Marine Insurance

Object of Marine Insurance

- ‘*means whereof it cometh to pass that upon the loss or perishing of any ship there followed not the undoing of any man, but the* ***loss lighteth rather easily upon many rather than heavy upon few****, and rather upon them that adventure not than upon those* ***who do adventure****; whereby all merchants, specially those of the younger sort,* ***allured to venture more willingly and more freely***’ (1601 Insurance court)

Marine Insurance defined

- Section 3: A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed against marine losses, that is to say, the losses incidental to marine adventure.

Mixed sea and Land risks

- Section 4(1) A contract of marine insurance may, by its express terms, or by usage of trade, or extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

Other risks

- Section 4(2): Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by policy in the form of marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Explanation

- Explanation to Section 4: ‘An adventure analogous to a marine adventure’ includes an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit.
- Section 5: subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

Marine Insurance Act

- 1906 UK
- Marine Insurance Act 1963 identical to MI Act of UK 1906
- As London was center for marine activity, their principles were practiced by others also. They became International Insurance practices, codified into MI Act

Subject Matter

- Insurable property exposed to marine peril
- Earnings endangered by marine perils
- Any liability to a third party
- Eg ship, goods, movables
- Ship insurance is called hull insurance
- (Ship includes hull materials outfit, stores and provisions for the officers and crew, machinery, boilers, coals, engine stores,etc)

What is insured?

- Vessels (hull), loss, damage, detention, delay, stranding etc
- Cargo loaded in vessel
- Freight paid or received by assured
- Other merchandize, which is in transit on water or land or on both, transactions incidental to marine adventure
- Third party liability

Insured

- Insurance includes all perils, risks to money, documents, securities, other valuable goods in ship
- Cost of insurance, freight charges etc
- Building of ship, launching of ship, transport of stores concerned
- What is really insured against is ‘actual risk’. Goods may be somewhere safe, recovery may cost more.

Insurable Interest

Marine Insurance

Wagering

- Section 6(1) Every contract of marine insurance by way of wagering is void.
- (2) A contract of marine insurance is deemed to be a wagering contract-
  - a)where the assured has not an insurable interest as defined in this Act, and <u>the contract is entered into with no expectation of acquiring such an interest</u>; or
  - b) where the policy is made ‘interest or no interest’ or ‘without further proof of interest other than the policy itself’ or ‘without benefit of salvage to the insurer’ or subject to any other like term.

Exception to wagering

- Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer. (Exception to Section 6)

Insurable interest

- Section 7(1) Subject to provisions of this Act, every person has an insurable interest who is interested in marine adventure.
- 1. Physical object exposed to marine peril
- 2. Assured must have legally recognized relationship with object
- (benefit by preservation or prejudiced by its loss or damage)

Interest in Marine Adventure

- '*In particular, a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein in consequence of which <u>he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss or by damage thereto</u> or by the detention thereof or may incur liability in respect thereof' Section 7 (2)*

When interest must attach

- Section 8(1): The assured must be interested in the subject matter insured at the time of the loss, though he need not be interested when the insurance is effected:
- Provided that, where the subject-matter is insured ‘lost or not lost’, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

No interest, no policy

- Section 8(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

Defeasible or Contingent

- Section 9(1): A defeasible interest is insurable as also is a contingent interest.
- (2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

Examples

- A partial interest of any nature is insurable S 10.
- Section 11(1): the insurer under a contract of marine insurance has an insurable interest in respect of such reinsurance. (2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

Insurable interests

- The Lender of money on bottomry or respondentia has an insurable interest in respect of the loan. s 12
- The Master or any member crew of a ship has an insurable interest in respect of his wages. 13

Advance Freight

- Section 14: Advance Freight: In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.
- Section 15: Charges of Insurance: The assured has an insurable interest in the charges of any insurance which he may effect.

Quantum of Interest

- (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.
- (2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

Quantum of Interest

- Section 16 (3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable to indemnify him in case of loss.

S 17. Assignment of interest

- S 17. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.
- But the provisions of this section do not affect transmission of interest by operation of law.

S 18. Insurable Value

- Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:-
- (1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions, and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

Value of steamship

- The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; in the case of a ship driven by power other than steam includes also the machinery and fuels and engine stores, if owned by the assured; and in the case of a ship engaged in a special trade, includes also the ordinary fittings requisite for that trade:

Insurable value

- (2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:
- (3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole:
- (4) In insurance on any other subject- matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

Uberrimae Fidae

Contract of Good Faith

Uberrimae fidae

- Section 19: A contract of marine insurance is a contract
- based upon the utmost good faith, and
- if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

20. Disclosure by assured

(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which, is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known to him. If the assured fails to make such disclosure, the insurer may avoid the contract.

Material circumstance

- (2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.
-

Need not be disclosed

- (3) In the absence of inquiry the following circumstances need not be disclosed, namely:-
- (a) any circumstance which diminishes the risk;
- (b) any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business as such, ought to know;

Need not be disclosed

- (c) any circumstance as to which information is waived by the insurer;
- (d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

Section 20

- (4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, question of fact.
- (5) The term "circumstance" includes any communication made to, or information received by, the assured.

Section 21. Disclosure by Agent

- Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer-
- (a) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and

Agents’ duty

- (b) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

Warranties & Representations

Marine Insurance

22. Representations pending negotiation of contract

- (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.
- (2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

Representations

- (3) A representation may be either as to a matter of fact, or as to a matter of expectation or belief.
- (4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

Representations

- (5) A representation as to a matter of expectation or belief is true if it be made in good faith.
- (6) A representation may be withdrawn or corrected before the contract is concluded.
- (7) Whether a particular representation be material or not, is, in each case, a question of fact.

What is Warranty?

- A warranty in contract of insurance is substantially same as a condition in contract.
- Breach of warranty gives other party right to avoid the contract. Discharge insurer from liability.
- Undertakes to fulfill a condition, confirms or negatives existence of certain facts.
- Should be literally complied with.

Condition & Warranty

- Breach of warranty makes contract void, breach of condition gives the aggrieved party right to claim compensation.
- Warranties must be complied with.

Warranty & Condition

Warranty is a

- -condition precedent for liability of insurer
- -exception to liability of insurer
- -limitation on general words used in policy

Warranty operates from outside of the contract also, while the ‘condition’ has to operate from within.

Warranty & Condition

- Warranty is **absolute** it cannot suspended even for a while.
- Operation of a **condition may be suspended**.
- Not to store naphtha near stocks is warranty of prohibition. If stored even once, it may discharge liability of insurer.
- If the condition is that ‘insured cannot recover if fire takes place while prohibitive articles were kept, liability gets **re-attached** as soon as those articles are removed.

CONDITIONS

PRECEDENT

-Presence of Insurable Interest
In subject matter
-Essential for creation of
A contract
-Void ab initio

SUBSEQUENT

-Related to continuance
Of valid contract
-Define and limit rights after
The contract is formed

Express

Expressly stipulated
In terms of contract.

Implied

-Prescribed by
Usage or custom
Or law
Eg. That insured has
Insurable interest

35. Nature of Warranties

- Section 35(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes 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.
- (2) A warranty may be express or implied.

Warranties

- 35(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as form the date of the breach of warranty, but without prejudice to any liability incurred by him before that data.

36. When Breach of Warranty excused

- (1) Non- compliance with a warranty is excused when by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.
- (2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.
- (3) A breach of warranty may be waived by the insurer.

37. Express Warranties

- (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.
- (2) An express warranty must be included in, or written upon the policy, or must be contained in some document incorporated by reference into the policy.
- (3) An express warranty does not exclude implied warranty, unless it be inconsistent therewith.

Examples

- Ship will sail on a specific day
- Ships is safe on a particular day
- Ship will proceed to the destination without any deviation.

Implied

- Implied warranties do no appear in the policy at all but tacitly understood by the parties to be present and are as fully binding as express warranties. Assumed to have been included in policy by law, custom, usage or general agreement.
- Seaworthiness, Legality of venture, and non-deviation are implied warranties.

39. No implied warranty of nationality

- There is no implied warranty as to the nationality of a ship or that her nationality shall not be changed during the risk.

40. Warranty of good safety

- Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

41. Warranty of seaworthiness of ship

- (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.
- (2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

Seaworthiness of ship

- S.41(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

Seaworthy

- S. 41. (4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.
- S.41 (5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer in not liable for any loss attributable to unseaworthiness.

What is seaworthiness

- Reasonably fit to undertake voyage and to withstand the ordinary perils of the sea.
- To be seaworthy a ship should be suitably constructed, properly equipped, officered and manned with trained persons, amply supplied with fuel and provision.
- It is a relative term.
- A ship fit for coastal voyage may not be seaworthy for trans-oceanic voyage.

Seaworthiness

- Ship suitable for summer voyage may not be fit for winter voyage.
- Purely passenger ship may not be seaworthy as a cargo ship.
- Standard of seaworthiness may vary with any particular vessel at different periods of same voyage.
- Warranty of seaworthiness of ship applies to hull but not to cargo insurance.

Compliance

- Ignorance or innocence is no excuse to breach of warranty.
- Implied warranty has to be fully complied with.
- If ship owner fails to discover the latent defect, it would defeat his object of insurance, deprive him of right to recover.

42. No implied warranty that goods are seaworthy

- S.42 (1) In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy.
- S.42 (2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

Seaworthy condition

- Test: whether the leak was attributable to injury and violence without or to weakness from within?
- Unfit or unseaworthy condition was introduced in Merchants Trading Co v The Universal Marine Insurance Co case (1935)53 Ll.L.Rep 156. Appellate court also approved this test. Ship was unable to keep herself afloat in still water. It could not withstand expected, ordinary and foreseeable casualty.

Bihar Supply Syndicate case

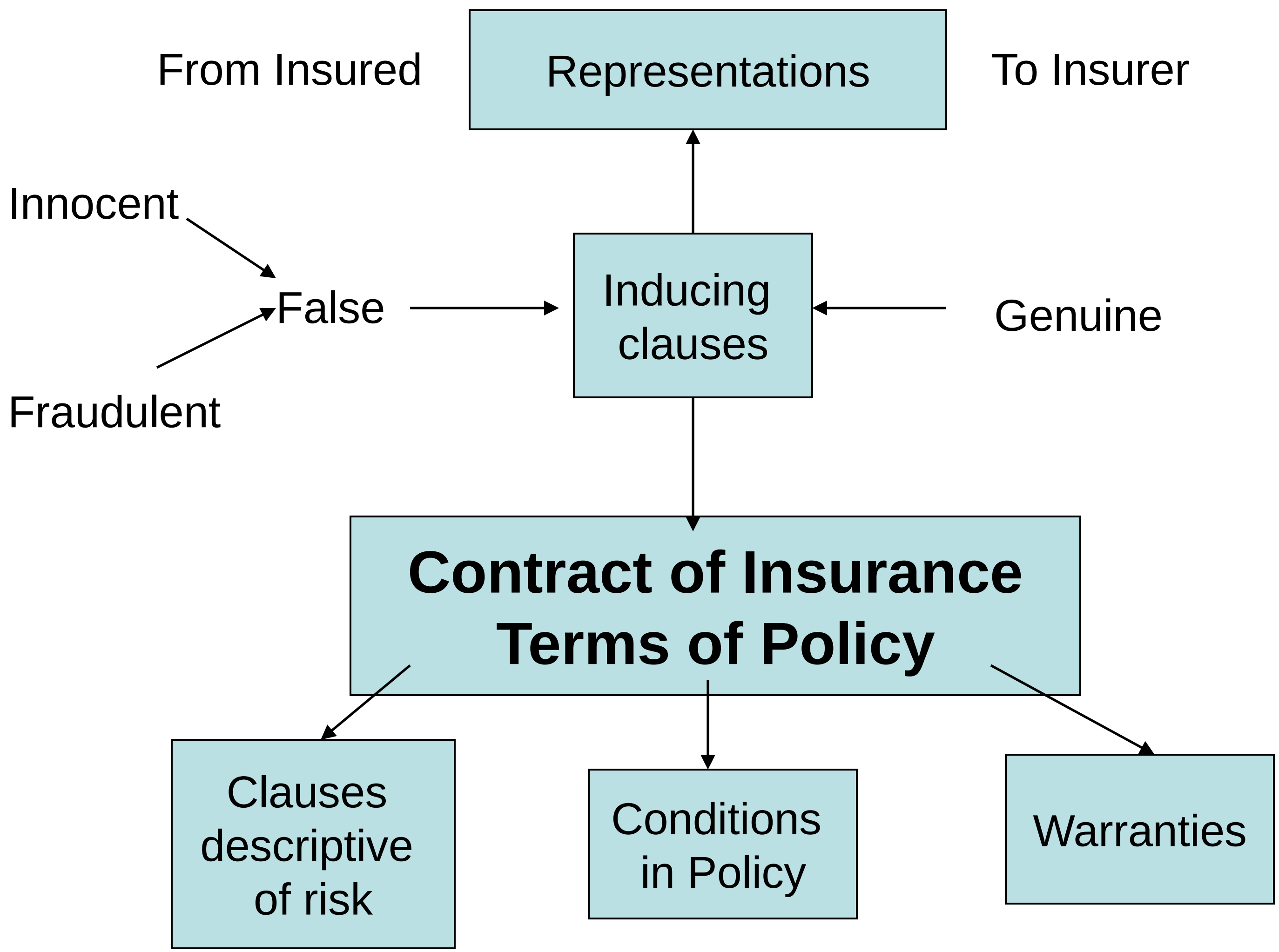
- Bihar Supply Syndicate v Asiatic Navigation & others, United Salt Works. 1993 (2)SCC639 AN's ship was chartered to transport salt from Kandla (Gujrat) to Calcutta Port. BSS insured for 9.5 lac. Excluded war risks. Ship left Kandla while nearing Calcutta, engine trouble started. It was towed to Viskha, could not be repaired, crew were not paid.

Case

- HC ordered selling of vessel along with cargo. Pl asked HC to direct Receiver of ship to pay him for the loss. Refused. Pl sued, decreed. In Appeal reversed. Supreme Court held not a case of loss of goods due to perils of sea. Sea water did not enter ship and spoiled salt. Pl gave consent to sale of cargo. He lost cargo due to reasons other than peril of sea.

43. Warranty of legality

- S. 43: There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.
- No marine insurance for illegal voyages, eg smuggling, violating neutrality laws etc.


From Insured
Representations
To Insurer
Innocent
False
Fraudulent
Inducing clauses
Genuine
Contract of Insurance
Terms of Policy
Clauses descriptive of risk
Conditions in Policy
Warranties

Warranty and Representation

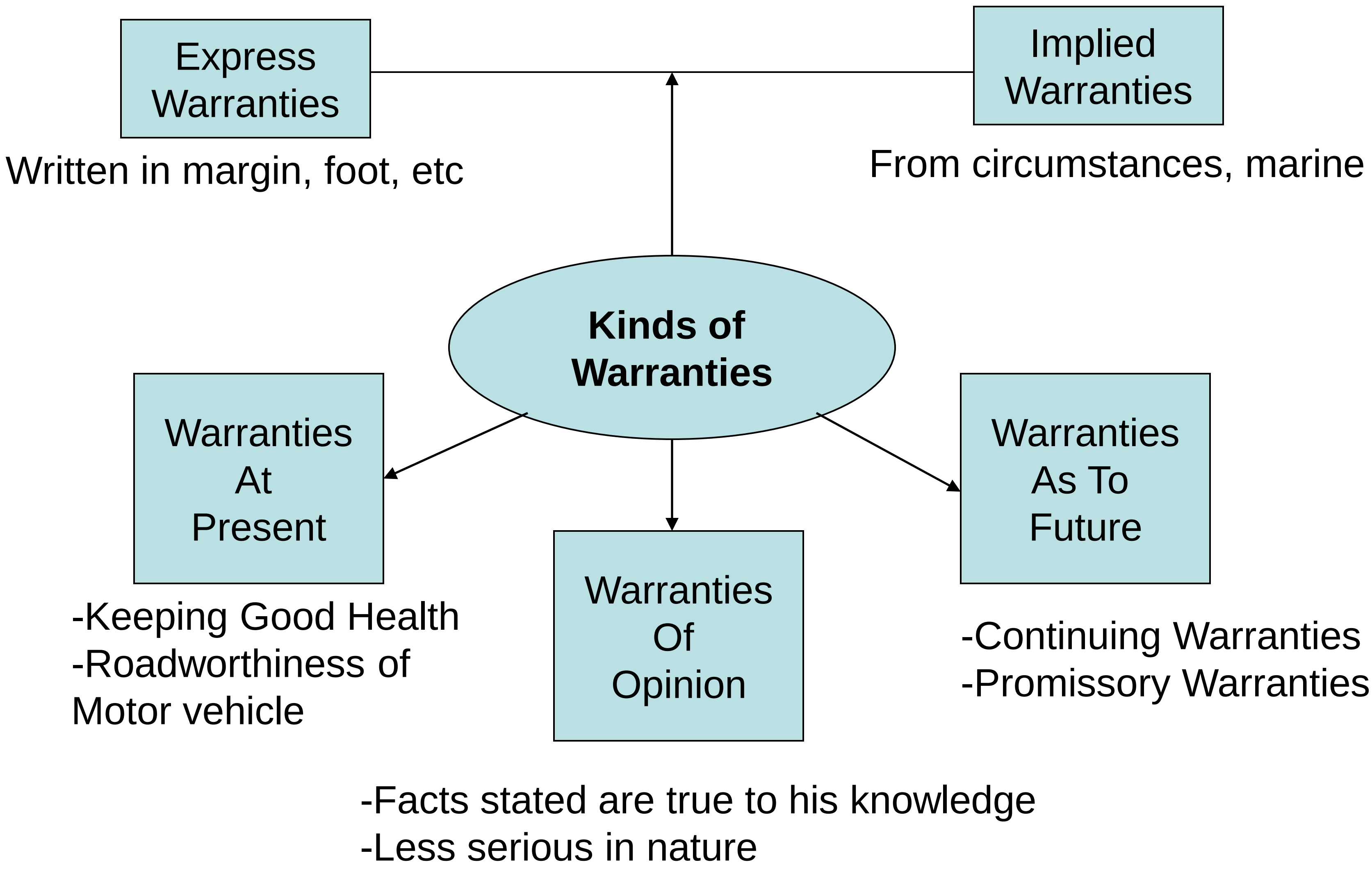
- Condition, material part of contract
- Contractual. Must be true, good faith or fraud not considered
- Exist only after contract is completed
- Breach of w relieves the insurer

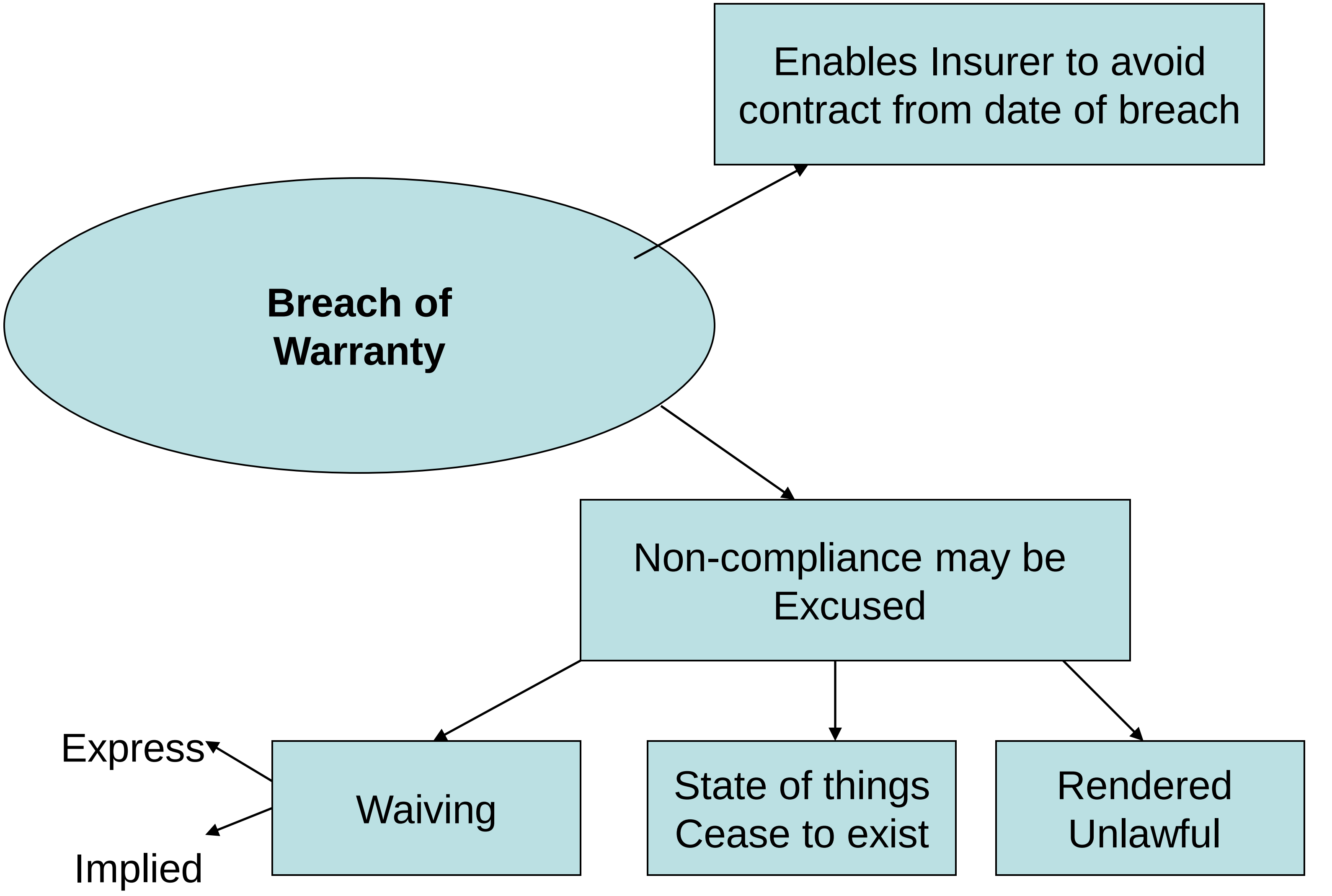
- Verbal or written statement of insured
- Statements made during negotiation, process of contract
- Must be inducing so precedes contract
- If false, it becomes voidable

Warranty & Representation

- Breach of warranty will make it void, no return of premium
- Must be in writing
- Inserted in policy
- Relates to matter material to risk
- To be strictly complied with 35MI

- Breach of representation may not breach of contract
- Oral or writing
- No included in policy
- May not be a material representation
- To be complied when it is material.


Kinds of Warranties
Express Warranties
Written in margin, foot, etc
Implied Warranties
From circumstances, marine
Warranties At Present
-Keeping Good Health
-Roadworthiness of Motor vehicle
Warranties Of Opinion
-Facts stated are true to his knowledge
-Less serious in nature
Warranties As To Future
-Continuing Warranties
-Promissory Warranties


Enables Insurer to avoid contract from date of breach
Breach of Warranty
Non-compliance may be Excused
Express
Implied
Waiving
State of things Cease to exist
Rendered Unlawful

Contract of Insurance

Marine Insurance

23. When contract is deemed to be concluded

- A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip, covering note or other customary memorandum of the contract, although it be unstamped.

24. Contract must be embodied in policy

- A contract of marine insurance shall not be admitted in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

25. What policy must specify

- A marine policy must specify-
- (1) the name of the assured, or of some person who effects the insurance on his behalf;
- (2) the subject-matter insured and the risk insured against;
- (3) the voyage, or period of time, or both, as the case may be, covered by the insurance;
- (4) the sum or sums insured;
- (5) the name or names of the insurer or insurers.

26. Signature of insurer

- (1) A marine policy must be signed by or on behalf of the insurer.
- (2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

27. Voyage and time policies

- (1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject - matter for a definite period of time, the policy is called a "time policy" A contract for both voyage and time may be included in the same policy.
- (2) A time policy which is made for any time exceeding twelve months is invalid.

Time Policy

- Insured for a definite period of time.
- Continuation clause: if ship starts on last day of period insured, it will continue for a reasonable time till safe arrival at destination port.
- Suitable for hull insurance by owners.

Voyage policy

- Insured risks at a particular voyage from port of departure to port of destination.
- Goods are insured at and from….to….
- Goods are insured from…to…
- Suitable for cargo policy
- Mixed policy: both time and voyage policy

28. Designation and subject matter

- (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.
- (2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

Subject Matter

- (3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.
- (4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

29. Valued policy

- (1) A policy may be either valued or unvalued.
- (2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

Value fixed

- (3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.
- (4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

Valued policy

- Value agreed upon is taken as basis of indemnity.
- Insured value is not necessarily actual value of the cargo. Eg actual value of goods insured may be Rs. 1 lakh, policy may be taken only for Rs 50,000.
- Invoice price of goods, freight, shipping charges, insurance etc, a fixed percentage of margin to cover anticipated profits and other incidental chages.

S 30 Unvalued policy

- An unvalued policy is a policy which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore explained.

Unvalued policy

- Value of subject matter not agreed upon.
- Left to be decided later on
- It does not include anticipated profit margin etc
- Generally all policies are valued policies
- Floating policy- open policy or declaration policy. Mentions amount only other particulars are added later.

S 31 Floating policy

- 31(1) A floating policy is a policy which describes the insurance in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration.
- (2) The subsequent declaration or declarations may be made by endorsement on the policy, or in other customary manner.

Floating policy-2

- (3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.
-

Floating policy-3

- (4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

Block policies

- A single policy to cover all risks including incidental risks, such as inland risks (rail-road transport) transmission by ship, is called block policy.
- Goods may be covered from point of origin to point of consumption under block policy.
- Gold or cotton may be covered under block policy, from warehouse to destination

Named policy

- Floating policy with the specified interest.
- In floating policy name is not mentioned, to be declared at the time of shipment
- For example policy may specify 1000 bales of cotton per SS Viswa from Bombay to Port Louis.
- **Single Vessel** policy -owner insuring his single ship separately or, **Fleet** Policy-insuring fleet of ships

34. Double Insurance

- (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.
- (2) Where the assured is over-insured by double insurance-
-

No to excess amount

- (a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

Policy amount paid – actual value

- (b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation, for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured;
- (c) where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;
-

Holding Excess, in trust

- (d) where the assured received any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Perils of the sea

Marine Insurance

Perils of sea

- Every thing that happens to ship on voyage, by act of God,
- Fortuitous accidents or
- Casualties not attributable to free will or desire of human agency
- Not include natural and ordinary action of winds and waves

Underwriter’s clause of undertaking

- *“touching the adventures and perils which we, the assurers, are consented to bear, and to take upon us in this voyage, they are of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, taking at sea, arrests, restraints, and detainments of all kings, princes, people, of what nation, condition or quality so ever, barratry of the masters and mariners, and of all other perils, losses, and misfortunes that have or shall come to hurt, detriment, or damage of the said goods and merchandize, and ship, etc., or any part thereof.”*

All risk contract

- Other exceptions and exclusions,
- Can be applied to ‘all other perils, losses and misfortunes’ the rule of reason.
- 1963 Act Perils of Seas refer to fortuitous accidents or casualties of the sea. Does not include ordinary action of winds and waves.

Perils

- Accidental fire on sea, by negligence or by lightening etc
- Pirates and thieves, hijacking airplane from over ship is piracy, assailing thieves, theft by violence or with threat of violence is also covered.
- Jettisons: voluntary sacrifice of property to preserve remainder

Perils

- Enemies: hostile acts, subjects of enemy country
- Barratry: fraudulent acts of master or crew members against owner. Running away with ship, setting fire, sinking, abandoning
- Rule 11 of 1963Act: “Every wrongful act willfully committed by the master or crew to the prejudice of the owner or as the case may be, the charterer’.

Letters of Mart

- Powers granted by state to persons who undertook to attack enemies of nation in revenge to loss or attacks.
- Letters of countermarts, powers granted by opposing nations to others resist, retaliate such attacks
- Surprises: associated with capture
- Takings a sea: stopping and taking to port

Arrests

- Arrests and Restraints: fall under ambit of war risks, political or executive acts, may be specifically covered by clauses.
- Does not include loss caused by riot or by ordinary judicial process.
- Foundering at sea: Ship missing for a reasonable time, fury of storms, tempests

Risks: Ship wreck

- Ship wreck: Ship striking against rock
- Stranding: out of voyage, stuck up in shallow regions or sands, or injured.
- Collision: If collision by negligence, liable under court decree, is not peril of sea. To avoid it collision clause or running down clause is introduced where underwriter pays 3/4th of loss.

Additional perils

- Contract may contain coverage against other perils also.
- Inchmaree clause: losses due to negligence or accident outside scope of perils of sea are generally not covered, if agreed to cover it is called inchmaree clause.
- Sue and labour clause: Assures contribute according to rate and quantity of sum insured.

Voyage, Terms & Law

Marine Insurance

Clauses of contract

- Insurance contract incorporate clauses:
- Voyage- specifying the course of voyage- ship must follow it.
- At and from clause
- Warehouse to warehouse clause
- Assignment clauses

44. Implied condition as to commencement of risk

- (1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.
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Effect of delay

- (2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

45. Alteration of port of departure

- Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

46. Sailing for different destination

- Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

47. Change of Voyage

- (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.
- (2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

48. Deviation

- (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insured is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

Deviation

- (2) There is a deviation from the voyage contemplated by the policy-
- (a) where the course of the voyage is specifically designated by the policy, and that course is departed from; or
- (b) where the course of the voyage is not specifically designed by the policy, but the usual and customary course is departed from.

Deviation

- (3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

Change and deviation

- Time when determination to change becomes manifest, it is ‘change’
- Policy becomes void the moment change of voyage is contemplated.
- Deviation must become a fact before validity of policy is questioned. Underwriter is discharged from the moment of deviation. Mere intention to deviate will not discharge insurer.
- Deviation did not increase risk- irrelevant.

Several Ports of Discharge

- S 49. (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.

Ports of discharge

- (2) Where the policy is to "ports of discharge" within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation.

50. Delay in voyage

- In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable despatch, and; if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

51. Excuse for deviation or delay

- (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused-
- (a) where authorised by any special term in the policy; or
- (b) where caused by circumstances beyond the control of the master and his employer ; or
- (c) where reasonably necessary in order to comply with an express or implied warranty; or

Excuses

- (d) where reasonably necessary for the safety of the ship or subject-matter insured; or
- (e) for the purpose of saving human life or aiding a ship in distress where human life may be in danger; or
- (f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

Excuses

- (g) where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.
- (2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable despatch.

Touch and stay

- Contract may have a term saying that the ship may touch and stay at particular ports during the voyage.
- If not specified they must be casual places on the route. If not it amounts to deviation.

Inchmaree clause

- Engine in inchmaree ship was to pump water to boiler. Check valve was closed with salt either because of negligence or accident. Water was forced into air chamber where pump was broken and there was a huge loss. Claim was rejected as it was not covered by ‘all other perils, losses and misfortunes’. HoL agreed with rejection. Then inchmaree clause is developed to cover inherent risks also.

Sue and Labour clause

- This clause entitles assured to take all necessary steps for the preservation of the subject matter insured in case of accident, casualty or danger.

Sue and labour clause

- ‘and in case of any loss or misfortune it shall be lawful to the assureds, their factors, servants and assigns to sue, labour and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship etc., or any part thereof without prejudice to this insurance; to take charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein insured”.

F C S

- Free of Capture and Seizure clause: insurer excludes his liability for risk of capture, seizure, and detention in times of war without additional premium for war risks
- AAR Against All Risks
- RDC running down clause: undertakes risk of vessel found to be guilty for collision with other ship.
- FSR & CC (Free of Strikes Riots and Civil Commotion clause)

Assignment of the policy

Marine Insurance Law

52. When and How policy is assignable?

- (1) A marine policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

Assignment of policy

- (2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected.
- (3) A marine policy may be assigned by endorsement thereon or in other customary manner.

53. Assured who has no interest cannot assign

- Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:
- Provided that nothing in this section affects the assignment of a policy after loss.

Assignment

- As Insurable interest must be present only at the time of claiming, policy is easily assignable.
- It may be assigned to any, who has insurable interest or going to acquire at later date.
- Cargo insurance assignment does not even require consent of insurer, which is necessary in hull insurance.
- Transfer of subject matter does not automatically transfer insurance policy also. Person who lost or parted with insurable interest cannot transfer the policy subsequently.

Premium

Marine Insurance

33. Premium to be arranged

- (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.
- (2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens out no arrangement is made, then a reasonable additional premium is payable.

54. When premium payable

- Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium.

82. Enforcement of return

- Where the premium, or a proportionate part thereof, is, by this Act, declared to be returnable-
- (a) if already paid, it may be recovered by the assured from the insurer, and,
- (b) if unpaid, it may be retained by the assured or his agent.

83. Return by agreement

- Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

84 Return for failure of consideration

- (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.
- (2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

When returned

- (3) In particular-
- (a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;

Where policy is void

- (3) In particular-
- (a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;

Never imperiled

- (b) where the subject-matter insured, or part thereof, has never been imperiled the premium, or, as the case may be, a proportionate part thereof, is returnable :
- Provided that where the subject-matter has been insured "lost or not lost", and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

No insurable interest

- (c) where the assured has no insurable interest throughout the currency of the risk the premium is returnable, provided that this rule does not apply to a policy effected by way of wagering;
- (d) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;
- (e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

Over insurance

- (f) subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:
- Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

Losses

Marine Insurance Law

Proximity of cause

- S 55. Included losses and excluded losses
- (1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

Misconduct of insured

- (2) In particular-
- (a) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;
- (b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by although the delay be caused by a peril insured against;

No liability for ordinary wear and tear, leakage or breakage

- (c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

56. Partial Loss or Total Loss

- (1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.
- (2) A total loss may be either an actual total loss, or a constructive total loss.
- (3) Unless a different intention appears form the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

Partial loss

- (4) Where the assured brings a suit for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.
- (5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial and not total.

57. Actual and Total loss

- (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.
- (2) In the case of an actual total loss no notice of abandonment need be given.

S 58 Missing Ship

- Presumption of actual & total loss
- Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

S 59. Effect of transhipment

- Where, by a peril insured against, the voyage is interrupted at intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

Constructive Total Loss

- (1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

Deprivation of possession

- (2) In particular, there is a constructive total loss-
- (i) where the assured is deprived of the possession of his ship or goods by a peril insured against, and
- (a) it is unlikely that he can recover the ship or goods, as the case may be, or
- (b) the cost of recovering the ship or goods, as the case may be,
- would exceed their value when recovered; or

Repair cost exceeds value

- (ii) in the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.
- In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

Cost of repairing damage

- (iii) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

61. Effect of constructive total loss

- Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

62. Notice of abandonment

- (1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.
- (2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

Abandonment

- (3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make enquiry.
- (4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

Abandonment

- (5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.
- (6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

Abandonment

- (7) Notice of abandonment is unnecessary where at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.
- (8) Notice of abandonment may be waived by the insurer.
- (9) Where an insurer has reinsured his risk, no notice or abandonment need be given by him.

63. Effect of abandonment

- (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

Effect of abandonment

- (2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

64. Particular average loss

- (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.
- (2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

65. Salvage Charges

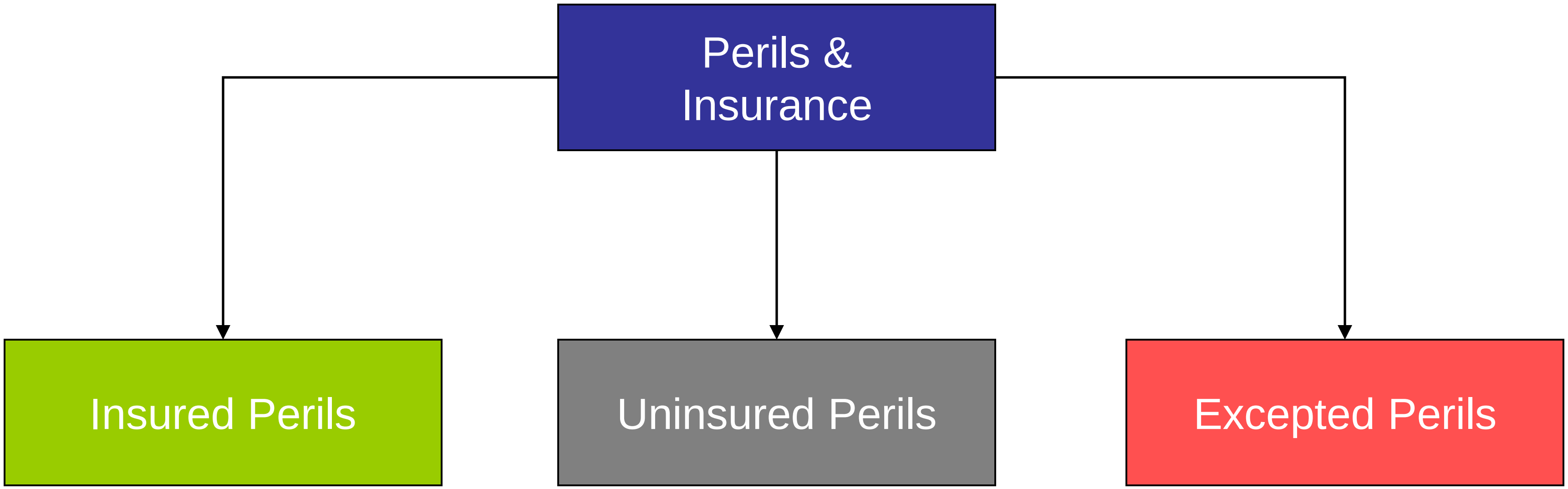
- (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

Salvage charges

- (2) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

Proximate cause

- Proximate cause means the active, efficient, cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source (Pawsey v Scottish Union & National (1907)



Insured Perils

Fire in Fire Policy
Burglary in Burglary Insurance policy

Uninsured Perils

Suicide in Life Policy
War in Marine Policy

Excepted Perils

Fire under burglary policy
Natural death in Personal Accident Policy

Three kinds of perils

- Insured perils: eg. fire under fire policy, burglary under a burglary policy
- Excepted perils: specifically excluded eg. Suicide in life insurance policy, war perils under marine insurance policy etc.
- Uninsured perils: not mentioned in policy, which are clearly outside scope of cover. Eg. fire damage under burglary policy, natural death under personal accident policy.

Maxim

- Causa proxima non remota spectatur (the immediate, or proximate, not the remote, cause must be regarded.
- Unless the loss is proximate and from insured peril, insurer is not liable.
- When chain of events causing loss is complicated by excepted and uninsured perils, the liability becomes controversial.

Proximate in efficiency

- Leyland Shipping Co Ltd v Norwich Union Fire Insurance Co. Ltd, 1918:
- "….to treat proximate cause as if it was the cause which is proximate in time is out of the question. The cause which is truly proximate is that which is proximate in efficiency."

Commonsense standard

- Determination of proximate cause is based upon the standards of the reasonable man.
- Causation has to be understood as the man in street, and not as either the scientist or the metaphysician, would understand it. (Yorkshire Dale S.S.Co v Minister of War Transport (1942)

Johnston v West of Scotland Insurance Co. 1828

- A fire left a wall in a dangerous state.
- Local authority ordered demolition
- Before that it fell on neighbouring property
- Proximately caused by fire.
- Gaskareth v Law Union 1876, again fire left a wall in dangerous state, after some days, a gale caused the fall and damaged other property. Proximate cause was failure of owner to remove wall.

Marsden v County Assurance Co 1865

- A plate glass insurance covered breakages from any cause except fire.
- As fire broke out in neighbouring building, mob broke the plate glass of insured’s premises to carry out looting.
- Insurers cannot avoid liability, fire was only remote cause, unlawful action of mob is proximate cause.

General Rules

- Single cause: roof damaged by lightening, proximity is not a problem
- Chain of events: proximate cause is complicated

Chain of events

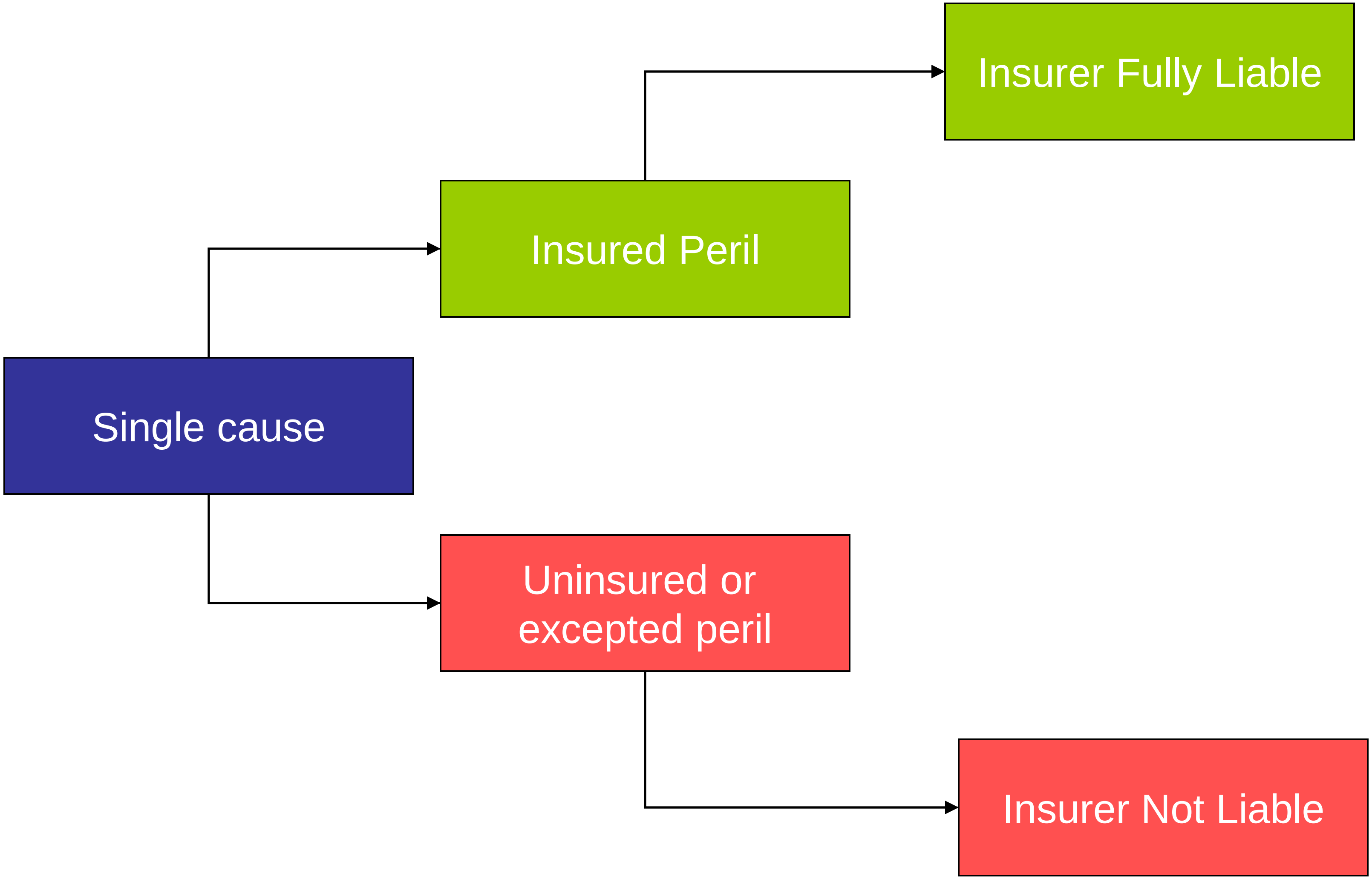
- Unbroken sequence: each event is caused by and necessarily follows from previous one.
- Broken sequence: where a new and independent cause intervenes, so that end result is not inevitable consequence of the first event

Unbroken

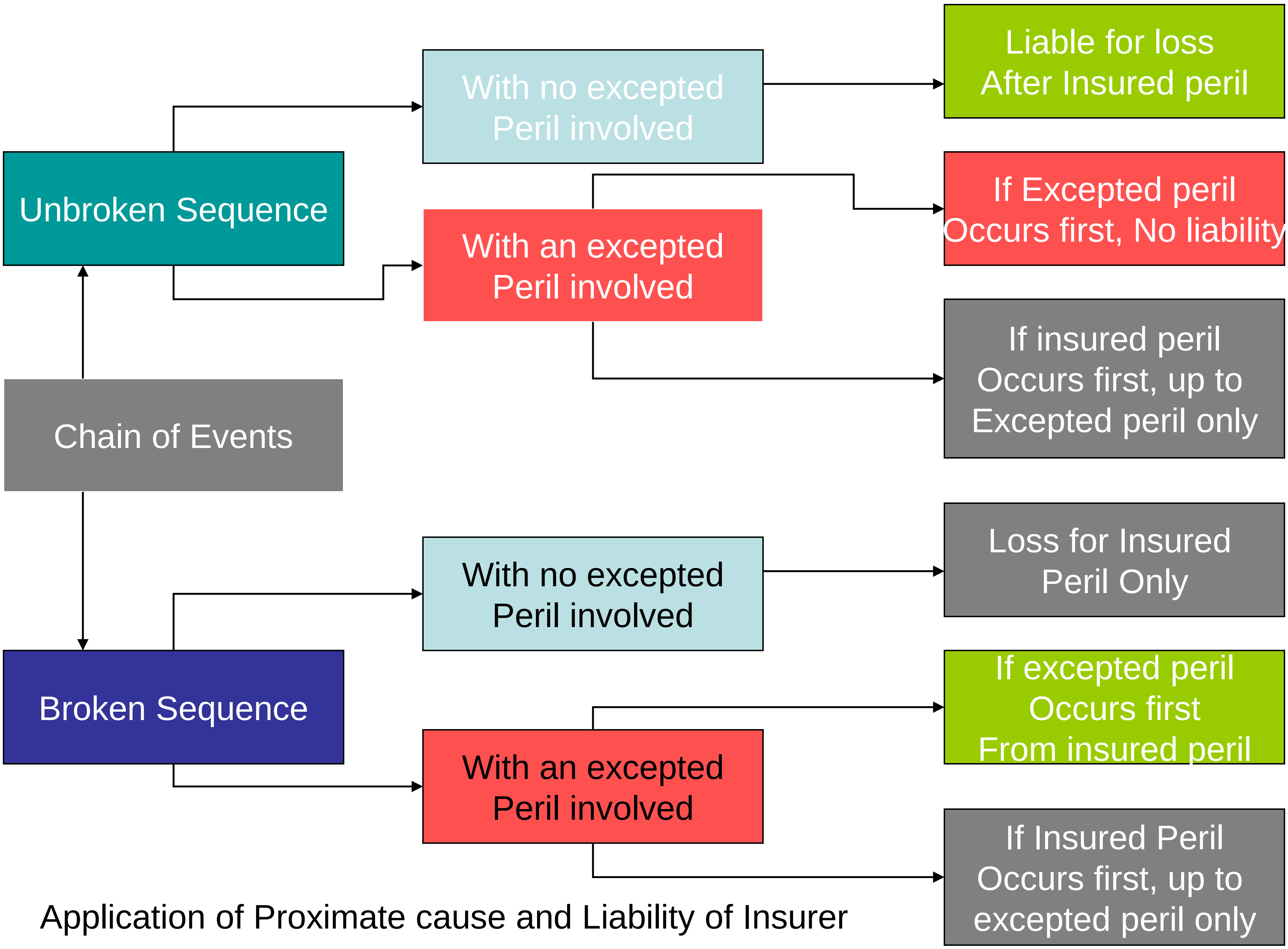
- Unbroken chain of events, no excepted, but insured peril. Losses by and following insured perils are recoverable.
- Re Etherington and the Lancashire & Yorkshire Accident Insurance Co (1909) Policy for death due to accidents but nor for sickness. A Fell from horse, suffered shock, got pneumonia, died. Accident was proximate cause, insurer liable.

Unbroken with excepted peril

- Where excepted peril occurs in an unbroken chain of events, liability depends on whether excepted peril occurred before or after the insured peril.



Application of Proximate cause and Liability of Insurer



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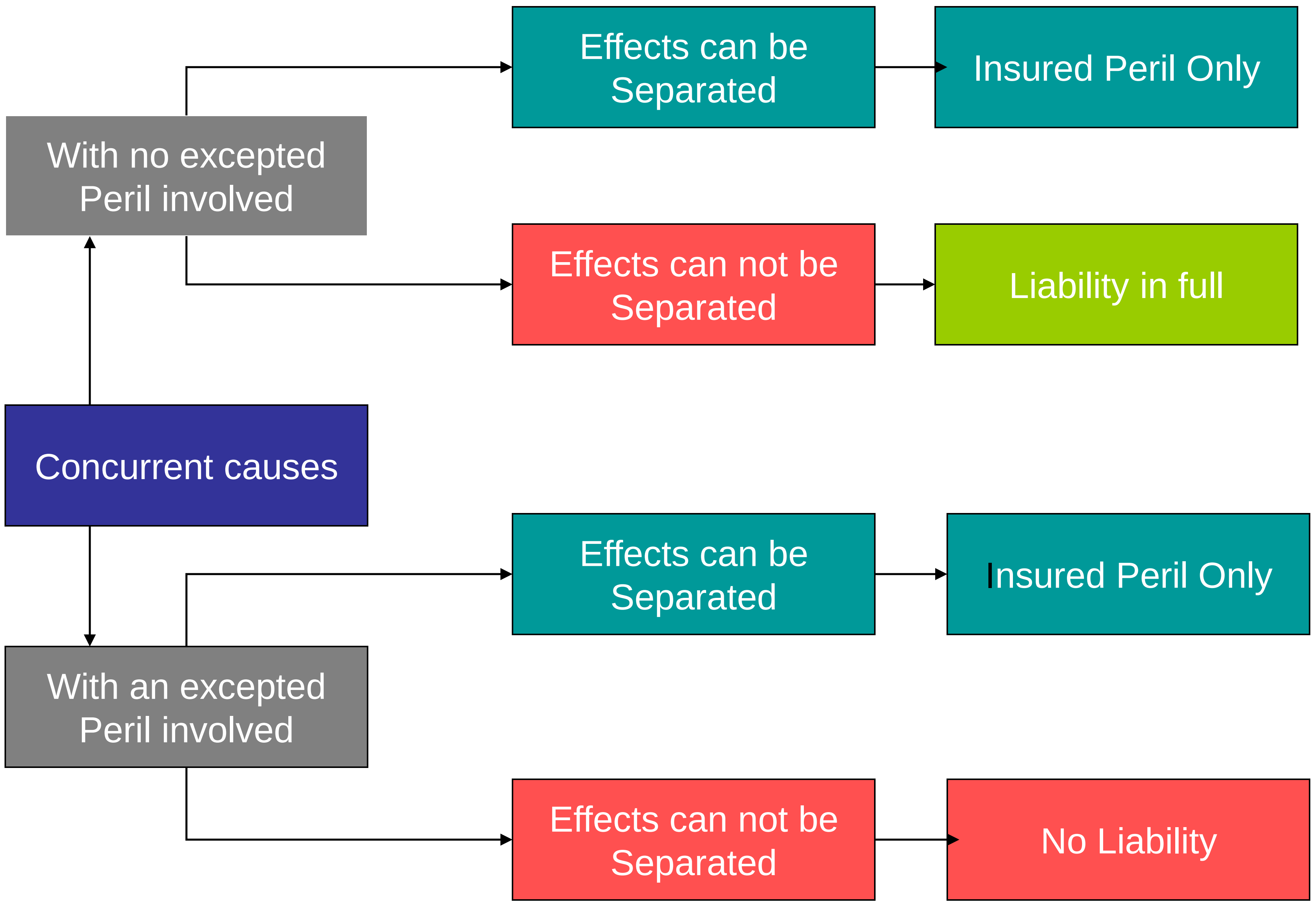

Application of Proximate cause and Liability of Insurer

Measure of indemnity

- S 67 Extent of liability of insurer for loss:
- In case of unvalued policy, to the full extent of insurable value.
- Valued policy, to the full extent of value fixed by the policy. This is called measure of indemnity (the sum which assured can recover.
- Insurer is liable to the proportion of indemnity as amount his subscription bears to the value fixed by policy (or insurable value if unvalued policy)

Total loss

- S 68 where there is total loss
- If it is valued policy, assured is entitled to get sum fixed by policy
- If it is unvalued policy, entitled to insurable value of the subject matter insured

Partial Loss

- S 69 Where the ship is damaged but is not totally lost, the measure of indemnity is as follows:
- Cost of repair less customary deductions
- If partially repaired, cost of repair plus reasonable depreciation arising from unrepaired damage, provided that aggregate amount shall not exceed the cost of repairing the whole damage

indemnity

- Where ship is damaged but not repaired, and not has been sold, assured is entitled to
- Reasonable depreciation arising from unrepaired damage, provided that aggregate amount shall not exceed the cost of repairing the whole damage

Indemnity

- Where damaged ship has not been repaired and has been sold in damaged state, entitled to reasonable cost of repairing the damage, but not exceeding the depreciation in value as ascertained by the sale.
- S 70 Partial loss of freight
- S 71 Partial Loss of goods, merchandise

Apportionment of valuation

- S 72 Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values…..
- S 73 assured has paid or liable for any general average contribution, the measure indemnity is full amount of such contribution. If not insured for full contribution value, to the proportion entitled.

Liability to Third party

- S 74 in policy covering liability to third party the measure of indemnity is the amount paid or payable to third party in respect of such liability.
- 75 General provisions as to measure of indemnity
- 76. Particular average warranties.
- 77. insurer liable for successive losses

Rights of insurer on payment

- 79. Right of **subrogation**: where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part of the subject matter insured, he thereupon becomes entitled to take over the interest of the assured whatever may remain of the subject matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of casualty causing the loss.

Partial loss

- If insurer pays for partial loss, insurer subrogates in so far as the assured has been indemnified, by such payment for the loss.

Right of contribution

- S 80 where assured is over-insured by double insurance, each insurer is bound as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under the contract.
- If any insurer pays more than his proportion of the loss, he is entitled to maintain a suit for contribution against the other insurers, and is entitled to he like remedies as a surety who has paid more than his proportion of the debt.

Effect of underinsurance

- S 81 where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

Ratification

- S 85 Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

Implied obligation varied

- Section 86 Implied obligation varied by agreement or usage.
- Where any right, duty or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.
- The provisions of this section extend to any right, duty or liability declared by this Act which may be lawfully modified by agreement.

Reasonable time a question of fact

- 87. where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.
- 88. where there is a duly stamped policy, reference may be made, as heretobefore, to the slip or covering note, in any legal proceeding.

Power of Center

- S 89 The Central government has power to modify this law to apply to ships exclusively used in inland navigation, subject to conditions and exceptions it may notify.
- S 90 Nothing in S 6(e) of TP Ac 1882 shall affect the provisions of sections 17, 52, 53 and 79 of this Act.