawful consideration**
- **Lawful object**
- **Certainity and possibility of performance**

PRINCIPLES OF INSURANCE

PRINCIPLE OF UTMOST GOOD FAITH

According to this principle , both parties to the contract should make full disclosure of all material facts. Material facts means those facts which may affect the decision of either party to contract whether to enter or not to enter into the contract.

FACTS TO BE DISCLOSED

In case of Life Insurance :-

- Name, address and his occupation.
- Date of birth, age, height, weight etc.
- Facts about his life and habits.
- Family history.
- Information about health.

In case of Marine insurance :-

- Method of packing.
- Nature of goods.
- Particulars of vessel carrying the goods
- The port of shipment & destination along with the route of journey

In case of Fire Insurance :-

- *Location of property.*
- *Details of construction and description of property.*
- *Nature of goods or material .*
- *Particular of occupier i.e. whether used for office , residence, shop ,godown , manufacturing unit etc.*
- *Particulars of previous loss.*

In case of non disclosure of material facts by insured , the insurance company can cancel the contract.

PRINCIPLE OF INSURABLE INTEREST

According to it, the person getting an insurance policy must have an insurable interest in the property or life insured.

A person is said to have an insurable interest in the property if he is benefited by its existence & prejudice by its destruction. Without insurable interest the insurance contract is void.

Essentials of insurable interest

i. There must be a specific subject matter to be insured.
ii. The insured should have the monetary benefit in the subject matter.
iii. The insured should have the legal relationship with the subject matter and it must be recognised by law.
iv. The insured must be the owner or possess the legal right or interest in the subject matter.
v. The insured should be economically benefited by the existence of the subject matter and should suffer a economic loss on its non-existence or at the death of the insured.

PRINCIPLE OF INDEMNITY

All Insurance contracts, except for life insurance, are contracts of indemnity. The basic principle of insurance is to transfer the loss of a person to the insurance company. It is therefore, necessary that a person will get exactly the same amount as he has lost due to the loss of his goods or damage to the property.

Example: if the goods are insured for Rs.10000 and the insured suffer a loss of Rs. 5000, he will be compensated for Rs.5000 only. But if the insured has taken policy for a smaller value than the actual loss, the insurance company is bound to pay.

Merits of Principle of Indemnity

- Avoidance of under or over Insurance
- To avoid anti-social activity
- To maintain premium at low level

Features of Indemnity

- All contracts of insurance are contacts of indemnity except life insurance.
- There is an indirect relationship between the principle of indemnity and insurable interest because insured is required to prove the amount of his actual loss and his interest therein in order to get compensation.
- The amount of compensation cannot exceed the amount of actual loss or the value of policy, whichever is less.
- After the compensation of loss, the insured cannot hold the ownership right on the thing insured i.e., the ownership right will shift to the insurance company.
- Valued policies are not covered under the principle of indemnity.

Conditions of Indemnity

- Insured has to prove that he has suffered a loss on the subject matter insured and it is the actual monetary loss.
- The compensation cannot exceed the amount insured.
- Insurer has a right to get back the extra amount, if any paid to the insured.
- The insurer has a right to get back all amount received by the insured from the third party, if the loss is fully indemnified by the insurer.
- The principle of indemnity is not applicable in case of life insurance as the actual loss on death cannot be calculated.

Liability of Insurer to pay Compensation

- Sum insured or the value of policy
- Excess and Franchise Clause
- Pro-rata Average
- Salvage
- Subrogation
- contribution

Methods of Indemnity

- **Cash Payment:** Cash payment of the amount of claim of insurance is the easiest and a very common of indemnification. After making proper enquiries of loss the insurer accepts the claim by making cash payment through cheque to the insured.
- **Repairs:** In some cases, where the subject matter is partially damaged and is capable of being repaired, the insurer instead of making cash payment prefers to settle claim of the loss or damage, by means of getting subject matter damaged, repaired. The repair is authorised to the insured and insured has to submit bill of repairs alongwith a note of satisfaction and then the repair bill is paid.
- **Replacement**: In case of subject of the insurance policy is damaged, lost or destroyed to such an extent that it is not possible and feasible to get it repaired, the insurance company may arrange the replacement of the property. Generally, this practice is followed in case of theft of property.
- **Reinstatement:** Reinstatement is a method rarely used. In this case, the property damaged is reinstalled in its original position.

PRINCIPLE OF SUBROGATION

The principle of subrogation refers to the right of the insurer to stand in the place of the insured after the settlement of a claim. The insurer can recover the loss from the third party. There always exists a possibility of getting something in addition to the claim received from the insurer by the insured e.g. value of scrap, damages from the person responsible for the loss and several other alternatives.

Definitions

In the words of Federation of Insurance Institutes

''Subrogation is the transfer of rights and remedies of the insured to the insurer who has indemnified the insured in respect of the loss''

Essentials of Subrogation

- Extension of Principle of Indemnity
- Subrogation is the substitution
- Subrogation only upto the amount of payment
- Subrogation may be applied before payment
- Personal insurance

Features of Subrogation

- It is an corollary and outcome of the principle of indemnity and is applicable in all contracts of indemnity.
- It is applicable only after the payment of loss by the insurer.
- It may also arise even before indemnification of loss except in case of marine insurance policies.
- The insured is required to provide all help to insurer while enforcing the claim against the defaulter.
- The insurer has a right to sue the third party in the name of insured. But all expenses of litigation are to be borne by the insurer.
- The insured will hold the amount of compensation received from the third party in trust for the insurer if he has already been compensated by the insurer.

Causa Proxima

Causa Proxima is Latin word means proximate or nearest cause. This principal states that the cause of the loss should be immediate and not remote. It means if the loss is caused by more than one peril or cause, the nearest cause should be taken into consideration to decide the liability although the loss may not have happened without the remote cause. To fix the liability of the insurer, the nearest cause will be considered and not the remote one. Generally, if a product is insured against a definite damage, like insurance against fire, no claim will be settled, if damage has occurred because of theft or any other reason. This situation creates the value of this principal of causa proxima.

Principal of mitigation of loss

As per this principal, the insured must take all the steps to minimise the loss in the event of mishap. The insured must not neglect and behave irresponsibility during such events. But he is not bound to do so at the risk of his life. At the time of mishap, he should take all those necessary steps as any prudent person would do in that case. The insured should not feel relaxed by mere taking an insurance policy of goods. Rather , he should have to protect his goods with an awakened mind. For example

Types of Policies

- Motor Insurance
- Fire Insurance
- Marine Insurance
- Engineering Insurance
- Miscellaneous Insurance
- Reinsurance

PRINCIPLE OF CONTRIBUTION

Sometimes a person get his property insured with more than one insurer called 'DOUBLE INSUANCE' whereby in event of damage, he can not claim anything more than the actual loss from all the insurers put together. In such cases the total loss suffered by the insured is contributed by different insurers in the ratio of value of policies issued by them for the same subject matter.

"PRINCIPLE OF CONTRIBUTION REFERS TO THE RIGHT OF THE INSURER WHO HAS PAID A LOSS UNDER A POLICY TO COVER A PROPORTIONATE AMOUNT FROM OTHER INSURERS WHO ARE LIABLE FOR LOSS"

PRINCIPLE OF ASSIGNMENT

Principle of assignment is also known as transfer of interest. In case of marine and life insurance assignment can be made freely without the prior consent of the insurer . But in case of fire insurance and accident insurance policy, assignment without prior consent is not valid.

PRINCIPLE OF RETURN OF PREMIUM

Ordinarily the premium once paid is not refunded. However the premium paid is returnable in following cases:

- By agreement in policy.
- For reasons of equity

PRINCIPLE OF OVER-INSURANCE BY DOUBLE INSURANCE

If there is over insurance by the way of double insurance, a proportionate part of several premium is returnable provided that if policies are taken at different times and any earlier policy has at any time borne the whole risk or if a claim has been paid. On the policy in respect of the full insured thereby no premium is returnable in respect of that policy and when double insurance is effected knowingly by the insured, no premium is returnable.

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