

**LL.M. IV SEMESTER**  
**SUBJECT – INSURANCE LAW**  
**L-4003**

**CONTRACT OF MARINE INSURANCE**

- Most of the law of Marine Insurance is in essence pure interpretation of the contract contained in the common form of Marine Policy.
  - Kulukundis V Norwich Union Fire Insurance Society, 1937.
  - The basic principle of a contract of insurance is the indemnification.
  - Thus as per the section 3 of M.I. Act 1963 – “ a contract of marine insurance is a contract whereby the Insurer undertakes to indemnify the assured , in manner and to the extent there by agreed against marine losses, that is to say the losses incident to marine adventure section 4 - of M.I. Act.
  - The formal instrument embodying the contract of marine insurance is called “ the policy and “the slip” or “covering note”
  - The subject matter insured and the consideration for the insurance are respectively known as “ the interest insured” and the premium.
  - The person who is indemnified is “ Assured “ and the other party is “the insurer or the under writer.”
  - “ Loss” includes damage or detriment as well as actual loss of property arising from Maritime perils.
  - “Maritime perils” – means the perils consequent on or incidental to the navigation of the sea, that is to say the perils of the sea. Thomas V Hamilton 1887.
  - The perils of the sea..
    - Canda V Union Marine 1941
    - Hamilton V Paridrof 1887
    - Stewart V NewZealand 1912
  - Marine adventure – sea 2(d) – M.I. Act.
  - It is a contract of indemnity and indemnity only.
    - Castellain V preston 1883
    - British & Foreign Marine Insurance Co.1921.
    - Maurice V Golds brough 1939
  - Richards V Forest Land, Timber and Railways Co. Ltd 1941
- “ The Act is merely dealing with a particular branch of the law of contract namely those of marine insurance. Subject to various imperative provisions or prohibitions and the general rules of common law, the parties are free to make their own contracts and to exclude or vary the statutory terms. The object both of the legislature and of courts has been to give effect to the idea of indemnity, which is the basic principle of insurance and to apply it to the diverse complications of fact and law in respect of which it has to operate . In this way, the law merchant has solved or sought to solve, the manifold problems which have been presented by insurances of mari time adventures”
- Irving v Manning (1847)
  - Section 29(3) of M.I. Act

This is largely attributable to the fact that both the common law and the and the inactment endorse the fact that the value fixed by the police is conclusive of the insurable value of subject matter insured.

Robertson V French 1803

Birrel V Dryer 1884

- Requirements of taking an insurance policy

Insurable interest

Section 24 to 34 of M.I. Act

Insurable Interest

Section 7 of M.I. Act

Attachment of Interest

Section 8 of M.I. Act

- Valuation of Insurance –

A clear delimitation of insurable value is necessary –

- a) To fix the measure of indemnity, in the case of an unvalued policy.
- b) To fix the measure of indemnity in the few cases in which a valued policy can be opened up.
- c) To furnish an approximate standard for fixing the value in a valued policy.

- Other policy requirement

Surajmall Nagoremall v Triton Insurance Co. Ltd 1924.

- Section 7 (1) Indian Stamp Act 1899.

Section 26 of M.I. Act

Section 28 of M.I. Act

- Duties of Parties.

Section 19 - 22 of M.I. Act

Reciprocal duty.

Scope of insurer's duty of disclosure –

Scope of assured's post – contractual duty of disclosure.

Pre – contractual

- Rights of insurer on payment

ESSO Petroleum Co. Ltd v Hall Russell and Co. 1988

Simpson v Thomson – 1877

Yorkshire insurance co v Nishet shipping co. 1962

Section 80 of M.I. Act

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