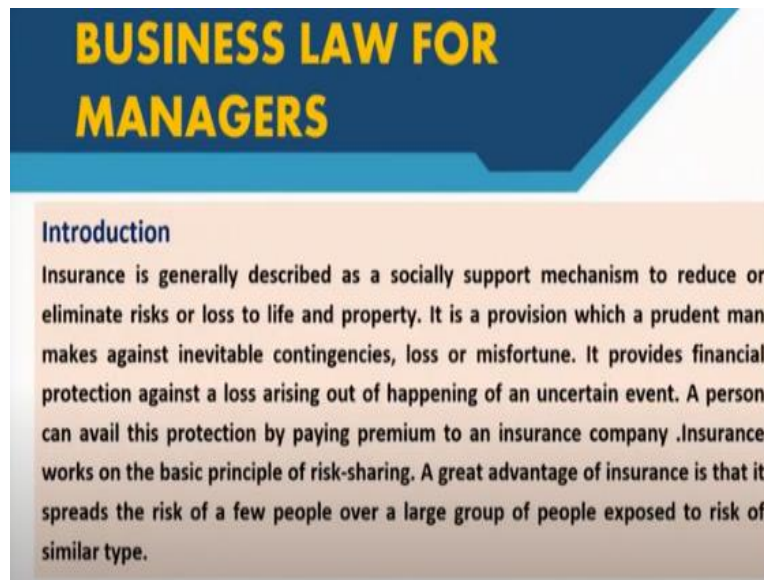


Business Law for Managers
Mr. Kaushik Mukherjee
Vinod Gupta School of Management
Indian Institute of Technology, Kharagpur
Module-4: Law of Contract

Lecture - 20
Law of Insurance

Good evening. This brings us to the lecture 20 module 4, Law of Insurance.

(Refer Slide Time: 00:33)



BUSINESS LAW FOR MANAGERS

Introduction

Insurance is generally described as a socially support mechanism to reduce or eliminate risks or loss to life and property. It is a provision which a prudent man makes against inevitable contingencies, loss or misfortune. It provides financial protection against a loss arising out of happening of an uncertain event. A person can avail this protection by paying premium to an insurance company .Insurance works on the basic principle of risk-sharing. A great advantage of insurance is that it spreads the risk of a few people over a large group of people exposed to risk of similar type.

Well, insurance is basically a law, which speaks of how do you cover your risks. Risks are part of the business. So, without risks, business cannot run. And the amount of risks that a business has today cannot be in numbers. It has gone up like anything. And the latest one is the pandemic risk. Never heard of before, but it has also joined the risk register now. So, all big company's risk register also contains now the pandemic risk.

(Refer Slide Time: 01:13)

KEY POINTS

- Essential requirements
- General Principles
- Form of Insurance
- Who has insurable interest
- Voyage and deviation

But the essential principles of insurance remains the same, the principle is very clear, complete trust and faith. If you do not have the proper disclosure, you will first of all lose out on everything. First is disclose everything, whether it is a medical insurance, or it is property insurance of a corporate or it is a marine insurance of a corporate, or it is your life insurance.

If you do not disclose your day zero, you are losing out. Be extremely transparent, clear in what you are doing. Allow the insurer to know all your perceived risks, what are the risks that you perceive. Then only you can take a proper coverage of the risk. And you take a policy, which is a robust comprehensive one, point number 1. Point number 2, from a corporate side never look at insurance as an investment, as a profit center.

Never look. Insurance is never an investment; it is never a profit center. It is a risk mitigation measure. If somebody starts looking at that I have paid insurance premium for my property for last 10 years, maybe 20 crores but my claim is only five crores. So why should I pay? That is not the way to look at insurance. You may be fortunate that it is happening like that, but one fine morning all these 20 crores may go to the drain and you would have nothing but you have paid premium of only 5 crores.

That 5 crores will save you to get 20 crores less some salvage and some depreciation you will get the money back maybe 15, 16 crores. So, no one has to look at insurance from the point of view of an investment or a return on investments. It is a risk

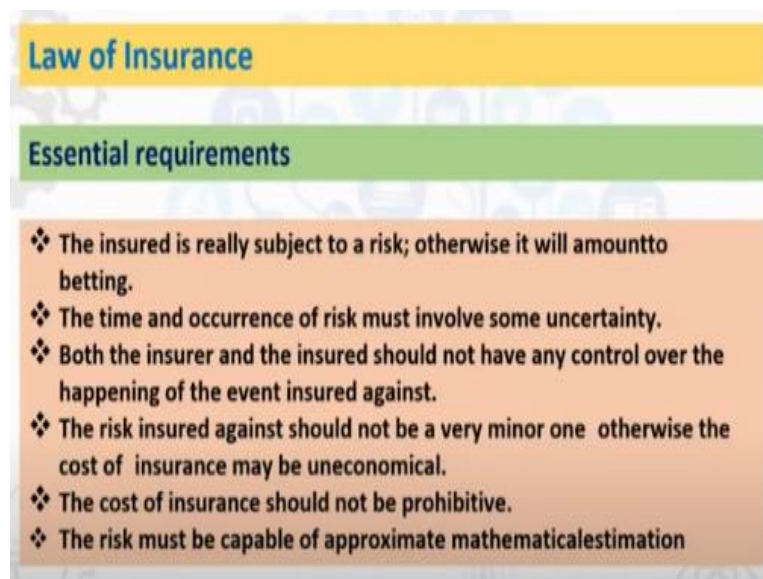
mitigation measure. The third also is important. Insurance does lot of preventive measures. Insurance helps the company to prevent timely many disasters. How?

Because any insurance that you do is a continuous process of monitoring by the insurance company. They do a risk inspection at least once in a year for each of the factories and is quite thorough.

If a company desires to understand what are the inherent risks which they are running then he can from the risk inspection report of the insurance companies do those checks and balances and keep the plant healthy, reduce the shutdown of the plants, reduce the disruption of the plants and this helps to increase the bottom line and the yield of the production process.

So, a robust and effective insurance of the plants will always help not only in risk mitigation but also to a large extent in improving the health of the plant and thereby the yield and the productivity of the plant. This is one concept perhaps not deliberated so much when you talk of insurance, will only talk of coverage but it does add, it does add to the bottom line and the health of the organization.

(Refer Slide Time: 04:48)



Law of Insurance

Essential requirements

- ❖ The insured is really subject to a risk; otherwise it will amount to betting.
- ❖ The time and occurrence of risk must involve some uncertainty.
- ❖ Both the insurer and the insured should not have any control over the happening of the event insured against.
- ❖ The risk insured against should not be a very minor one otherwise the cost of insurance may be uneconomical.
- ❖ The cost of insurance should not be prohibitive.
- ❖ The risk must be capable of approximate mathematical estimation

It basically from the law of insurance the insured is really subject to a risk. There has to be a risk. If there is no risk, then they cannot be insured. There is the risk of fire, the risk of storm, the risk of marine peril sea, the risk of a pandemic, the risk of a

health, risk of an earthquake. So various risks which are covered are real, measurable and those which happen.

So, when we take a factory insurance, we do not take only a fire insurance we take it an industrial all risk insurance. All risks are covered; storm, peril, earthquake, terrorism, fire, ignition, explosion, everything is covered in one. That is called IAR policy, industrial all risk policy. The second thing is the occurrence would be uncertain. There would not be any certainty, that is not insurance.

Therefore, many times they say life insurance is an assurance not an insurance, because we all have to die. Death is certain. But again, there is an uncertainty as the timeliness of the death. Therefore, it is insured. No one has the control. Both the insured and the insurer does not have any control over the happening of the event. In any of these cases, we do not know when the fire would be happening in the factory.

No one has the control. No one knows when the ship would be hitting an iceberg. No one knows when there will be a leakage of oil from the ship. No one knows when we have a medical emergency. Again, the risk insured should not be very minor, petty risks are not included. Because it is uneconomical. Premium has a cost. Why premium? Because premium is a recovery. Insurance companies, their job is to spread the risk.

When somebody approaches a company for a medical insurance, the first thing the insurance company ask the insurance head of that organization, how many heads would you insure? Why ask so? Because depending upon that it will help him to cover and quote the premium. Very simple. If there are 100 employees and the average age of the employees is 27 medical insurances will be very low.

If they are 100 employees, average age of the employees is 65, it will be very high. Same if the employees are 1000 and average age is 65, still low, still low. Then 100 employee is 65. But if the 1000 employees is 27 it would be least, why? Insurance thrives on the purpose of the probability of happening. What is the chance of happening?

If there are only 100 people and all above 65, the occurrence of medical emergency is very high. Whereas it is 27 is very low. Whereas 1000, 65 then it is high but not very high because the spread is so high. Maybe 20 people out of 1000. But if it is 100 it can be very high if it is 20 out of 100. 20 out of 100 and 20 out of 1000 is a different concept altogether. So, risk spread they want to know how much risk I can spread.

Same with the factory insurance. A company may have five factories. You go for insurance of one factory, premium would be very high. The moment you take the same policy for five factories it will be less than half for a single factory. If it was 80 lakhs for a single pack factory now it is five factories it will be 40 lakhs because probability of happening of fire explosion in that factory.

(Refer Slide Time: 09:22)



Insurance is not a wagering contract, no way. Because wagering means speculative. Insurance is never a wagering contract because there is an insured, there is an insurable interest. The purpose is risk minimization, not profit maximization. There is no gambling here. Certainty is not there, but there is a distinct chance of happening. Only the timing is not there.

(Refer Slide Time: 09:50)

Law of Insurance

General principles of Insurance

- ❖ Indemnity – Example – X insures his car against accident and theft for Rs. 90,000. The car meets with an accident and the loss thereby occasioned is Rs. 10,000. The amount recoverable from the insurance company will be Rs. 10,000 only.
- ❖ And in case the car is stolen, thus resulting in a total loss, the amount recoverable from the insurance company shall be Rs. 90,000 (minus depreciation) even though the car may be of a value more than this, say, Rs. 95,000.
- ❖ Good Faith – (Medical Insurance disclosure of decease) Therefore, all contracts of insurance are contracts *uberimae fidei*, i.e., contracts of utmost good faith and therefore non-disclosure of a material fact entitles the other party to avoid the contract.

These are very general basic principles of insurance. One concept is **you** one cannot make profit out of insurance. By taking an insurance you cannot make profit. Because supposing your car value is 1 lakh rupees and you have declared the car value as 50,000. You can do that. I declare my car when was 50,000. You want to save premium. So, supposing you have paid premium of 50,000 rupees, say 5000 rupees.

Now your car meets with an accident and their claim comes 2000 rupees. Now you said I have paid 5000 rupees give me 2000 rupees. The insurance company will not pay. The insurance company will pay you 50% of 2000 rupees. Why, because you have underinsured your asset by 50%. 10 lakhs you have insured for 5 lakhs, 50% you have insured. So, any claim that comes you will get 50%.

That is the law of insurance. You declare full value, whatever will be the claim you will get. 10 lakhs is the full value. Even for any reason you have paid 5000 rupees only, the claim comes 50,000 rupees you will get 50,000 rupees though you have paid premium 5000. So that is what the insurance is about.

Second, you had a car. The car, there was the theft of the car 90,000 rupees and there was an accident and theft for rupees 90,000. The car meets with an accident and the loss thereby occasioned 10,000. So, amount recovered from the insurance company will be Rs. 10,000. X insures his car against accident theft for Rs. 90,000 The car meets with an accident the loss thereby occasioned Rs. 10,000.

The amount recoverable from the insurance company will be 10,000. In case the car is stolen, thus resulting in a total loss the amount recovered from the insurance company 90,000, less depreciation even though the car may have a value of more than rupees, say 95,000. So, depreciation is always reduced. The cost of depreciation gets reduced. You cannot get more than the depreciated value.

Even if the car value is 90,000, the car is totally stolen, you can ask for a claim of 90,000? No, you have used the car for 10 years or 5 years. They have a procedure of calculation depreciation for 5 years. They will reduce the value of 5 years and then give you the value. Supposing it is 10% depreciation, then 9000 rupees for 4 years, 36,000 rupees. 90 minus 36,000 rupees will be given to you. 54,000 rupees would be given to you.

Whereas, the car price according to you was 90,000, it was stolen. Even if it was stolen, the car that was stolen was used by you for 4 years, depreciation has to be charged. Similarly, car met with an accident. 90,000 cars, totally damaged. You can expect to get 90,000? No, they will calculate the depreciated value of the car and then they will reduce the salvage also.

Salvage means whatever scrap you have sold and got the money. Maybe even 500 rupees, 600 rupees that will be reduced. Then only you will get the money. In all medical policies also, there is a concept called excess. Minimum amount you have to pay. Over and above that the medical insurance company will pay. The excess may be 200, 500, 600.

If you have a medical claim of 500 rupees, 600 rupees, they will not pay because it comes within the excess. If it is 12000 rupees the excess will be reduced and balance amount would be paid to you. So, you cannot make profit out of insurance. There are various other means, which cannot be discussed, because there are people also play around with this kind of insurance and try to make money.

I mean, these are lot of bad practices are there which they may try to bring out that kind of you know issues where their assets are not existing, showing as assets. Assets

are met with the damage but the damage claim is shown at a bigger figure. So, I am not discussing all these because these are not the cases which are ideal situation.

I am talking about the ideal situation where insurance is taken for the benefit for risk mitigation and risk minimization. There we find that you cannot make profit out of insurance. You have to be totally honest. And that is the best way to deal with insurance. Good faith. *Berriman fidei*. There is a Latin word which means utmost good faith. *Uberrimae fidei* means utmost good faith.

Always be, supposing you are going for a medical checkup, medical insurance. If you do not disclose your diabetic, if you do not disclose you have got some medical problem. And later on, it amounts that the premium has been calculated on the basis of without considering those issues or problems, medical health problems, and unfortunately you are diagnosed with any one of them after a few years and you are to be treated, then the claim may be rejected totally because you have not disclosed.

(Refer Slide Time: 15:25)

Law of Insurance

Insurable Interest

Causa proxima. In case of marine and fire insurance we have the principle of *causa proxima*, i.e., the proximate cause. When a damage has resulted due to two or more causes, we have to look to the proximate or the nearest cause of damage, although the damage might not have taken place without the remote cause. Thus, in the event of the loss, it is the proximate and not the remote cause that is to be looked into. If the cause of the loss is a peril insured against, the insured can recover, otherwise not.

▪ Example –
Cargo (sugar) being shipped is insured against sea perils. Certain rats make holes into the bottom of the ship wherefrom the seawater enters the ship, thereby destroying the whole cargo. The remote cause in this case is rats which is not a peril insured against but the proximate cause is "sea water" which is a peril insured against and thus the loss will be recoverable.

In insurance, there is another wonderful concept which is called *causa proxima*. *Causa proxima* means proximate cause. Any damage that happens maybe for various incidents one by one, sequential events, but insurance will see what is the immediate reason for the loss. If the immediate reason is something which is insured, then only insurance will be paid otherwise not. See the example in this case.

In case of a marine and fire insurance, we have a principle of causa proxima that is proximate cost. When a damage has resulted due to two or more causes, series of causes, we have to look at the proximate or the nearest cause of damage, although the damage might not have taken place without the remote cause. Even if you do a root cause analysis, you will find that the damage has happened actually from point A.

Point A it has gone to point B, point B to point C, finally C has hit the ship which is insured. Now we have to see C, point C whether point C is covered or not. Whereas the root cause is point A. Point A may or may not be covered, that is not material. Material is whether C is covered. If C is covered, you are going to get the money. Your claim stands. If C is not covered, your claim does not stand even though A is covered.

A is not material in this case, though it is a root cause. Example, cargo means sugar is being shipped, is insured against sea perils. Sea perils are many things. Sea perils means sea water, icebergs, storms, even pirates. So many perils are there. Certain rats make holes into the bottom of the ship where from seawater enters the ship, thereby destroying the whole cargo.

So, rats makes holes from that hole seawater enters and the cargo gets damaged. Now the claim comes from the insurance company. The surveyor comes. Surveyor is a person who is appointed by the insurance company to go and find out the cause of the incident. Because very important for the insurance company to know the cause of the incident. Because the moment they find out the cause, they have to see whether that cause has been covered or not.

Say for example, medical. What is the cause of the ill health or the hospitalization? Dengue, malaria, COVID, something else, what is that cause? All these are covered. But if it is something which due to a congenital disease, congenital disease for which he is hospitalized, and that congenital disease has not been disclosed at the time of insurance, then he does not get any claim.

If he has disclosed at the time of insurance and paid premium accordingly, he is fully covered. Similarly, in this case, the root cause will not be seen. In this case the root

cause will not be seen. What will be seen is what is the immediate cause? The immediate cause is sea peril which is water. Water is a sea peril, is covered. Water damaged the cargo, the sugar. Rat did not damage it.

Rats are not covered, water is covered. So, insurance company is bound to pay. However, if you see at the cause of the incident is the rat but still the insurance company is bound to pay because of the causa proxima concept. The remote cause in this case is rats which is not a peril insured. So what? But the proximate cause is sea water which peril is insured against and thus the loss is recoverable.

It is a fight between the head and the heart. The heart will say well the rats are responsible; the insurance company should not have been paid. But head is saying different thing because it says the proximate cause and the proximate cause is sea peril loss due to sea water.

(Refer Slide Time: 19:33)

Law of Insurance

Insurable Interest

- In *Pink v. Fleming* (1899) 25 Q.B.D. 396, Lord Esher observed, "The question, which is the cause proxima of a loss, can only arise where there has been a succession of causes. When a result has been brought about by two causes, you must, in insurance law, look to the nearest cause, although the result would no doubt, not have happened without the remote cause." In the above case the ship collided with another ship, resulting in delay and mishandling of cargo of oranges which deteriorated. *Held*, that the damage to oranges was not direct result of collision (the peril insured against) but of delay and mishandling and as these causes were not insured against, the insured could not recover.
- Mitigation of loss
- Risk must attach

Another case exactly like this proximate cause, very important for insurance companies to find out the root cause and the proximate cause. In this case, the question is when a result has been brought about by two causes you must in insurance law look to the nearest cause, although the result would go would no doubt not have been happened without the remote cost. Same thing the judge says.

In the above case the ship collided with another ship. So, there was a collision. Ship collision is definitely a covered. It is a very common thing in a sea which is covered

in insurance. Ship collided with another ship. It may be in the port. Normally in the sea no one collides because you are plying on the sea you are going in different directions. It happens mostly in the ports.

So, ship collided with another ship, resulting in delay and mishandling of the cargo of oranges which deteriorated, oranges deteriorated. Held the damages to oranges was not direct result of collision but of delay and mishandling. As these causes were not insured against the insured could not recover. See, there was a collision between the two ships. The cargo was in question is oranges.

Now these oranges got deteriorated, damaged. The surveyor came and saw these oranges got deteriorate damaged not for the collision. What happened they were held in crates. And these crates originally when it was shipped, it was shipped properly. Now when it collided, it got displaced here and there. And all the helpers, workers inside the ship they were desperately trying to put the carrots in the proper places, crates in the proper places.

While doing so they mishandled. Some of the crates got broken. Some of the heavy materials were kept on top of the crates, heavy materials, and these got broken. Since this got broken, and the surveyor could take photos and find out that how can these heavy materials be put over the crates of oranges he could establish the fact that it did not happen for collision.

But it happened for mishandling and delay in handling of the ship crew and therefore it is not payable. Though collision is covered, collision is covered but the proximate cause was something else, mishandling, delay which was not covered. Hence, insurance claim is not payable. So proximate cause is so important to find out to find out whether at all the claim is payable or not.

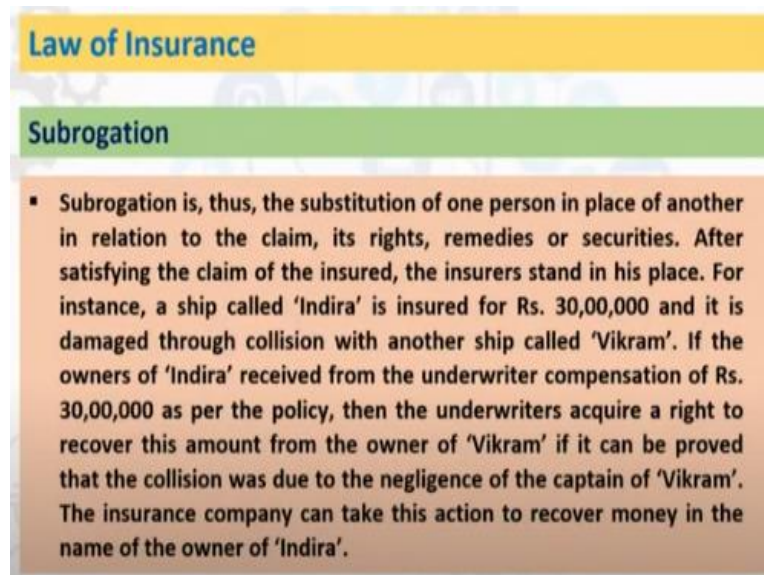
The other aspect of insurance is mitigation of loss, very important. The insured the moment the loss happens, the insured has two responsibilities, to inform the insurance company immediately the loss has happened. He should immediately inform the insurance company loss has happened. And second, as a judicious person, he should

make every effort to reduce the loss, to mitigate the loss, to minimize the loss, is his responsibility of the insured.

So, if there is a fire in a factory, many times the surveyor comes and says what happened after that? What actions you took? I could see the explanations you have given about the damage. How could the fire spread like this? Where were the firefighting operators doing? How much firefighting was done. So, if there are firefighting operators not there in the factory, then you are violating one of the conditions of factory to keep firefighting operations.

Have you taken the firefighting operations? Have you established without doubt that enough action has been taken to mitigate the loss? If not, then your claim gets reduced to a large extent.

(Refer Slide Time: 23:38)



Law of Insurance

Subrogation

- Subrogation is, thus, the substitution of one person in place of another in relation to the claim, its rights, remedies or securities. After satisfying the claim of the insured, the insurers stand in his place. For instance, a ship called 'Indira' is insured for Rs. 30,00,000 and it is damaged through collision with another ship called 'Vikram'. If the owners of 'Indira' received from the underwriter compensation of Rs. 30,00,000 as per the policy, then the underwriters acquire a right to recover this amount from the owner of 'Vikram' if it can be proved that the collision was due to the negligence of the captain of 'Vikram'. The insurance company can take this action to recover money in the name of the owner of 'Indira'.

The other important aspect is subrogation. It means stepping into the shoes of another. The insurance companies do it. Substitution of one person in place of another in relation to a claim. After satisfying the claim of the insured, the insurer stands in place of the insured. What does it mean? It means when there is a damage of a property insured by a particular insurance company with the insurance company, the insured will lodge a claim on the insurance company.

The insurance company after doing all the due diligence, checking mitigation, checking root cause, finding the exact damage, reducing the salvage, reducing

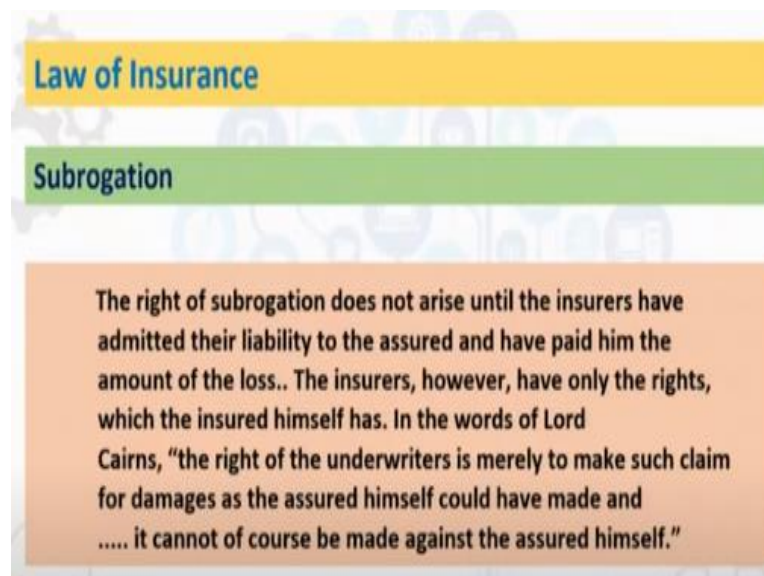
depreciation settles the claim. Once the claim is settled, then the insured has no further claim.

Now the insurer steps into the shoes of the insured and sees to it that these damage if has happened for someone or something against which claim can be lost, he will the insurance company will lodge the claim and realize try to realize the amount. Example, a ship called Indira is insured for 30 lakhs and it is damaged through collision with another ship called Vikram.

So, Indira got damaged with collision with another ship Vikram. If the owners of Indira received from the underwriter, means the insurance company compensation of 30 lakhs as per the policy. Of course, there is no deduction here of underwriter depreciation and salvage. It is a clear example as if 30 lakhs comes back as 30 lakhs. Then the insurer acquire a right to recover the amount from the owner of Vikram.

Now Vikram owner will be prosecuted or will be challenged, will be taken to court, will be actually been forced to pay or recover the damage that has been done to Indira. And that money will be recovered by the insurance company, not by the insured. Insured is first given the relief. Your claim is settled. Once that is settled, then insurance company steps into the shoes of the insured. That is called subrogation.

(Refer Slide Time: 26:06)



Law of Insurance

Subrogation

The right of subrogation does not arise until the insurers have admitted their liability to the assured and have paid him the amount of the loss.. The insurers, however, have only the rights, which the insured himself has. In the words of Lord Cairns, "the right of the underwriters is merely to make such claim for damages as the assured himself could have made and it cannot of course be made against the assured himself."

Of course, this right of subrogation will only arise after the insurers have admitted their liability to the assured and have paid him the amount of the loss.

(Refer Slide Time: 26:26)

Law of Insurance

Contribution

Contribution – Where a particular property is insured with two or more insurers against the same risk, it is called 'double insurance'. In the event of loss, the insured will get compensation only for the amount of actual loss. He will be compensated by the concerned companies on the basis of 'principle of contribution'. The insurers must share the burden of payment in proportion of the amount assured by each.

Contribution is double insurance. Many times, it happens that you get your property insured by two or more insurance companies. But that does not make you richer by a penny. When the claim comes, you will get exactly the damage that has happened to you, and they will proportionately share the burden. So, you even if you take 2, 3, 4 insurance company's premiums, pay premiums, you will get the same amount.

You cannot get more than what the damage is. The insurance companies will proportionately bear your loss.

(Refer Slide Time: 27:01)

Law of Insurance

Double Insurance

Example –

- X insures his ship against marine perils of Rs. 5,00,000 with A company and Rs. 3,00,000 with B company. This is double insurance.

Double insurance is subject to the principle of indemnity and therefore in the event of the loss, the insured will not be allowed to recover more than the actual of the loss, the insured will not be allowed to recover more than the actual loss from all the insurers together. Thus, if in the above example, the ship sinks, thereby resulting in a total loss and the value of the ship is Rs. 5,00,000 the insured cannot claim Rs. 8,00,000 (Rs. 5,00,000 + Rs. 3,00,000) but only Rs. 5,00,000.

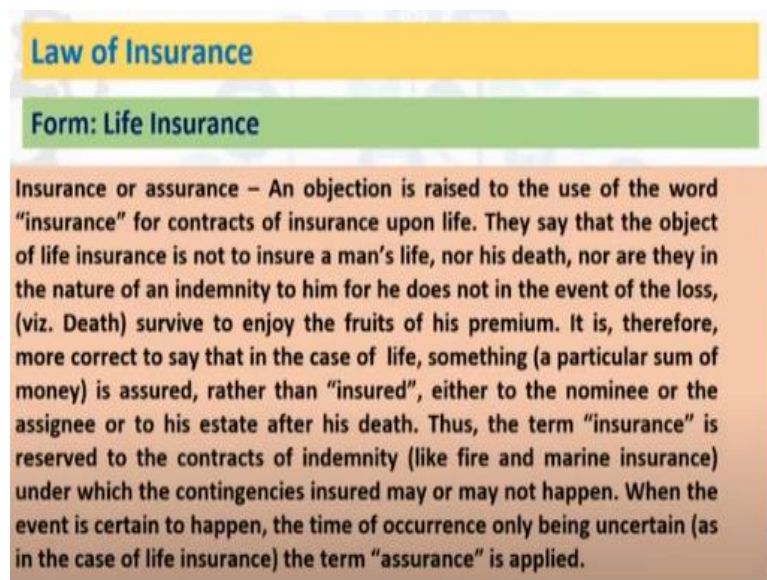
This is an example of how proportionately the double insurance gets shared.

(Refer Slide Time: 27:10)



Life insurance is basically nothing but a life assurance, where it is bound to happen. But still, it is an insurance because there is an element of uncertainty. Let us see each of these insurances.

(Refer Slide Time: 27:23)



Is an insurance or assurance. As I said, life insurance is more of an assurance. But in this case also it is a question of uberrima fides, utmost good faith. One has to disclose everything, because later on it may amount that life insurance would be questioned. Even then, the premium depends on the disclosure that the individual gives.

If the disclosure is insufficient, and because of something else unfortunately something happens the person, the insured passes away, then getting that premium

would be difficult because he has suppressed diseases because of which if death has happened.

(Refer Slide Time: 28:19)

Law of Insurance

Form: Life Insurance

- Life insurance not a contract of indemnity
- This distinguishes life insurance from other types of insurance.

Suicide – The life policies usually contain a clause that no payment shall be made in case the assured commits suicide. In such cases the insurer can avoid the liability. But, however, if the assured was insane and was incapable of appreciating the nature of his act, his self-destruction is not intentional and therefore the insurance company shall be liable on the policy in spite of the clause. Sometimes, the policies provide that they would become void only if the assured committed suicide within a particular period from the date of the policy.

(Refer Slide Time: 28:22)

Law of Insurance

Form: Life Insurance

- Assignment of life insurance policy (s.38 of the insurance act of 1938).

Life insurance policies are freely assignable like actionable claims. Life insurance policies are marketable commodities, which can be validly assigned with or without consideration, to persons who have no interest in the assured's life. Thus, life policies may be sold, mortgaged or settled.

(Refer Slide Time: 28:24)

Law of Insurance

Fire Insurance

- What is a fire – The term 'Fire' in a Fire Insurance Policy is interpreted in the literal and popular sense. There is fire when something burns. Thus, ignition is necessary to fire. Heating not accompanied by ignition is not fire. Loss or damage occasioned by fire means loss or damage either by ignition of the articles consumed, or by ignition of that part of the premises, where the article is. In one case there is loss, in the other case, a damage occasioned by fire. Damage from lightning is not included in the fire risk unless it causes ignition. The same is the case with electricity. Also, 'fire' does not include 'explosion' unless the explosion is caused by 'fire' or explosion causes fire (Stanley v. Western Insurance Co. L.R. 3 Ex.71).

Fire insurance is what the corporates look at for mitigating the risk as regards the various factories they have. And it is not fire insurance alone they do industrial all risk, IAR insurance, which a large part, chunk of it is the fire insurance policy.

(Refer Slide Time: 28:50)

Law of Insurance

Fire Insurance

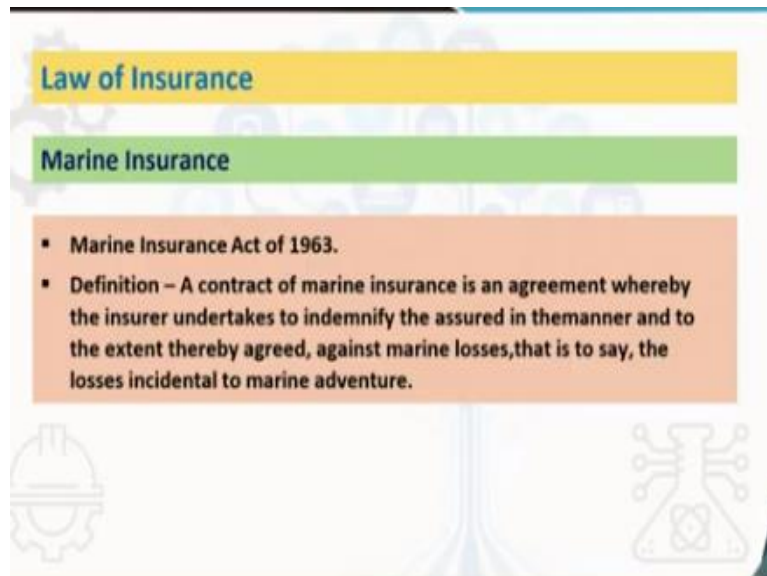
- The cause of fire is not material unless it is the deliberate act of insured himself or of someone acting with his knowledge or consent. Loss by fire, which is caused by the negligence of the insured, is recoverable. In Harris v. Poland (1941), 1 K.B. 462, she hid her jewellery under the coal in the grating near the fire-place. Having forgotten this, she lit the fire and jewellery was damaged. Held, she could recover under the firepolicy.

Fire insurance is a contract of indemnity and is also subjected to the principles of *uberimae fidei*, subrogation, and contribution.

But here again, the cause of fire is important to understand. Unless it is a deliberate act of the insured, all claims are payable, even negligence is payable in case of fire insurance. If you are negligent, because of your negligence fire has happened even then it is payable unless it is a deliberate negligence, then it is a fraud. There is an example of a lady jewelry she kept it near the fireplace.

That was a clear negligence, but still she got it because she did not do it deliberately. It was inadvertence and negligence. So, fire insurance case negligence is covered but not deliberate act.

(Refer Slide Time: 29:34)



Here also in case of fire insurance, disclosure of materials you are keeping in the factory, plastics you are mentioning in the factory, your power plants, your vegetations, your firewalls, your firefighting, all these equipment have to be in place before a comprehensive fire insurance policy is taken.

There are instances when insurance companies refuse to give insurance to certain companies when they find the practice are very risky. They are not run properly. There is every chance of an explosion in the factory. In that case they will not go for a cover of the policy. Because a premium is a peanut when explosion happens. Premium is nothing when an explosion can totally damage the factory and they are bound to pay.

Quantum of premium will not determine that. They are bound to pay if they have taken an insurance policy.

(Refer Slide Time: 30:25)

Law of Insurance

Marine Insurance

- The term Marine adventure includes any adventure where
 - (i) any insurable property is exposed to marine perils,
 - (ii) the earnings or acquisition of any freight, passage money, commission, profit or other benefit or the security for any advances, loans or disbursements is endangered by the exposure of insurable property to maritime perils,
 - (iii) any liability to a third party which may be incurred by the owner of or other person interested in or responsible for, insurable property by reason of maritime perils [s.2(d)].

Many insurances is a contract which covers all cargo movement, the sea cargo movement, which happens and it is a costly insurance and it is a risky insurance because movement in the sea and that to 45, 60, 70 days, 90 days is every hour every day is risky. And there is uncertainties galore. And the claims come very big. It is not small claims, large claims come.

So, there are separate insurance policies for that. The premiums are quite high. And it is always under you know constant monitoring. Various losses that has happened in the past of insurance companies, large amount goes for meeting marine insurance losses.

(Refer Slide Time: 31:20)

Law of Insurance

Marine Insurance

- Insurable property is defined by s.2(c) to include any ship, goods or other movables which are exposed to maritime perils.
- Maritime perils [s.2(e)]. The term "maritime perils" is the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures and seizures, restraints and detentions of princes and peoples, jettisons, barratry and other perils which are of the like kind or may be designated by the policy. "Perils of the Seas" refers only to fortuitous accidents or casualties of the sea and does not include the ordinary action of the wind and waves.

Maritime perils. These perils include fire, war perils, pirates, robbers, thieves, captures, seizures, even you know piracy is something of a cover, which is a very high premium, but some companies are bound to take because the route they take, the route they take, the dreaded route they take, there are chances of pirate attacks. Seizures.

Few days back only there was an incident in with three or four ship members were shot dead by the pirates inside the ship. So, these kinds of things happen though they may not happen often but these kinds of things happen.

(Refer Slide Time: 32:10)

Law of Insurance

Types of Marine Insurance

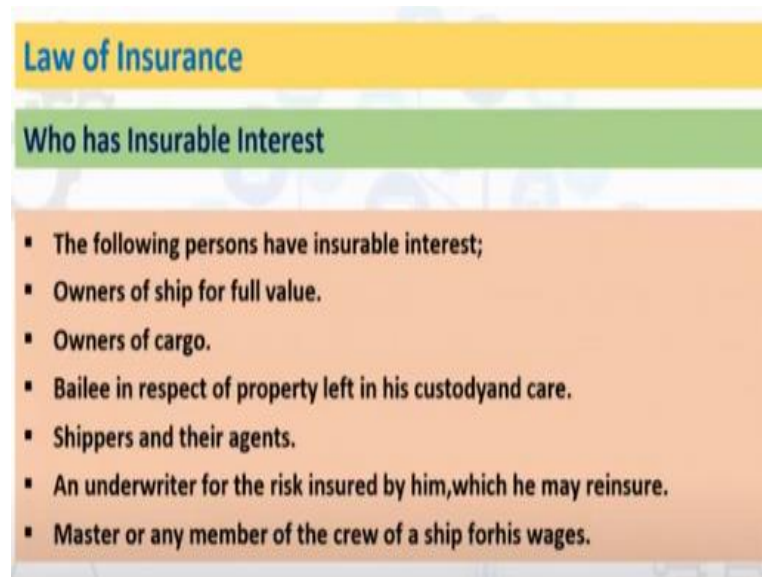
- **Voyage Policy**
Where the contract is to insure the subject-matter "at and from" a place, or from one place to another or others, the policy is called a voyage policy
- **Time Policy**
A policy that covers a specified period of time is called "Time Policy". A "time policy" cannot be taken for a period more than twelve months (s.27).
- **Valued Policy**
A valued policy is a policy, which specifies the agreed value of the subject-matter. In the absence of fraud, the value is conclusive as between the assured and insurer, except for ascertaining 'constructive total loss' (s.29).

And marine policy is a very tricky policy. Lot of terms are to be understood here. It can be two ways done. It can be done as a voyage basis from one destination, port of call to the port of destination, port from the, port from which sail to the port of destination. That is one which is called the voyage policy. The other is called the time policy. Take it for a whole year.

Whatever we the number of voyages, the policy is taken for a period from 1st January to 31st December. How many voyages, where it is going, all are covered. And the other is specific voyage basis policy. From one place to another place is called the voyage policy or time policy. There is another policy which is valid policy to keep a cap on the value that this money amount of marine policy cover we will give, this much amount.

Say 100 crores, 200 crores, 500 crores. That much is the value policy. The moment it covers that, the policy stops. Fresh policy has to be taken.

(Refer Slide Time: 33:11)



Who has insurable interest? Owners of the ship has insurable interest. Owners of the cargo has got insurable interest. Shippers and their agents have got insurable interest. Master or member of the crew have got insurable interest. Underwriters have got insurable interest. So many persons have got insurable interest. But the most important person is the master or the captain of the ship.

He is practically the power of attorney holder for all the other persons having insurable interest when the ship is on the sea. He can take any decision he wants. If he wants to take the ship to the nearest port for safety security reasons, he can deviate from the route. Deviation of route in a ship is very costly. It is not like car deviation; you move from this road you go to the other road.

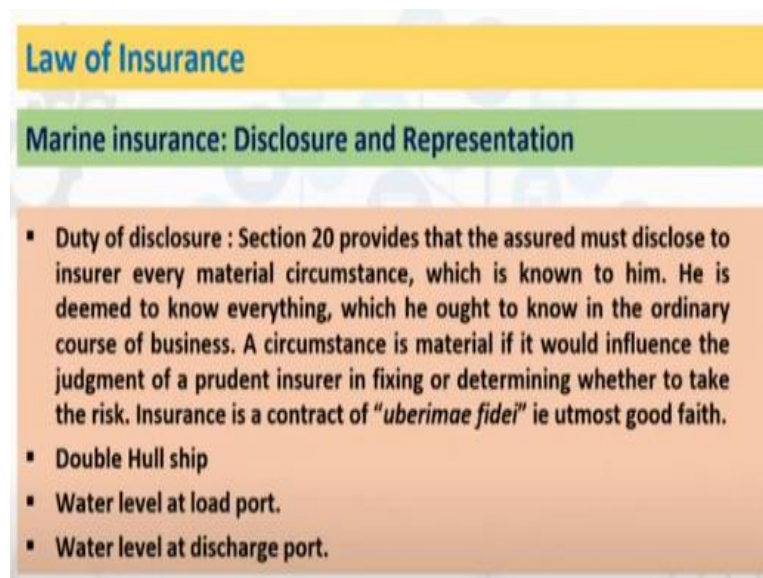
For ship deviation means huge amount of burning of oil, huge expenses, and there can be demurrage also. Huge demurrage expenses. Demurrage means waiting charges. Even then, such a costly affair, the sole authority decision making is on the captain of the ship. He will command, he will say whether it is required or not.

And sometimes it is done for protecting the interest of the owners, cargo, the cargo, the ship, if it is in damaged condition and of course the health of the crew members

requiring emergency attention. So, in all those cases if he deviates and he incurs losses, even that is covered, marine policy that is covered.

Only thing it has to be a situation like that which demands that deviation. The insurance company would like to understand why it happened.

(Refer Slide Time: 35:00)



Law of Insurance

Marine insurance: Disclosure and Representation

- Duty of disclosure : Section 20 provides that the assured must disclose to insurer every material circumstance, which is known to him. He is deemed to know everything, which he ought to know in the ordinary course of business. A circumstance is material if it would influence the judgment of a prudent insurer in fixing or determining whether to take the risk. Insurance is a contract of "*uberimae fidei*" ie utmost good faith.
- Double Hull ship
- Water level at load port.
- Water level at discharge port.

Disclosure is very important. Many insurances of water level at port, water level at the load port, water level at the discharge port. Because ships cannot come into the port unless there is enough bar, I mean depth of the sea for it to come. Panamax vessels, Aframax vessels, they continuously face this problem of berthing in Indian ports. Of course, not ports like Mundra and others.

But Calcutta ports, Haldia ports, these are huge difficulty in berthing of big Panamax and Aframax vessels, even today. Dredging is done but still this is difficulty. Because ships, floor of the ship, the bed of the ship can get hurt and it can be a damage on the ship hull, which will be a huge cost. And it is responsible for the port to give a safe berth to all the ships.

So, water level at the load port and discharge port. Then again, whether it is a single hull ship or a double hull ship, disclosure is very important. If you are carrying oil, it should always be a double hull ship. If you have gone for a single hull ship, and you have not disclosed that to the insurance company, your premium will be, your premium also will be low and your risk will be very high.

They may not pay your claim at all. Because you are supposed to take a double hull ship you are carrying oil. But to save premium you have said second hull, I mean single hull ship you have mentioned and you have carried that as a single hull ship. Then in that case, your loss your risks actually would be under the scanner, you may not be paid for the risk.

(Refer Slide Time: 36:25)

Law of Insurance

Warranties

- According to s.35(1) of the Marine Insurance Act, warranty is an undertaking by the assured that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts. A warranty may be expressed or implied.
- Express warranties :
"Express warranties" are those, which are expressly mentioned in the policy or incorporated in some document, referred to in the policy.

(Refer Slide Time: 36:29)

Law of Insurance

Warranties

- Implied warranties – "Implied warranties" are those warranties, which are presumed to be present in every contract of marine insurance unless excluded by express words to the contrary. These warranties are :
 1. Warranty of seaworthiness - In a voyage policy there is an implied warranty that the ship will be seaworthy at the commencement of the voyage for the particular adventure insured. Where the voyage is "Seaworthy" means that the ship is reasonably fit in all respects to encounter the ordinary perils of the seas as regards the adventure insured. In a voyage policy on goods there is an implied warranty that the ship shall at the commencement of the voyage be seaworthy as a ship and also that it will be reasonably fit to carry the goods to the agreed destination (s.42).

Warranties are there of the ship's worthiness, of the route.

(Refer Slide Time: 36:32)

Law of Insurance

Warranties

2. Warranty of legality of voyage – There is an implied warranty in all marine policies that the adventure is lawful and that it shall be arrived out lawfully, in so far as the assured is able to control it (s.43). But, where the master of crew, without the knowledge of the owner, indulge in unlawful activities, the contract will not become void on this ground.

Of the legality of the voyage.

(Refer Slide Time: 36:35)

Law of Insurance

Voyage and Deviation

- Where the place of departure is specified in the policy, the ship must sail from that place. If it sails from any other place, the risk does not attach (s.45)
- Where the destination is specified in the policy and ship sails for a destination other than the one specified, the risk does not attach (s.46).
- Unless the policy otherwise provides, if after the commencement of the risk, the destination is voluntarily changed, the insurer ceases to be liable as from the time of change (s. 47).
- Unreasonable delay in the prosecution of the voyage discharges the insurer from liability (s.50).

If any deviation is done for unforeseen circumstances, force majeure situations, that is acceptable.

(Refer Slide Time: 36:42)

Law of Insurance

Voyage and Deviation

- Deviation when excused - A ship is permitted to deviate from the prescribed voyage, or, when no voyage has been prescribed by the policy, the customary route, under the following circumstance:
 1. Where allowed by any special term in the policy;
 2. Where caused by circumstances beyond the control of the master or his employees;
 3. When the master of the ship finds that, in order to make the ship seaworthy, the ship must be rushed to the nearest port of refuge;

The captain has to take the call, the master of the ship.

(Refer Slide Time: 36:46)

Law of Insurance

Voyage and Deviation

4. Where necessary to ensure safety of the ship or the subject matter insured;
5. For the purpose of saving human life or a ship in distress, when loss of life is feared.
6. Where reasonably necessary to obtain medical or surgical aid for a person on board.

Where it is necessary for the safety of the ship, human lives, medical help, he is bound to take and he is protected and, in that case, also insurance company agrees.

(Refer Slide Time: 36:57)

REFERENCES

- <https://legislative.gov.in/sites/default/files/A1872-09.pdf>
- Peel, E., and Treitel, GH. (2011). Treitel on the Law of Contract (13th ed, Sweet & Maxwell)
- Poole, J (2014). Casebook on Contract Law (12th ed, Oxford University Press.
- Stone R and Devenney J. (2014). Text, Cases, and Materials on Contract Law (Third edition, Routledge
- Stone, Richard. (2009). The Modern Law of Contract (8th ed, Routledge-Cavendish.
- Taylor RD and Taylor D. (2013). Contract Law, vol Directions (4th ed, Oxford University Press.

If something happens because of the deviation, he meets with an accident, then insurance company cannot say why the deviation happened? And since the deviation happened this damage has happened. No, if there is a reason for that captain has deviated and the damage has happened, still the claim lies.

Before I end, I must talk of one insurance which is a currently talked about insurance, most talked about insurance is Directors and Officers Liability Insurance, D&O insurance. It is a newest insurance policy, but is taken by all companies because of the enormous responsibilities and risks associated in governance of companies.

So, it is especially cut out for the directors including the independent directors and the officers of the company like the key managerial personnel, the managing director, the chief financial officer and the company secretary and other officers who are responsible for the day-to-day actions of the company. They are all protected in case any court case is filed, any claims, any damages, any penalties are imposed on them.

These insurance company takes care except where it is by fraud or something to do with a criminal breach. Other than that, civil breaches, non-filings, any prosecution, anything which happens normal course, then in those cases penalties are given, I mean awards are given against all these are covered by D&O insurance.

However, environmental loss, breaches, breaches of sexual harassment, whistleblower all sorts of things which are of the nature of fraud, which are of the nature of

deliberate nature, these are not covered. But in the regular course of business so many decisions are taken, if anything backfires, claims come, directors are held responsible, companies are held responsible and companies are penalized, in those cases the Directors and Officers Liability Insurance can be invoked and the damages can be made are to be made by the insurance company.

So, this is the newest in the Indian corporate and almost all companies have taken Directors and Officers Liability Insurance to come out of this. That brings an end to this insurance session. I have taken references from some of these books, but as I always continue saying the same thing it is all from my experience of working for so many years and also looking into the various aspects.

(Refer Slide Time: 39:26)

CONCLUSION

In this lecture discussion has been made on law of insurance including essential requirements of insurance, general principles, form of insurance, who has insurable interest and voyage & deviation with an aim to have a detail idea on insurance to the learners.

Thank you so much. Wish you all a very good time ahead. Thank you.