



PECULIARITIES OF INSURANCE CONTRACTS

6.0 INTRODUCTION

So far you have studied that the Insurance contract is a contract of indemnity. The contract of Insurance is a contract in which an insurer, in consideration of a premium agrees with an insured either to indemnify him against loss caused by a risk insured against or to pay him an agreed sum of money on the happening of specified events.

The Insurance contract is unique in the sense that in addition to the contract meeting the six common conditions of commercial contracts, it is also subject to 4 special features i.e. Utmost Good Faith, Insurable Interest, Indemnity and its two corollaries, subrogation & contribution and proximate cause. The four conditions which we studied in detail in the previous chapters (it is to be remembered that in life Insurance contract the special conditions of indemnity and proximate cause are not applicable). But people have misconceptions about the insurance which have been discussed in this chapter.

6.1 OBJECTIVES

At the end of this lesson you will be able to know:

- How the insurance is different from gambling
- What are other features of the insurance contract?
- How the dispute arises in the insurance contract

6.3 INSURANCE AND GAMBLING

Some people at times say that Insurance is a gamble, a wager or a bet where the Insured pays a small amount (Premium) to the Insurer company and the Insurer in turn offers to pay a large sum (claim) in case a particular event happens otherwise he keeps the premium. While on the surface it may appear that this is no different than a person placing a small bet on a horse with the chance of getting 10-20 times his money back if that particular horse wins. While it is true that both Insurance and gambling involve money changing hands on the basis of chance events, it is important to understand the difference between the two.

The very act of placing a bet puts a person at risk of losing money. If he had not placed the bet there would be no risk and he would not care less which horse won or not. In Insurance, whether he insures or not, the risk is there and he is exposed to the possibility of a fire damaging his house. Gambling creates the risk whereas Insurance transfers an existing risk from one party to another.

The other differences between Insurance and gambling are

- (1) In Insurance, Insurable Interest is a pre-requisite whereas in gambling the interest is limited to the amount to be won or lost.
- (2) The Insured is immune from loss and his identity is known before the event whereas in Gambling the loser cannot be identified before the event.
- (3) Full disclosure (Utmost Good Faith) is required from both parties to an assurance contract whereas this is not necessary in a gambling contract.
- (4) Insurance contract is enforceable at law whereas there is no legal recourse for any of the two parties in a gambling contract.

INTEXT QUESTION 6.1

1. Is insurance contract gambling?
 2. Do you agree that the insurance & maintenance contracts are same?
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6.4 OTHER FEATURES OF AN INSURANCE CONTRACT

(a) Aleatory

Insurance contracts are said to be aleatory i.e. the values given up by the parties are unequal. The insurer may pay a large claim in return for a small amount (premium) or he may not pay at all. In either case the change of values are not equal. It is not true to say that an insured will not get anything if there is no claim but what he does receive is freedom from worry whether he sustain a loss or not. The peace of mind and freedom from worry are of far greater worth than the amount of petty premium paid.

(b) Conditional:

The Insurer is not obligated to perform if the conditions set forth in the contract are not met. The Insured does not promise to meet the conditions but he cannot force the Insurer to perform unless he does so. An example of this is the condition in an insurance policy regarding notification of claims that the Insurer be informed of a loss within a stipulated time period. The Insured is not compelled to do so but the Insurer can refuse to keep his promise if the Insured does not comply with this condition. Because of this conditional nature of an Insurance contract the Insured must be fully aware of the conditions of the policy if he is to receive its protection.

(c) Unilateral:

Only the Insurer makes a promise to do something, the insured on the other hand after payment of premium does not make any promises, though he must comply with the conditions if he wants the insurer to perform. He does not promise to meet the conditions, therefore Insurance contracts are said to be unilateral as in contrast to bi-lateral contracts in which both parties make enforceable promises and either party can force the other to perform or pay damages for not performing.

(d) Personal:

Insurance contracts are personal meaning thereby that it is the loss to person and not to the property itself that is insured. You may say your car is insured but actually its you who is insured against financial loss caused by

something happening to your car. That is why when a car is sold the Insurance does not automatically pass on to the new owner. It may be assigned but only with the consent of the Insurer because it is the people who are insured and they effect the hazard and Insurer are concerned as much about the person as with the property which may be subject matter of Insurance.

(e) Adhesion:

The Insurance contracts are contracts of Adhesion. Most commercial contracts are formulated after bargaining between the parties to the contract but Insurance contracts are created by the insurers alone and they are presented to the insured and he can take them as they are or leave them. This fact influence the way courts handle disputes regarding contracts of Insurance. The rule is that if there is an ambiguous clause then it will be interpreted in favour of the Insured on the assumption that since the Insurer has worded the contract he should know what he wants to say and write it down clearly.

This is one reason why Insurance contracts are complicated. Failure to state the specifications of what is covered and what is not and that too in a clear manner can prove to be costly for an Insurance company because if there is a difference of opinion the Insurer will be the victim of court interpretation.

6.5 SUMMARY

We have discussed various features of insurance contracts but it does not mean that the disputes will not arise if these features are present. Disputes may be of two categories.

The first is whether a contract exists or not. Was there a contract? Was it in existence at the time of loss?; and these questions concern whether or not the essential condition of a contract have been met i.e. Was the purpose legal?; Was there an offer and acceptance?; Was there a consideration?; Were the parties competent?; Whether conditions of Utmost Good Faith and Insurable interest were complied with or not?.

The second general area of dispute is whether the claim is payable or not and the amount of claim, and these disputes

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arise from the questions. Was the risk covered?; Has there been any breach of warranty?; Have the conditions to the policy been complied with?; Was the Sum Insured adequate?; Should the conditions of average apply or not?; Whether entire loss was due to cover risk?; etc.

6.6 TERMINAL QUESTIONS

1. What is the difference between a service contract and a contract of insurance?
2. What are other features of insurance contract?

6.7 ANSWERS TO INTEXT QUESTIONS

6.1

1. Gambling creates the risk whereas Insurance transfers an existing risk from one party to another.
2. No, we do not agree with given statement as Maintenance contract is against the expense of the inevitable whereas Insurance contracts are against the expense of the accidental and there is an element of chance, which is a basic requirement of Insurance contracts.