LAW OF INSURANCE

Insurance → Is a contract whereby a person undertakes to pay a premium (Insured) so that to be indemnified against any loss that may occur by the insurer.

The parties of insurance are Insurer and insured.

Cover note.

It's a temporal cover extended to the proposer (insured) by the insurer after submitting the proposal form before it is accepted.

The cover note plays the following functions.

1. It gives enough time to the insurer to access the risks involved in the subject matter.
2. The subject during the accessment is at risk and therefore requires to be covered.

Acceptance of the Proposal form.

It can take the following ways

1. Formal comm.
2. Conduct
3. Acceptance for premium.
4. Issuance of the policy.
5. Acceptance & retention of primium.

Formal communication
Conduct
Acceptance for a premium.

Details in the Proposal Form.

1. Particulars of the proposer.
2. Details of the subject matter.
3. Circumstances affecting the risk.
4. History of attachment of the risk.

Classification of Insurance Contract

1. The event insured - fire, buglary, marine, motor vehicle, acc. e.t.c.
2. The interest insured → like life insurance
   Property insurance e.t.c.
3. Nature of the contract → Indemnity
   Non-indemnity. -

Indemnity means that person can be restored back to the position that he was before eg fire, marine, buglary.

Non-indemnity is a contract to mitigate against ~~loss~~ the lost - e.g life ~~insurance~~ assuarance.

4. Private or Social - ~~Is~~ Private optional and voluntary eg life assuarance whereas social is compulsary eg motor vehicle insurance.
5. Basis of the ~~program~~ programme - either insurance or reinsurance.

Principles of Insurance

~~Insurable interest~~

1. Insurable interest
2. Utmost good faith
3. Indemnity
4. Subrogation
5. Salvage
6. Re-instatement
7. Contribution and ~~appointment~~ apportionment.
8. Proximate ~~cost~~ cause.
9. Abandonment
10. Average clause
11. 3rd Party insurance.
12. Reinsurance.
13. Double insurance.

1. Insurable Interest

- direct relationship btn insured & subject matter.
- Insured bares any loss or liability arising.

Is the financial / monetary / pecuniary interest at stake or in danger if the subject matter is not insured.

To ascertain whether a person has insurable interest to the subject matter court employ the following rules;

1. There should be a ~~subject~~ direct relationship between the insured and subject matter.
2. The insured bares any loss or liability arising.
3. The insured must have a legal or equitable interest to the subject matter.
4. The interest must be capable of financial / pecuniary estimation.

Time of Insurable Interest

1. In the indemnity contracts it must exist at time of loss.
2. In life assurance it must exist when the contract is entered into.

Rules of establishing Insurable Interest in matters of Life Assurance

- A wife has an interest in the life of the husband.
- A husband has interest in the life of the wife.
- A parent / guardian has interest in the life of a child below 18yrs.
- An employer has interest in the life of employee.
- A creditor has interest in the life of a debtor.

2. Utmost Good Faith / Duty of Disclosure.

Both parties have the duty of disclosure.

They have to disclose the material facts. Failure to disclose the material facts renders the contract voidable at the option of the innocent party.

Though the contract of insurance is of utmost good faith certain matters need not to be disclose that include the following:

1. Provisions and proportions of law.
2. Unknown facts
3. Facts known by other party

4. Matters of public notoriety - knowledge.

3. Indemnity

It means restoring the insured to the position he was before the loss.
It is given effect by the subordinate principles of idemnity which include: subrogation, Reinstatement, salvage, Contribution & ~~appointment~~ apportionment.

Subrogation.

It means that once the insurer indemnities the insured, ~~the~~ he steps into the shoe of the insured in relation to the subject matter.
Means: The insurer taking over the rights and liabilities of the subject matter that were previously with the insured.

Salvage.

These are the remains of the subject matter which become the property of the insurer and therefore is part of subrogation.

Reinstatement.

It is repair or replacement of the subject matter in circumstances in which it may be reinstated.
The subject matter must be reinstated to the satisfaction of the insured.

Double Insurance.

It is where by a party takes out more than one policy on the same subject matter.

Conditions that must be made to establish double insurance.

1. There is more than one policy on same subject matter.
2. The policies must be insured by different insurers.
3. The policies must be taken by the same person.
4. The policies must be in force when loss occurs.
5. The policies must be legally binding agreements.

Contribution & Apportionment

Apportionment → In double insurance the insurers share the loss between themselves on the basis of the premium paid to them.
Contribution → If one of the insurers make good the total liability, he is suppose to recover the excess payment from the other insurers.

Abandonment

It is the surrender by the insured of the remains of the subject matter for fully indemnity.
It entails giving up the subject matter.
It is widely applicable in marine insurance.

Proximate Cause.

It is the loss caused by an event which is more attributable to what has been insured.
It is the cause which is more dominant and direct
The cause of loss should not be remote

Average Clause.

If the subject matter is under insured because of under valuing and partial loss occurs, the insurer pays the proportion of the loss and not the full amount of the loss. This clause in ensures that the subject matter is insured that the correct value.

3rd Party Insurance.

A person can insure himself against risks that may occur to the 3rd party e.g A driver of a motor vehicle is required to be insured against liability eg death or injury he may cause to pedestrians or passengers.
Motor vehicle 3rd party Insurance is a compulsary insurance.

Re-Insurance.

This is when an insurer, insures the subject matter that has already been insured with another insurer.

Elements / Essentials of Insurance.

1. The parties ie insured & insurer - parties must agree.
2. Primium - the consideration that passes from the insured to insurer.
3. Risk - Probability or chance of loss.
4. Beyond control - risk is beyond the control of either party.
5. Insurable insurance.
6.

Termination of Insurance Contract.

1. Mutual Agreement.
2. Lapse of time - every year
3. Payment of indemnity - in the event of total loss not partial loss.
4. Sale of the subject matter.
5. Winding up or Liquidation of the insurer.
6. Breach of contract.