SOUTHWESTERN UNIVERSITY NIGERIA

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LECTURE NOTE

ON

INTRODUCTION TO INSURANCE (BUA 317)

Lecture I

Historical Development of Insurance

Introduction

The origin of the concept of insurance is traceable to the business practices adopted by Italian merchants in the beginning of the 14th century which was similar in structure to modern day insurance practices. The risks associated with shipping of goods facilitated the evolution of risk insurance policy. Overtime, the popularity of the practice increased. The practice spread to London which was the then hub of maritime business. The practice essentially involved merchants entering into agreement to bear the risk inherent in movement of goods. They also resolved trade related disputes according to the custom of their trade. In 1601 on the instigation of merchants, a chamber of assurance was established by statute to regulate insurance business.

By mid 18th century, Lord Mansfield introduced reforms which culminated in the common law court applying principles derived from the trade customs of merchants and the traditional common law concepts to resolve matters arising from contracts of insurance.
With time, the jurisdiction of the court over insurance matters became firmly entrenched. Marine insurance was the pioneer type of insurance and was predominantly operated at a coffee shop belonging to a man called Lloyd. The practice was that any merchant desiring insurance cover would circulate a piece of paper requesting for cover from any of the persons present. The slip of paper provided information about the ship, the voyage plan, details of the cargo and other particulars they deemed necessary. Willing insurers initialed the slip. When the aggregate target of the insurance required was underwritten, the contract of insurance was deemed to have been perfected. Over the years Lloyd expanded his business and became the global leader in the issuance of insurance policies especially marine insurance policies. The principles adopted in the course of carrying on marine insurance business have influenced other classes of insurance business including fire insurance and personal accident insurance.

Pre- Independence

During the pre-colonial era in Nigeria, indigenous people, tribes and communities practiced some form of insurance. Age grades, tribal associations, communal associations and social clubs in return for members paying some form of dues were assured of the support of other members in times of adversity like failed harvest, deaths ailment etc. Levies were imposed and donations sourced to ensure that such members were protected and provided for adequately. Aggregate communal resources were often utilized to bail out members suffering from calamities. This could be held analogous to insurance practices.

Modern Insurance

Modern day insurance practice was introduced to Nigeria by foreign merchants trading in goods from European countries. Insurance companies in Europe extended the risk cover provided for such merchants to their trading activities in Nigeria. These insurance companies subsequently appointed agents in Nigeria to transact business on their behalf locally. These Nigerian agencies later metamorphosed into local branches of the parent insurance companies in Europe.

Independence

After the Nigerian Independence in 1960, Nigerian insurance companies were registered to operate in Nigeria and grew from one to twenty five by 1970, there was in existence in Nigeria over one hundred and fifty insurance companies. The expanding insurance business started providing a wide range of services including product liability insurance, workmen compensation insurance, goods in transit insurance as well as bond, credit and suretyship insurance.

Growth of Insurance Business

Due to the lucrative or profit assured nature of insurance business insurance sprung up all over Nigeria. Many insurance companies relying up poor regulation encouraged dishonesty lack of accountability in the sector. Fraudulent business men took advantage of the illiteracy and poverty which was prevalent in Nigeria to sell bogus insurance policies. Public outcry necessitated government intervention in 1976, the insurance Act was enacted. It aimed at strict regulation of insurance business in Nigeria with a view to flushing out miscreants in the sector and revoking the licence was the insurance licence of the companies that were not viable.

Insurance Act

The Insurance Act applies to all insurance businesses and insurers other than insurance business carrier on or by insurers of the following description:

(a) A friendly society or association of persons established for the purpose of aiding its members or their dependants

(b) A company or body corporate or unincorporated association established outside Nigeria engaged solely in reinsurance transaction with an authorized insurer pursuant to this Act.

Classification of Insurance

There are two major classification of insurance - life insurance and general insurance

Persons Who May Carry on Insurance Business in Nigeria

No person in Nigeria is authorized to carry on any class of insurance business in Nigeria except

(a) A company duly incorporated as a limited liability company under the companies and allied matters Act

(b) A body duly established by or pursuant to any other enactment to transact the business of insurance or reinsurance (See Section 3 of the Insurance Act).

Insurance to be Registered

No insurer is allowed to commence insurance business in Nigeria unless the insurer is registered by the Commission under the Act - See section 4(1) of the Act.

Where the Commission is satisfied that it is not in the public interest or the interest of the policy holders or persons who may become policy holders the company will not be register – see section 4(2) of the Act.

Cancellation of Registration

Cancellation of registration may be done by the Commission for several reasons ranging from non-compliance with the insurance Act, failure to comply with the stipulated margin of solvency in the insurance act, carrying out an insurances business and an alternate business which is detrimental to the insurance business failure to pay claims promptly to bankruptcy of the insurer – see section 8 of the insurance Act.

The growth of the insurance sector has introduced specialized practices in specific sectors e.g. the Nigerian deposit insurance corporation (NDIC) which insures banks' deposit, the Nigerian Social Insurance Trust Fund (NSITF) which provides annuity insurance and ancillary pension services.

Lecture II

Nature of Insurance

Definition of Insurance

Section 102 of the insurance Act, 2003 however provides that insurance includes “Assurance”. Insurance has been described as a transaction in which the insurer (the insurance company) for a certain consideration (premium) promises to reimburse (indemnify) the insured or render services in the case of certain accidental losses suffered during the subsistence of the agreement.
Insurance is incapable of being specifically defined. In Department of *Trade and Industry v St Christopher Motorist Association Ltd* (1974) AIIER 395 Templeman J opined that it was undesirable that there should be an all embracing definition because of the tendency to obscure and occasionally exclude that which ought to be included.

Insurance Contract

The insured receives a contract called insurance policy which stipulates the conditions and circumstances under which the insured will the financially compensated. In most cases, the policy holder pays part of the losses referred to as the deductible while the insurer pays the rest e.g. car insurance, health insurance, disability insurance, life insurance and business insurance.

Characteristics of Insurance Contract

A contract of insurance has the following characteristics:

· Dependence on the happening of a specified event which must be uncertain or fortuitous
· There must be an insurable interest in the subject matter of the insurance.
· There must be a legal duty or obligation to pay an agreed sum on the happening of the contingency or specified event.

Insurance is distinct from a wagering contract (gambling) because an insured has an insurable interest in the subject matter of the insurance while a wager (gambler) has no other interest apart from his stake. It is the risk of loss that motivates an insured to enter into a contract of insurance while a wager creates the risk he hopes to take advantage of. Wagering contracts are null and void under section 56(1) of the Insurance Act 2003.

Types of Insurance

Insurance transactions are as varied as the vicissitudes sought to be insured against. They include:

(a) **Automobile or Motor insurance**: it is the commonest form of motor insurance. It may cover legal liability claims against the driver and loss or damage to the vehicle

(b) **Health Insurance:** It covers medical bills incurred as a result of illness, injury or accident which impacts on the health of the insured.

(c) **Life insurance:** Provides for family members and other named beneficiaries to make up for loss of the insured's income

(d) **Fire insurance:** it is usually taken to indemnify the insured against loss of property due to fire outbreak.

(e) **Credit insurance:** It provides payment for some or all loans back where the borrower either due to unemployment, disability or death is unable to pay.

(f) **Annuities:** Annuities and pensions provides for the payment of benefit for life. It insures against the possibility that a retiree will outlive his financial resources.

A single policy may cover multiple risks

Types of Insurance Company

Insurance companies are usually classified into two as follows:

(i) **Life Insurance Companies**: Companies which sell life insurance, annuities and pensions products.

(ii)**Non Life or general insurance companies**: Other types of insurance apart from life insurance
Insurance companies are further distinguished into reinsurance companies which consists of insurance companies which provide cover or insure other insurance companies against loss and brokers.

Brokers are paid a fee by the customer to shop around for the best insurance policy among many companies

Criticism of Insurance Companies

Insurance companies have been criticized on the basis that the financial security it offers encourages risk taking by the insured.

It is exploitative. To reduce their financial exposure, insurance companies have contractual clauses either limiting or excluding their liability from providing cover from liability ordinarily insured against.

Due to the intricacies in insurance contract, issues of fees, regulation and risk coverage are poorly negotiated by them and they are often preyed on by insurance companies.

The insured is sometimes made to pay higher premium premised on marital status, occupation and level of education without proper data to show that such status makes the insured more predisposed to the risk insured against.

In some insurance transactions like Health insurance in spite of assurances, the insured is deprived of the best available health care due to the conflict between the maintenance of a healthy profit margin by the insurer and the need to ensure that the insured stays healthy. This conflict has often degenerated to wasting time and expense on litigation by the insured and insurer. Many countries have nationalized their health sector as a healthier method of dealing with this conflict. In Nigeria, the National Health Insurance scheme Act was enacted in May 1999 with the objective of ensuring access to good healthcare service to every Nigerian and protecting Nigerian families from financial hardship of huge medical bills and other related matters. It has been dogged by allegations of inefficiency and compromising the health of the populace. In spite of the above criticisms of insurance, it is incontrovertible that there is solace in providing coverage for future risks.

Lecture III

Functions of Insurance

Introduction

Insurance is the provision of security against pecuniary losses that can arise on the happening of an unforeseen event. It is a shield against financial storm it is to restore you as much as possible to the same condition the insured was before the occurrence of the loss insured against.

Individuals have tangible assets e.g. houses, cars, factories and ships or intangible assets e.g a singers voice can be insured because they risk becoming non-functional on the occurrence of a disaster or an accident. To ensure security against future losses or risk is the primary function of insurance. However there are secondary and other functions.

Primary Functions

(i) Providing protection is the elementary function of insurance. This is in order to provide security against future risk, or accidents. Although insurance cannot prevent or arrest risk, it cushions the loss by providing economic cover by sharing the risk with others;

(ii) Collective risk bearing by insurance ensure financial loss is shared or divided among larger number of people.

(iii) Risk evaluation by insurance fixes the likely volume of risk by assessing diverse factors that give rise to risk. Risk is the basis for ascertaining the premium that is payable on an insurance policy.

(iv) Provision of certainty by insurance, changes uncertainty to certainty.

Secondary Functions

(i) Preventing losses by insurance assists to warn individual and businessmen to prevent unfortunate aftermath of risk by observing safety instructions, installation of alarm system.

(ii) Covering larger risks with small capital by insurance provide business with security of investment

(iii) Insurance helps in the development of larger industries by affording them the opportunity to grow by covering their risk.

(iv) Insurance provide risk free trade with the issuance of a variety of policies under the marine insurance cover.

(v) It is a medium of earning foreign exchange through insurance polices

(vi) Insurance functions as a savings and investment tool by restricting unnecessary expenses by the insured and enables him also take advantage of income tax exemptions.

Lecture IV

Insurance Underwriting

Introduction

Underwriting is the process utilized by large financial service provider to assess the eligibility of a customer to receive their products. The name “underwriting” originated from the practice of the Lloyd’s of London. Insurance market financial bankers who in exchange for a premium would write their names under the risk information written on a Lloyd’s slip created for the purpose.

Insurance Underwriting

Insurance underwriting involves the evaluation of the risk and exposure of potential clients. Insurance underwriters evaluate how much coverage a client should receive, how much they should be paid for it and whether the insurer should accept the risk and insure them. The function of the underwriter is to enhance the profit of the insurance company by protecting it from risks that they estimate will make a loss. Underwriting is essentially the process of issuing insurance policy

Factors to be Considered In Insurance Underwriting

The factors to be considered in insurance underwriting depend on the risk. Each insurance company has its own set of underwriting guidelines in the determination of whether or not to underwrite the risk. For example in a motor vehicle insurance the factors to be considered would include the age of the car, the drinking habit of the driver, the use to which the vehicle is put, the goods carried by the vehicle e.g. if it is utilized for the carriage of inflammable materials, higher premium would be required to be paid. The health of the driver will also relevant.

Duties of the Underwriter

Underwriters are essential to insurance transactions. They assist insurance companies to:

(a) Protect the insurance company from acquiring business that is not profitable

(b) Advising the company on the risk to provide coverage

(c)Provide the company with an equitable policy which can be sold

(d) Designing programs for individuals and corporations in search of protection.

(e) Analyzing information on insurance application to assess the acceptability of the risk.

(f) Risk assessment and classification of risks into classes for the purpose of determining the premium to be paid

(g) Conduct independent investigation of applicants.

(h) Setting policy terms and conditions for each risk accepted

(i) The underwriter owes fiduciary duties to the insurer.

Liability of the Underwriter

An underwriter is liable for failure to state a material fact in a registration form which compromises the insurer.

Lecture V

Formation of Insurance Contract

Introduction

The essentiality of an insurance transaction is risk coverage and indemnity and discussed in the previous module. It is necessary to understand the meaning of the contract of insurance and what constitutes an insurance offer and acceptance and the obligations and rights exercisable in an insurance contract to render it valid.

The insurance contract is subject to the general rules regulating contractual obligations which requires offer, acceptance, valuable consideration and an intention to create legal relations or a binding legal contract between parties to an insurance transactions with full knowledge of all related materials facts

Insurance Contract

An insurance contract is a contract whereby for a specified consideration, one party undertakes to compensate the other for loss relating to a particular subject as a result of the occurrence of designated hazards.

In an insurance contract, one party referred to as the insured or assured, pays a specified amount of money called a premium to another party, the insurer who in turn agrees to compensate the insured for specific future losses. The losses covered are listed in the contract and the contract is called a policy.

Offer and Acceptance

An offer to enter into an insurance contract may be made by a prospective insured or by an insurer. The insurer could make the offer by stating the premium payable in respect of a risk proposed to be insured and invite the insured to accept it. The insured could accept by signing the proposal form. Where it is an e — form, the insured acceptance would be by clicking the appropriate button indicated on the form.

The agreement for an insurance policy usually consists of the nature of the risk, duration of the risk covered and the amount to be paid as premium. In practice most insurance proposal forms stipulate that the offer is subject to the insurer’s usual terms and conditions. Where the insured accepts, the transaction is concluded and the agreed premium starts to run.

Counter Offer

Where it is agreed between the parties that the acceptance of the insurance proposal is subject to the payment of the first premium, it implies that either party should be free to withdraw until the payment of the premium which constitutes the acceptance. This generally constitutes a counter offer and there is no binding contract pending the payment of premium.

In *Canning v Farquhar (1886) 16 QBD 727* a proposal for life insurance was "accepted on December 12 on the terms that no insurance was to take effect until the first premium was paid. The premium was tendered on January 9, but four days previously, the proposer had fallen and suffered serious injuries from which he subsequently died. The Court of Appeal held that the insurer was not bound.

Similarly in *Industrial And General Insurance Company Limited v Kechinyere Adogu (2010) 1 NWLR (PT1175)* 337 the court held that the receipt of an insurance premium is a condition precedent to a valid contract of insurance and there is no cover in respect of an insurance risk unless the premium is paid in advance. In other words a valid insurance contract is made when a premium for insurance is paid in advance.

In the instant case, the Mercedes Benz car was insured on December 18, 2002 for a term of twelve months for a premium of N520, 000. 00 in which a deposit of N220, 000. 00 was paid. The car was robbed at gun point on February 15, 2003. At the time of the robbery, the Respondent had not paid up the premium of N520, 000 she was supposed to pay at the time the contract was entered into. Two days after the robbery incident, the Respondent went back to the Appellant to pay the second instalment of N300, 000 to complete the payment of the premium. The court held that at the time of the robbery, there was no valid contract of insurance between the parties as the payment of premium which was a condition precedent was not fulfilled.

Premium

Premium is the periodic payment made on an insurance policy by the insured. It is what entitles the insured to a claim against the insurer in the event of the occurrence of the risk insured against.

Cover Note

On the completion of a proposal in respect of an insurance policy by the insured, the insurers may be desirous of studying the proposal to come to a finding as to whether or not to accept the risk to be insured. In the interim, the insured may need an immediate insurance cover as a temporary cover. The temporary cover is referred to as cover note.

Lecture VI

Parties to an Insurance Contract

Introduction

An insurance contract is comprised of two principal parties — the insurer and the insured. It could also be a tripartite agreement involving third parties or beneficiaries. The parties to an insurance contracts and the consideration to be paid are always specified and the beneficiaries of the transaction are also agreed between the parties.

Insurer

An insurer is a person who carries insurance risk and is recognized as duly established to transact the business of insurance or reinsurance by the National Insurance Commission (NAICOM) which was established pursuant to the National Insurance Commission Act 1997. Persons who may commence or carry on insurance business in Nigeria are stated in section 3 of the Insurance Act Cap 117, Laws of the Federation of Nigeria 2004 to include:

(a) a company duly incorporated as a limited liability company under the Companies and Allied Matters Act 1990

(b) a body duly established by or pursuant to any other enactment to transact the business of insurance or reinsurance.

Insured

The insured is a person who takes out an insurance policy to protect himself and named persons or objects in the policy against the happening of a risk or incident. An insured can be a natural or artificial person i.e. corporation.

Parties

Some insurance transactions may involve more than two parties. In other words, third parties may be involved in insurance transactions e.g. in life insurance policies. The insured may be different from the person insuring. In other words, the beneficiary of the insurance policy could be a third party.

Third Parties

Where third parties are involved in an insurance contract, the insured can take out an insurance to provide indemnity for bodily harm or death occasioned to such third parties and may also include damages to movable and immovable properties belonging to third parties.

A contract of insurance affects parties to it. It cannot be enforced by or against a person who is not a party even if the contract is made for his benefit. Even if its established that an insured took up a policy of insurance with an insurer, a third party cannot sue the insurer *ab initio* as there is no privity of contract between them.

Intermediaries

The business of insurance is conducted through intermediaries who are statutorily regulated. Some of these intermediaries include agents, insurance brokers and loss adjuster. Their various roles shall be discussed subsequently.

Agents

An insurer can carry on the business of insurance through accredited agents who have the capacity to bind the principal (insurer) in transactions with third parties. Insurance agents are specifically licensed and authorized by an insurer on its behalf to solicit risk and collect premiums on behalf of the insurer. He earns a commission and other remuneration from the insurer for rending such services. A disclosure or representation made by the insured to an insurance agent shall be deemed to be a disclosure or representation to the insurer provided the agent is acting with his authority. Where an insurer acts outside the scope of his authority, the acts done are not binding on the insurer.

However, where an agent assists an Applicant to fill or complete an application or proposal form for an insurance policy, he does so as the agent of the Applicant

Insurance Brokers

An insurance broker is a special class of insurance agent who acts in a professional capacity as an intermediary to arrange insurance cover for the insured. He utilizes his professional skills and expertise to ensure that he obtains the most favourable terms and conditions for his client. Section 36 of the insurance Act stipulates the conditions for the registration of brokers.

Loss Adjuster

A loss adjuster is an intermediary in an insurance contract who for money or other valuable consideration engages in the assessment of losses and the adjustment of claims arising from insurance contracts for or on behalf of any insurer or person in non-life insurance claims.

Lecture VII

Warranties and Conditions

Introduction

A warranty is an assurance by one party to the other party that certain facts or conditions are true or will occur. Where this turns out to be untrue, the other party is at liberty to seek redress. In insurance contracts, terms are usually stated in the form of condition precedent to be fulfilled for the validity of the contract and warranties which are ancillary to the contract.

Not all misstatements made by an insured party however gives the insurer the right to cancel a policy or refuse a claim. To qualify as a warranty or condition, the statement must be expressly included in the contract and the provisions must clearly show that the parties intended that the rights of the insured would depend on the veracity of the statement.

Warranty

A warranty is in the general law of contract which applies to insurance contract relates to minor or superficial parts of the transaction a breach of which entitles the injured party to damages for the inconvenience or loss suffered. It generally may not entitle the injured party to a repudiation of the insurance contract.

Until recently, it was customary in non-marine insurance contracts to treat a warranty as a fundamental term, breach of which entitles the insurer to repudiate the contract but the trend was reversed and it was later established that remedy for a breach of warranty was not automatic discharge but damages.

Subdivision of Warranties

Warranties in insurance contracts can be subdivided into affirmative warranty and promissory warranty. An affirmative warranty is a statement relating to facts at the time the contract of insurance was entered into. A promissory warranty is a statement about future or facts that will continue to be true during the subsistence or term of the policy. An untruthful affirmative warranty renders the contract of insurance *void ab initio*. The insurer may cancel the coverage of the policy at such a time when the promissory warranty becomes untrue. e.g. where a property is covered by a fire insurance policy and the insured undertakes that it would never be utilized as a chemical industry. If the insured reneges, the insurer can withdraw its cover.

Condition

Terms of an insurance policy are sometimes referred to as conditions some of these terms may not be directly related to the risk covered or to statement of fact but may be in the nature of collateral promises or stipulations.

Difference between Warranty and Condition

The difference between warranty and condition is that condition goes directly to the root of the contract when it is broken, the insurer can treat the insurance contract as vitiated while a breach of warranty is a breach of a term that is subsidiary to the main purpose of the insurance which entitles the insurer to damages and does not affect the discharge of the contract of insurance.
It is however provided by section 55 of the insurance Act 2003 that:

(2) in a contract of insurance, a breach of term whether called a warranty or a condition shall not give rise to any right by or afford a defense to the insured unless the term is material and relevant to the risk or loss insured against.

(3) *Notwithstanding any provision in any written law or enactment to the contrary, where there is a breach of a term of a contract of insurance, the insurer shall not be entitled to repudiate the whole or any part of the contract or a claim brought or the grounds of the* breach unless-

(a) The breach amounts to a fraud or (b) It is a breach of fundamental term of the contract.

(4) Where there is a breach of a material term of a contract of insurance and the insured makes a claim against the insured and the insurer is not entitled to repudiate the whole or any part of the contract, the insurer shall be liable to indemnify the insured only to the extent of the loss which would have been suffered if there was no breach of the term.

(5) Nothing in this section shall prevent the insurer from repudiating a contract of insurance on the ground of a breach of a material term before the occurrence of the risk or loss insured against.

(6) In subsection (2) of this section "Fundamental term" means a warranty, condition or other term of an insurance contract which a prudent insurer will regard as material and relevant in accepting to underwrite a risk and in fixing the amount of premium.

Lecture VIII

Classification of Insurance

Introduction

The classification of insurance business over the years has significantly expanded premised on economic growth and development in Nigeria. Insurance transactions transcend vast spectra of business. Typically, insurance business is categorized into life insurance business and non-life or other insurance business. Life Insurance business is further categorized into individual life insurance business and group life insurance. Non-life or general insurance business is subdivided into:

(i) Fire insurance
(ii) Accident insurance
(iii) Motor vehicle insurance
(iv) Workmen's compensation insurance
(v) Goods-in —transit insurance
(vi) Marine and aviation insurance
(vii) Oil and gas insurance
(viii) Contractors "all risks" and engineering risk insurance
(ix) Credit, bond and suretyship insurance
(x) Railway rolling stock insurance
(xi) Miscellaneous insurance business

Life insurance, Marine insurance, Fire insurance, Motor vehicle insurance and personal accident insurance.

Life Insurance

Life insurance is the contract of insurance in which one party agrees to pay a specified sum of money on the happening of a specific event. It is contingent upon the duration of human life in consideration of periodic payment or premium by another party.
The concept of life insurance was contrived to ensure that dependants are not rendered destitute on the death of their "bread winner" Life insurance policies often include exclusion clauses and limiting terms to the effect that the insured shall be excluded from liability on the occurrence of specified incidents including suicide, terrorist attacks war, riot, fraud and earthquake.

Classification of Insurance

Life insurance is further classified into the following

Whole Life Insurance

It provides for the payment of a specified sum of money to named beneficiaries on the death of the life insurance in consideration of an agreed premium as consideration which may be paid periodically or as lump sum. it is a medium of providing for ones dependants in case of premature death which is a necessary end for all mortals.

Endowment insurance

It provides for the payment of a stipulated sum when the life insured attains a specified age or on the death of the insured whichever occurs first. Endowment insurance apart from been a viable arrangement for one's dependant, could also provide substantial savings for aged insurer.

Term insurance

It is a short term insurance transaction where the insurer undertakes to pay the insured sum on the death of the insured within the term stipulated in the insurance policy. It differs from the endowment insurance because the sum insured cannot be paid unless the insured dies within the term stipulated in the policy. It is usually recommended for creditors wishing to insure the life of their debtors and persons engaged in hazardous activities.

Insurable Interest

A person seeking to take out an insurance policy on the life of another must establish that he has an insurable interest in the life insured. Section 56(1) of the insurance Act 2003 provides that a policy of insurance made by a person on the life of any other person or on any other event whatsoever shall be null and void where the person for whose benefit or on whose account the policy of insurance is made has no insurable interest in the policy of insurance or where it is made by gaming or wagering.

Section 56 (2) of the insurance Act 2003 also provides that a person shall be deemed to have an insurable interest in the life of any other person or in any other event where he stands in any legal relationship to that person or event or be prejudiced by death of that person or the loss from the occurrence of the event.

The insurance Act extends legal relationship to relationship which exists between persons under customary law or Islamic law where one person assumes responsibility for the maintenance and care of the other.

Since a life insurance is not a contract of indemnity, insurable interest is required to exist only at the time of the contract and not thereafter. This is in contrast to indemnity policies where insurable interest must exist at the time of the loss.

Where an insured or beneficiary facilitates the happening of the event so he can claim from the insurer on grounds of public policy, the insurance is adjudged void.

Personal Accident Insurance

Accident insurance refers to accidental death and dismemberment insurance that involves the payment of a specified sum of money on the death or injury of the insured. The payment could be lump sum or installment. Personal accident insurance involves a person or group of persons taking out an insurance policy to provide for the payment of money to themselves or members of their family in the event that they suffer partial, total, temporary or permanent physical disability or injury in an accident that is not staged or contrived but is caused by an accidental occurrence. A singer may insure her voice and a footballer may insure his legs against injury while playing football.

Coverage Provided

The coverage provided by personal accident insurance includes the provision of compensation to the insured person due to death arising from accident coverage, it is also provides for temporary and permanent disability and medical expenses of the insured and his beneficiary. The coverage could be extended to sever treatment in other jurisdictions. The scope of coverage provided and the scale of benefits accruing to the insured varies from one insurer to the other.

Limits of Coverage

Most personal accident insurance contracts unlike life insurance policies do not cover death arising from natural causes or illness. It also excludes death or injury arising from willful exposure to danger or injury, alcohol abuse induced injury, pre-existing medical condition induced injury e.g. epilepsy and drug abuse related injuries death or disability. This is because it relates to “accident” based death or disability or medical expenses.

Insurable Interest

Every person taking out a personal accident insurance policy must have an insurable interest in the health or life sought to be insured.

Types of Personal Accident Policies

There are several types of personal accident policies. They include:

i. Cash for accident: This involves the payment of cash to the insured when he suffers an injury. It is to assist the insured to pay his medical and ancillary expenses.

ii. Accidental death: Where death occurs as result of auto crash, fall or accidental occurrence, the beneficiaries of the insurance policy are entitled to be paid an agreed sum of money to cushion the effect of the death of their benefactor. It is distinguishable from life insurance policy as it is restricted to accidental deaths and not death from natural causes or illness.

iii. Disability insurance: where the injury is so severe as to disable the insured and deprive him of the capacity to work, the disability insurance policy is designed to provide sufficient coverage for the insured to have an upkeep and take care of his basic necessities

Personal Accident Insurance Risk Categories

As earlier observed, personal accident insurance provides coverage for accidental losses which result in loss of life, dismemberment, loss of speech, hearing or sight. There are however persons who by the nature of their employment are predisposed to accidental death and disability due to their risk situations. They include individual who –

(a) are deployed to war zones

(b) perform manual labour in construction sites

(c)manually operate tools machines and equipment

(d) travel frequently

(e) live or work in crime endemic areas

(f) work with hazardous chemicals.

The individuals are classified into high risk, medium risk and low risk.

(a) High Risk

This includes individuals who work in underground mines, with explosives and electricians who deal with high tension electricity supply, circus performers, high rise construction, soldiers, journalist and other people functioning in war zones and law enforcement agents working in crime endemic zones. Doctors and medical personnel's working in infectious disease endemic regions e.g. Human Immune Virus (HIV) Cholera and Hepatitis are includes in this category. The insured is required to pay higher premiums.

(b) Medium Risk

Individuals who drive heavy trucks, engineers who function as supervisors, builders, mechanics, professional athletes and veterinarians are classified as medium risk category. The rate of premium payable by the insured is lesser than what is required to be paid by an individual in the high risk category.

(c) Low Risk

Individuals associated with low risk have comparative lesser rate of premium payments include teachers, bankers, lawyers, accountants, architects and individuals working in corporations with standardized safety regulations. Categorization of risk is dependent on the environment where the insured is operating or residing and its propensity for accidents.

Marine Insurance

Marine insurance is a contract of indemnity and the most complex of all insurance contracts. It is the oldest form of modern insurance contract. Marine insurance has been defined as a contract whereby the insurer undertakes to indemnity the assured in manner and to the extent thereby agreed against marine losses. These are losses incidental to marine adventure.

Marine Adventure

Marine adventure refers to where any ship, goods or other movables which are insurable are exposed to maritime perils or the earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit or the security for any advances, loan or disbursement is endangered by the exposure of insurable property to marine perils. It extends to 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. Maritime perils means perils consequent on or incidental to sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, detainment of pirates and people, jettisons and related dangers which may be stated in the marine insurance policy.

Scope of Marine Insurance

In a marine insurance policy, if the subject matter of the insurance is to provide cover for a journey from one place to another or for a definite voyage, it is known as a “voyage policy”. Where it is to cover the subject matter for a definite period, it is called a “time policy”.

Insurable Interest

For a marine insurance to be valid, the insured must have an insurable interest in the subject matter. Section 7 (2) of the marine insurance Act defines a person as having insurable interest in a marine adventure where he stands in any legal or equitable relation in the adventure of any insurable property at risk in consequence of which he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss or damage of by the detention or may incur liability in that respect. Persons with insurable interest include:

(i) the ship owner

(ii)the owner of the insurable property

(iii) the mortgagee, consignee or other persons having an interest in respect of the subject matter insured.

(iv) The insurer of the ship and cargo

(v) The person to whom freight is payable

Types of Marine Insurance Policy

There are different types of marine insurance. They include:

(a) Voyage Policy

It covers the subject matter for a specific journey it is usually “at and from” or from one place to another.

(b) Time Policy

Where the insurance policy covers a definite period of time, the policy is held to be a time policy. A marine insurance contract for voyage and time policies may be included in the same policy.

Where an insured takes a time policy in a marine insurance certain precautions have to be taken including the insured ensuring that all the vessels carrying its goods do so and discharge the goods within the limited period specified in the contract. This is because on the expiration of the time stipulated, the insurer will not be liable to indemnify the insured for such a loss. The insured could also ensure that the policy contains a “continuation clause” which automatically continues the insurance after the expiration of the insured period until the ship arrives at the port of destination.

Valued or Unvalued Policy

A policy may be either valued or unvalued. A valued policy usually specifies the agreed value of the subject matter insured. In contrast, an unvalued policy does not specify the value of the subject matter insured but leaves the insurable value of the subject matter insured to be subsequently determined.

Floating Policy

The insurance is described in a general term leaving specifics such as the name of the ships to be subsequently stated in the policy. For a contract for marine insurance to be valid, it must be embodied in a policy which must specify the name of the insured or of some person who effects the insurance on its behalf. The marine policy should also be signed by or on behalf of the insurer or if the insurer is a corporation, the corporate seal may be sufficient.

Motor Vehicle Insurance

The increased vehicular and human traffic on the roads have significantly increased the nature and scope of risk to which motorists and pedestrians are exposed. Motor vehicle insurance is the most popular type of insurance in Nigeria. It comprises of the Act Policy, Third party policy, third party and theft policy and comprehensive insurance policy.

Definition of Motor Vehicle Insurance

Motor vehicle insurance is also referred to as automotive insurance. It refers to a contract by which an insurer assumes the risk of, or any loss the owner or operator of a vehicle may incur through damage to property or persons due to an accident.

Definition of User of Vehicle

A person is said to use a vehicle only when he is in charge of or driving it, controlling it and managing it on a public road. The risks covered by the Act relate to any liability which may be incurred by the insured in relation to the death of or bodily injury to any person occasioned by or arising out of the use of a motor vehicle covered by the policy.

Exemptions

Certain categories of persons are exempted from liability under the Act. Such persons exempted from cover include:

(i) injuries sustained or death arising out of and in the course of employment of the insured employee or

(ii)persons in a passenger vehicle on hire or reward in respect of the death of or bodily injury of persons being carried;

(iii) any contractual liability persons who are carried in a motor vehicle gratuitously are not covered by the Act.

Forms of Motor Vehicle Insurance

Motor vehicle insurance are in many forms. They vary both in their underlying legal principles and the nature of the risk covered. It includes.

(i) Third Party Policy

The third party insurance policy of the Act provides indemnity for death and bodily injuries occasioned to third parties or their properties. This could be movable or immovable property or tangible or intangible objects. Section 15 of the Act provides that no settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability that is required to be covered by a policy issued under the provisions of the motor vehicle, (third party insurance) Act is valid unless such third party is a party to such settlement. It is similarly provided that a policy issued under the Act shall remain in force and be available to third parties notwithstanding the death of any person insured under such policy as if such insured person were still alive.

(ii) Third Party Fire and Theft Policy

The policy consists of the characteristic of both the Act and the third party policy as well as loss or damage to the vehicle of the insured resulting from fire or theft. It also includes legal fees incurred in defending actions emanating from an accident for which a claim is being made as well as towing fee for conveying the damaged or stolen vehicle from the scene of accident or place of discovery to the nearest mechanic for safe place of custody

(iii) Comprehensive Policy

This is more extensive than the earlier discussed motor vehicle insurance policy. It is designed to cover wider risk including loss or damage caused to the insured vehicle through accident, collusion, fire and theft including the fitted accessories of the said vehicle. It also includes any cost or expenses incurred with the insured’s consent and medical expenses incurred in connection with any bodily harm from the accident by the insured, his driver or any occupant of the insured vehicle.

Limit of Coverage

Motor vehicle insurance policy cover obtained in Nigeria is inapplicable to accidents, damage or loss which occurs outside the territorial boundaries of Nigeria except a wider cover is obtained to extend to extra territorial damage or loss. Since the focus of the motor vehicle insurance policy is to provide cover for tortuous liability, it excludes contractual liability. Where an insured vehicle is driven by a person without license to drive, it is excluded from coverage by the policy. Liability arising from radioactive materials or nuclear or damage or loss due to acts of God e.g. thunder, volcanic eruptions, earthquake or war which result in injury or damage is not covered by the motor vehicle insurance policy**.**

Fire Insurance

Fire insurance policy is a contract of indemnity aimed at insuring property against the risk of fire. It is subject to the general principle of insurance and provides for specific sums to be paid to the insured in case of damage occasioned by fire, lightning and explosion. It usually covers cost of replacement, repair or reconstruction of the damaged property and other damages traceable to the fire.

Type of Fire Insurance

Fire insurance policies are classified into the following:

(a) **Specific Policy**: The insurer is liable to pay an agreed amount to the insured on the occurrence of the fire insured against. The insurer’s indemnity is not tied to the actual value of the property.

(b) **Comprehensive Policy**: It indemnifies the insured against loss by fire and other perils including burglary, theft and other risks. The insured could also get payment for consequential loss of profit attributable to the fire incidence or other risks insured against.

(c)**Valued Policy**: In this type of policy, the amount to be paid by the insurer to the insured on the occurrence of the incident, insured against is agreed with the insured irrespective of the scope of the loss.

(d) **Re – Instatement Policy**: The insurer is required to pay for the cost of replacing the damaged property. Subject to the terms of the insurance policy, the insurer could exercise the option of reinstating the property instead paying out cash to the insured.

Necessity for Fire Insurance Policy

Fire incident could result in catastrophic consequences. Due to bush burning faulty electrical wiring, arson, lightning and domestic fire incidents there is need for insurance coverage as it contributes to deaths, injuries and destruction of property. A person can avail himself of the benefit of ensuring that he is protected in the event of such risk.

Insurer's Liability

For the insurers to be liable on a fire insurance policy, there must be actual ignition.
For the insurer to be liable under a fire insurance policy, there must be a causal connection between the fire and the damage suffered by the insured. Ordinarily the insurer is not liable to damage attributable to natural disasters but the insured can extend the policy to cover risks arising from specific natural occurrences.

Benefits of Fire Insurance Policy

The benefit of a fire insurance policy is restoration of the insured as much as possible to the same position as he was before the occurrence of the risk insured against. It involves either of the following:

(i) In case of a partial loss, the insured is entitled to payment for repairing or replacing the property damaged by fire.

(ii)The insurer could undertake to fix the damaged property on its own instead paying the insured the cost of restoration.

(iii) The cover could be extended to cover other perils subject to the payment of an agreed premium.

Liability Insurance

Liability insurance entails the insured obtaining an insurance cover to indemnify him against legal liabilities arising from third party claims. The amount payable by the insurer is restricted to the insured sum irrespective of the extent of the insured's liability. Liability insurance policy includes product liability, employers' liability and professional liability. It is utilized in developed countries to afford the insured financial security or protection against financially crippling legal suits that could arise in the course of practicing a persons' trade or occupation. Liability insurance is insurance cover which protects the insured against risk imposed by law suits and ancillary claims. It covers legal costs and payments for which the insured is liable.

Types of Liability Insurance

Liability insurance is classified into:

(a) **Public Liability**: it is utilized by large organizations to protect themselves against law suit or claims arising from their activities e.g. a company may purchase pollution insurance cover to protect itself from suits and claims arising from environmental pollution claims. This is due to the adverse effect on third parties who may be injured or their property damaged. Public liability insurance is mandate by some countries for certain classes of business

(b) **Product Liability**: it is required to be utilized by manufacturers of products and supplier of goods to provide them additional protection in the event of risk exposure e.g. car manufacturers, pharmaceutical companies, tobacco companies and manufacturers of recreational equipments, etc.

(c)**Employers Liability**: Employers are obligated to provide insurance coverage for their employees to protect them against work place injuries and risks exposure.

(d) **Professional Liability**: The coverage is to protect professionals like medical doctors, lawyers, accountants who are susceptible to legal actions in the course of rendering their professional service. Medical doctors are often prone to medical malpractice litigation and claims.

(e) **General Liability**: General liability is an embracive coverage which includes protection for both public and product liability.

Role of Liability Insurers

The role of liability insurers is essentially about risk improvement and loss prevention. The policy protects the insured against legal liabilities from death, bodily injury or property damage. The insurer has a role to defend the insured by paying the sums for which the insured is adjudged liable and settle claims against the insured. Where the insurer fails to provide the requisite coverage, the insured can institute proceedings against the insurer for breach of contract.

Benefits of Liability Insurance

Risk financing which liability insurance provides is an essential protective mechanism for any successful business and professional enterprise. In the event of litigation due allegation of professional negligence, failure to perform professional service, product malfunction, environmental pollution from corporate operations without the requisite coverage, the consequences of litigation claims may cripple the business or enterprise.

Lecture IX

Principle of Utmost Good Faith (Uberrimae Fidei)

Introduction

The hallmark of the contract of insurance is the principle of Uberrimae fidei or utmost good faith. This means the insured must disclose all material facts of the contract which he knows or ought to know would influence the judgment of the insurer in determining whether or not to insure the risk or to insist on a higher premium for accepting to bear the risk. The insurer also has a duty not to conceal material facts relating to the insurance policy. Failure of either side to disclose such material facts renders the insurance voidable.

Distinction between Void and Voidable Insurance Contract

The distinction between voidable contract and "void" contract is that in a voidable contract, the aggrieved party may either continue with the transaction or he may elect to repudiate the contract. In a void contract, the transaction is illegal and unenforceable.

it is the duty of the assured not only to be honest and straight forward but at all times to make a full disclosure of all material facts. In the same vein, it is the duty of the insurer and their agent to disclose all material facts within their knowledge.

Evidence of Lack of Utmost Good Faith

The following circumstances are indications of lack of Utmost good faith:

Fraud: Where a proposer for an insurance policy makes a statement which he knows to be false, without belief in its truth or is reckless as to whether it is true or false, he is guilty of fraudulent misrepresentation. Where he conceals essential facts from the insurer which he knows would influence his decision whether or not to enter into the contract, he is guilty of fraudulent non-disclosure. In addition to voiding the insurance contract for fraud, the insurer is entitled to obtain damages from the insured for fraud.

Limitation of the Implementation of Principle of Utmost Good Faith

To minimize the risk of insurers taking advantage of the insured and rescind out of their obligations to the insured on the basis of non-disclosure of facts which they deem material subject to their whims and caprice section 54 (1) of insurance Act 2003 provides that where an insurer requires an insured to complete a proposal form or other application form for insurance, the form should be drawn up in such a manner as to elicit such information as the

insurer considers material in accepting the application for insurance of the risk and any information not specifically requested should be deemed not to be material.

Principle of Subrogation

Subrogation in insurance parlance refers to the circumstances in which an insurance company tries to recoup expenses for a claim it paid out when another party should have been responsible for paying at least a portion of that claim. Subrogation entitles an insurer who has paid an insured in accordance with an insurance contract to stand in the place of the insured and exercise the insured's right and remedies in respect of the subject matter of the insurance.

Scope of Subrogation

The principle of subrogation is analogous to the principle of indemnity. It is to ensure that the insured does not receive more than the value of his loss. It is inapplicable to non-indemnity insurance. It confers on the insurer who has indemnified the insured the right to step into the shoes of the insured which is the literal meaning of subrogation and in his name pursue any right of action available to the insured to diminish the loss insured against.

The right to subrogation arises only after the insurer has indemnified the insured against his loss. Where the insured has already recovered payment from the third party and is also indemnified by the insurer for the same loss, the insurer is entitled to recover from the insured what he received from the third party.
The insurers' subrogation right is however restricted to the amount actually paid to the insured, where for instance there happens to be a surplus after the insurers have recovered their money, the insured is entitled to keep it.

Salvage Rule

To ensure that an insured is not placed in a position better than he was before the occurrence of the risk insured against, the salvage rule evolved as an aspect of subrogation. Where an insured has been indemnified by the insurer, whatever salvage is left of the insured's property belongs to the insurer as an insured who has been indemnified cannot be allowed to benefit from the risk suffered by authorizing him to retain the salvage of his damaged property. Subrogation essentially affords the insurer the privilege of suing in the name of the insured.

Lecture X

Reinsurance

Introduction

The term re-insurance is used to designate insurance that is purchased by an insurance company (insurer) from another insurance company (re-insurer) as a means of risk management to transfer risk from the insurer to the re-insurer. The re-insurer and the insurer enter into a reinsurance agreement which stipulates the conditions upon which the reinsurer would pay the insurer's losses. A reinsurance premium is paid by the insurer to the reinsurer.

Nature of Reinsurance

There are two basic method of re-insurance and they are discussed below:

(a) Facultative Reinsurance

The reinsuring company and the reinsurer assume all or part of the risk assumed by a specific policy. In facultative re-insurance, each insurance contract is negotiated separately and reinsured. Facultative reinsurance in normally purchased by insuring companies for individual risks not covered by their reinsurance treaties for amounts in excess of the monetary limits of their reinsurance treaties and for unusual risks.

(b)Treaty Reinsurance

The insurer and the re-insurer formulate and execute a reinsurance contract. The reinsurer then provides the requisite insurance cover for all the policies under the contract. The primary function of reinsurance is to reduce the exposure to loss of insurance by passing their exposure to loss to a reinsurer or a group of reinsurers. It diversifies the risk factor in insurance business.

Reinsurance companies also engage in reinsuring the risk they cover by purchasing reinsurance policies. The practice is known as "retrocession "The reinsurance company that provides reinsurance cover is a "retrocessionaire" while the purchaser of the reinsurance is referred to as "retrocedent".

Reinsurance Contract

Reinsurance and insurance contracts are identical with very slight variations. Reinsurance contracts are contracts of indemnity. It is irrelevant if the original contract is not a contract of

indemnity. The general principles regulating contracts of indemnity are applicable to reinsurance policies.

The reinsurer is obligated to discuss all material facts to the insurer. The scope of disclosure required depends on what would influence a prudent insurer in determining the premium chargeable to provide cover for a particular risk. Reinsurance policy is deemed to incorporate the terms stipulated in the original policy. Where terms contained in the original contract are impracticable in the reinsurance policy, they will not be applicable to the reinsurance agreement.