

LL.M. THIRD SEMESTER: OE3.1: INSURANCE LAW

Objectives of the course: As early as in 1601 one finds an excellent exposition of the insurance idea expressed in these words of an Act of British Parliament "the loss lighted rather easily, upon many than heavily upon few". The insured person transfers from his own shoulders to the insurers, who, in return for agreeing to assume a potential risk of loss receive a payment known as premium. The insurers rely on the probability that only some of the losses, they insure against will in fact occur within any given period. They calculate, therefore, that they will be left with a profit. The insurer, on the other hand, is better able to risk his capital in trade since he knows that certain events which he cannot control, such as fire, shipwreck, will not cause him to lose his investment.

The insurance idea is an old-institution of transactional trade. The age old form of insurance was the marine insurance. There is nothing like disaster to set men's minds to work. Consequently, in due course of time fire and life insurance, made their appearance. Within the last hundred years the insurance principle is being extended wider. Today one finds insurance cover for accidents, motor vehicles, glass, live stock, crop, burglary and various other disasters.

Insurance is a device not to avert risks, calamities and disasters; but to mitigate their rigours and financial losses. The function of insurance is to spread such loss arising from risks of life over a large number of persons. The operational framework of insurance idea is provided by the general principles of contract. The insurance policy, being a contract, is subject to all the judicial interpretative techniques. Besides, the insurance idea has a compensatory justice component. This brings it in the arena of the law of tort as well. It is even suggested that a fully grown and developed law of insurance may, if not totally displace, decrease the significance of the law of tort.

This course is designed to acquaint the students with the conceptual and operational parameters of insurance law in the context of the development of the general principles of law and judicial interpretation to inform the students about the use of law for the establishment of "just" order in insurance and to develop the appreciative and evaluative faculties of the students. The following syllabus prepared with the above perspective will be spread over a period of one semester:

UNIT – I: Introduction, Nature of insurance contract, various kinds of insurance, proposal, policy, parties, consideration, need for utmost good faith, insurable interest, indemnity; Insurance policy, law of contract and law of torts-future of insurance : need, importance and place of insurance; Constitutional perspectives- the Entries 24,25,29,30,47 of List 1 Union List; 23, 24, of List III

UNIT – II: General Principles of Law of Insurance, Definition, nature and history, The risk - commencement, attachment and duration, Assignment and alteration, Settlement of claim and subrogation, Effect of war upon policies; Indian Insurance Law: General, History and development, The Insurance Act 1938 and the Insurance Regulatory Authority Act, 2000; Mutual insurance companies and cooperative life insurance societies; Double Insurance and re-insurance.

UNIT – III: Life Insurance, Nature and scope, Event insured against life insurance contract, Circumstances affecting the risk; Amounts recoverable under life policy, Persons entitled to payment, Settlement of claim and payment of money; Marine Insurance, Nature and Scope, Classification of marine policies, The Marine Insurance Act, 1963; Insurable interest, insurable value; Marine insurance policy - condition. - express warranties construction of terms of policy; Voyage-deviation, Perils of the sea, Assignment of policy, Partial laws of ship and of freight, salvage, general average, particular charges; Return of premium

UNIT – IV: Insurance Against Accidents; Property Insurance; Fire insurance; The Emergency Risks (Factories) Insurance; The Emergency Risks (Goods) Insurance; Policies covering risk of explosion; Policies covering accidental loss, damage to property; Policies covering risk of storm and tempest; Burglary and theft policies; Live stock policies; Goods in transit insurance; Agricultural insurance; Insurance against Third Party Risks, the Motor Vehicles Act, 1988; Professional negligence insurance; Group life insurance; Mediclaim, sickness insurance

Select Bibliography

1. John Hanson and Christophals Henly, All Risks Property Insurance (1999), LLP Asia, Hongkong.
2. Peter Mac Donald Eggers and Patric Foss, Good Faith and Insurance Contracts (1998) LLP Asia, Hongkong
3. Banerjee, Law of Insurance (1994), Asia Law House, Hyderabad.
4. Mitra B.C, Law Relating to Marine Insurance (1997) Asia Law House, Hyderabad
5. JCB Gilmar and Mustill, Arnold on the Law of Marine Insurance, (1981), Sweet & Maxwell
6. Birds John, Modern Insurance Law, (Sweet & Maxwell London, 1997)
7. Robert Ed Merkin: Colinvaux's Law of Insurance, (Sweet & Maxwell Publication, London, 1990)
8. O'Mary on Marine Insurance (1993), Sweet & Maxwell.
9. International Labour Office, Administration Practice of Social Insurance (1985)
10. E.R. Hardy Ivamy, General Principles of Insurance Law, (Butterworth's Publication, London, 1986)
11. Edwin W. Patterson, Cases and Materials on Law of Insurance (1955)
12. M. N. Sreenivasan, Law and the Life Insurance Contract, 9th Edn, (Butterworth's Wadhwa Nagpur 2004), Pp. 1439.
13. Avtar Singh, Principles of Insurance Law, 7th Edn, (Wadhwa Nagpur 2004), Pp1569.
14. Kumar's Insurance Laws, 7th Edn, (Law Publisher (India) Pvt. Ltd 2000), Pp1109.
15. Murthy & K V S Sarma, Modern Law of Insurance, 4th Edn., (Butterworth's Wadhwa Publications, 2009, Nagpur), Pp. 605.
16. Parkington & McGallivray, Insurance Law, 1st Edn, (Sweet and Maxwell, London, 1998)