



Outline and Lecture of:
ATTY. MARY ANN L. REYES
Insurance Law – Sundays 3:00PM-5:00PM
Ref: Insurance Law (2nd Ed.) by Aquino

I. INTRODUCTION

A. History

History of Insurance in the Philippines¹

- **Pre-Spanish Era** - there was no insurance; every loss was borne by the person or the family who suffered the misfortune.
- **Spanish era** – Insurance, in its present concept, was introduced in the Philippines when Lloyd's of London appointed Strachman, Murray & Co., Inc. as its representative here.
- **1898** – Life insurance was introduced in this country with the entry of Sun Life Assurance of Canada in the local insurance market.
- **1906** – First domestic non-life insurance company, the Yek Tong Lin Insurance Company, was organized
- **1910** – First domestic life insurance company, the Insular Life Assurance Co., Ltd., was organized
- **1939** – Union Insurance Society of Canton appointed Russel & Surgis as its agent in Manila. The business transacted the Philippines was then limited to *non-life insurance*.
- **1936** – Social insurance was established with the enactment of Commonwealth Act no. 186 which created the Government Service Insurance System (GSIS) which started operations in 1937. The Act covers government employees.
- **1949** – Government agency was formed to handle insurance affairs, where the Insular Treasurer was appointed commissioner ex-officio.

¹ <http://www.batasnatin.com/law-library/mercantile-law/insurance/1573-history-of-insurance-in-the-philippines.html>

- **1950** – Reinsurance was introduced by the Reinsurance Company of the Orient when it wrote treaties for both life and non life.
- **1951** – First workmen's compensation pool was organized as the Royal Group Incorporated.
- **1954** – RA 1161 was enacted which provided for the organization of the Social Security System (SSS) covering employees of the private sector.

B. Laws Governing Insurance

1. New Civil Code

Article 739. The following donations shall be void:

- (1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
- (2) Those made between persons found guilty of the same criminal offense, in consideration thereof;
- (3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

Article 2011. The contract of insurance is governed by special laws. Matters not expressly provided for in such special laws shall be regulated by this Code.

Article 2012. Any person who is forbidden from receiving any donation under article 739 cannot be named beneficiary of a life insurance policy by the person who cannot make any donation to him, according to said article.

Article 2186. Every owner of a motor vehicle shall file with the proper government office a bond executed by a government-controlled corporation or office, to answer for damages to third persons. The amount of the bond and other terms shall be fixed by the competent public official.

Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

2. **Republic Act No. 10607 (amending P.D. No. 612 as amended);**
3. **Executive Order No. 200 (Family Code)**



4. **Section 185 Code of Commerce (repealed by Act No. 1459 on Domestic Insurance Corporations);**
5. **Republic Act No. 8291 (Revised Government Services Insurance Act), Republic Act No. 8282 (Social Security Act of 1997);**
6. **Republic Act No. 5756, extending GSIS benefits to Barangay Secretaries and Treasurers;**
7. **Executive order No. 250 (1987), rationalizing insurance benefits of local government officials**
8. **Republic Act No. 3591 (PDIC Law)**
9. **Republic Act No. 9829 (Pre-Need Code)**

CASES:

Enriquez v. Sun Life Insurance of Canada G.R. No. L-15895, November 29, 1920

While, as just noticed, the Insurance Act deals with life insurance, it is silent as to the methods to be followed in order that there may be a contract of insurance. On the other hand, the Civil Code, in article 1802, not only describes a contract of life annuity markedly similar to the one we are considering, but in two other articles, gives strong clues as to the proper disposition of the case. For instance, article 16 of the Civil Code provides that "In matters which are governed by special laws, any deficiency of the latter shall be supplied by the provisions of this Code." On the supposition, therefore, which is incontestable, that the special law on the subject of insurance is deficient in enunciating the principles governing acceptance, the subject-matter of the Civil code, if there be any, would be controlling. (*underscoring supplied*)

The Insular Life Assurance Company, Ltd. V. Ebrado, G.R. No. L-44059, October 28, 1977

This is a novel question in insurance law: Can a common-law wife named as beneficiary in the life insurance policy of a legally married man claim the proceeds thereof in case of death of the latter?

xxx
(*answered in the negative*)

xxx

In essence, a life insurance policy is no different from a civil donation insofar as the beneficiary is concerned. Both are founded upon the same consideration: liberality. A beneficiary is like a donee, because from the premiums of the policy which the insured pays out of liberality, the beneficiary will receive the proceeds or profits of said insurance. As a consequence, the proscription in Article 739 of the new Civil Code should equally operate in life insurance contracts. The mandate of Article 2012 cannot be laid aside: any person who cannot receive a donation cannot be named as beneficiary in the life insurance policy of the person who cannot make the donation. Under American law, a policy of life insurance is considered as a testament and in construing it, the courts will, so far as possible treat it as a will and determine the effect of a clause designating the beneficiary by rules under which wills are interpreted

Filipinas Compania de Seguros, et al. v. Mandanas, G.R. No. L19638, June 20, 1966

[T]he purpose of Article 22 is to maintain a high degree or standard of ethical practice, so that insurance companies may earn and maintain the respect of the public, because the intense competition between the great number of non-life insurance companies operating in the Philippines is conducive to unethical practices, oftentimes taking the form of underrating; that to achieve this purpose it is highly desirable to have cooperative action between said companies in the compilation of their total experience in the business, so that the Bureau could determine more accurately the proper rate of premium to be charged from the insured; that, several years ago, the very Insurance Commissioner had indicated to the Bureau the necessity of doing something to combat underrating, for, otherwise, he would urge the amendment of the law so that appropriate measures could be taken therefor by his office; that much of the work of the Bureau has to do with rate-making and policy-wording; that rate-making is actually dependent very much on statistics; that, unlike life insurance companies, which have tables of mortality to guide them in the fixing of rates, non-life insurance companies have, as yet, no such guides; that, accordingly, non-life insurance companies need an adequate record of losses and premium collections that will enable them to determine the amount of risk involved in each type of risk and, hence, to determine the rates or premiums that should be charged in insuring every type of risk; that this information cannot be compiled without full cooperation on the part of the companies concerned, which cannot be expected from non-members of the Bureau, over which the latter has no control; and that, in addition to submitting information about their respective experience, said Bureau members must, likewise, share in the rather appreciable expenses entailed in compiling the aforementioned data and in analyzing the same. (*underscoring supplied*)

C. General Concept of Insurance

1. Concept of Insurance

"SEC. 2. Whenever used in this Code, the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

"(a) A contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.

"A contract of suretyship shall be deemed to be an insurance contract, within the meaning of this Code, only if made by a surety who or which, as such, is doing an insurance business as hereinafter provided.

"(b) The term doing an insurance business or transacting an insurance business, within the meaning of this Code, shall include:

"(1) Making or proposing to make, as insurer, any insurance contract;



"(2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;

"(3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;

"(4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.

"In the application of the provisions of this Code, the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business.

"(c) As used in this Code, the term Commissioner means the Insurance Commissioner.

2. Test of Insurance

White Gold Marine Services Inc. v. Pioneer Insurance and Surety Corp., G.R. No.154514, July 28, 2005

The test to determine if a contract is an insurance contract or not, depends on the nature of the promise, the act required to be performed, and the exact nature of the agreement in the light of the occurrence, contingency, or circumstances under which the performance becomes requisite. It is not by what it is called. Basically, an insurance contract is a contract of indemnity. In it, one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.

Philamcare Health Systems, Inc. v. Court of Appeals, G.R. No. 125678, March 18, 2002

In the case at bar, the insurable interest of respondent's husband in obtaining the health care agreement was his own health. The health care agreement was in the nature of non-life insurance, which is primarily a contract of indemnity. Once the member incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingent, the health care provider must pay for the same to the extent agreed upon under the contract.

3. Suretyship

In suretyship, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor solidarily. (Art. 2047, NCC)

A contract of suretyship shall be deemed to be an insurance contract, within the meaning of this Code, only if made by a surety who or which, as such, is doing an insurance business as hereinafter provided. (Sec.2, ICP)

4. Pre-Need Plans²

"Pre-need plans" are contracts which provide for the performance of future services of or the payment of future monetary considerations at the time actual need, for which plan holders pay in cash or installment at stated prices, with or without interest or insurance coverage and includes life, pension, education, interment, and other plans which the Commission³ may from time to time approve."

5. Variable Contracts⁴

"The term variable contract shall mean any policy or contract on either a group or on an individual basis issued by an insurance company providing for benefits or other contractual payments or values thereunder to vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account in which amounts received in connection with such contracts shall have been placed and accounted for separately and apart from other investments and accounts. This contract may also provide benefits or values incidental thereto payable in fixed or variable amounts, or both. It shall not be deemed to be a security or securities as defined in The Securities Act,⁵ as amended, or in the Investment Company Act,⁶ as amended, nor subject to regulations under said Acts."

6. Doing an Insurance Business⁷

The term doing an insurance business or transacting an insurance business, within the meaning of this Code, shall include:

- (1) Making or proposing to make, as insurer, any insurance contract;
- (2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;

² Republic Act No. 8799 "Securities Regulation Code", Section 3.9

³ Refers to Securities and Exchange Commission, *Id.* at Sec. 4.1

⁴ Republic Act No. 10607 "The Insurance Code", Section 238 (b)

⁵ Commonwealth Act No. 83, "An Act to Regulate the Sale of Securities, to Create a Securities and Exchange Commission to Enforce the Provisions of the Same, and to Appropriate Funds Therefor"

⁶ Republic Act No. 2629 "Investment Company Act"

⁷ *Id.* at 4, Sec. 2(b)



- (3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;
- (4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.

N.B.

In the application of the provisions of the Insurance Code, **the fact that no profit is derived** from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, **shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business.**

7. Mutual Insurance Companies⁸

"SEC. 403. Any society, association or corporation, without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments, but in no case shall include any society, association, or corporation with such mutual benefit features and which shall be carried out purely from voluntary contributions collected not regularly and/or no fixed amount from whomsoever may contribute, shall be known as a mutual benefit association within the intent of this Code.

"Any society, association, or corporation principally organized as a labor union shall be governed by the Labor Code notwithstanding any mutual benefit feature provisions in its charter as incident to its organization.

"In no case shall a mutual benefit association be organized and authorized to transact business as a charitable or benevolent organization, and whenever it has this feature as incident to its existence, the corresponding charter provision shall be revised to conform with the provision of this section. Mutual benefit association, already licensed to transact business as such on the date this Code becomes effective, having charitable or benevolent feature shall abandon such incidental purpose upon effectivity of this Code if they desire to continue operating as such mutual benefit associations.

White Gold Marine Services Inc. v. Pioneer Insurance and Surety Corp., G.R. No.154514, July 28, 2005

[A] mutual insurance company is a cooperative enterprise where the members are both the insurer and insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion to their interest. Additionally, mutual insurance associations, or clubs, provide three types of coverage, namely, protection and indemnity, war risks, and defense costs.

D. Characteristics

1. Risk Distributing Device

Insurance serves to distribute the risk of economic loss among as many as possible of those who are subject to the same kind of loss.

An essential characteristic of an insurance is its being synallagmatic, a highly reciprocal contract where the rights and obligations of the parties correlate and mutually correspond. The insurer assumes the risk of loss which an insured might suffer in consideration of premium payments under a **risk-distributing device**. Such assumption of risk is a component of general scheme to distribute actual losses among a group of persons, bearing similar risks, who make ratable contributions to a fund from which the losses incurred due to exposures to the peril insured against are assured and compensated. (*UPCB General Insurance Co. Inc. v. Masagana Telemart Inc., G.R. No. 137172, April 4, 2001*)

2. Contract of Adhesion

Rizal Surety & Insurance Company v. Court of Appeals, G.R. No. 112360, July 18, 2000

[C]onsidering that the two-storey building aforementioned was already existing when subject fire insurance policy contract was entered into on January 12, 1981, having been constructed sometime in 1978, petitioner should have specifically excluded the said two-storey building from the coverage of the fire insurance if minded to exclude the same but if did not, and instead, went on to provide that such fire insurance policy covers the products, raw materials and supplies stored within the premises of respondent Transworld which was an integral part of the four-span building occupied by Transworld, knowing fully well the existence of such building adjoining and intercommunicating with the right section of the four-span building.

After a careful study, the Court does not find any basis for disturbing what the lower courts found and arrived at. Indeed, the stipulation as to the coverage of the fire insurance policy under controversy has created a doubt regarding the portions of the building insured thereby. Article 1377 of the New Civil Code provides: "The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity"

⁸ *Id.* at 4, Chapter VII, Title I



Blue Cross Health Care Inc. v. Olivarez, G.R. No. G.R. No. 169737, February 12, 2008

[In this case], disabilities which existed before the commencement of the agreement are excluded from its coverage if they become manifest within one year from its effectivity. Stated otherwise, petitioner is not liable for pre-existing conditions if they occur within one year from the time the agreement takes effect.

xxx

Respondents counter that the burden was on petitioner to prove that Neomi's stroke was excluded from the coverage of their agreement because it was due to a pre-existing condition. It failed to prove this.

We agree with respondents.

In *Philamcare Health Systems, Inc. v. CA*, we ruled that a health care agreement is in the nature of a non-life insurance. It is an established rule in insurance contracts that when their terms contain limitations on liability, they should be construed strictly against the insurer. These are contracts of adhesion the terms of which must be interpreted and enforced stringently against the insurer which prepared the contract. This doctrine is equally applicable to health care agreements.

Petitioner never presented any evidence to prove that respondent Neomi's stroke was due to a pre-existing condition. It merely speculated that Dr. Saniel's report would be adverse to Neomi, based on her invocation of the doctor-patient privilege. This was a disputable presumption at best.

Fortune Insurance and Surety Co. v. Court of Appeals, G.R. No. 115278, May 23, 1995

It has been aptly observed that in burglary, robbery, and theft insurance, "the opportunity to defraud the insurer — the moral hazard — is so great that insurers have found it necessary to fill up their policies with countless restrictions, many designed to reduce this hazard. Seldom does the insurer assume the risk of all losses due to the hazards insured against." Persons frequently excluded under such provisions are those in the insured's service and employment. The purpose of the exception is to guard against liability should the theft be committed by one having unrestricted access to the property. In such cases, the terms specifying the excluded classes are to be given their meaning as understood in common speech. The terms "service" and "employment" are generally associated with the idea of selection, control, and compensation.

A contract of insurance is a contract of adhesion, thus any ambiguity therein should be resolved against the insurer, or it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way, as to preclude the insurer from non-compliance with its obligation. It goes without saying then that if the terms of the contract are clear and unambiguous, there is no room for construction and such terms cannot be enlarged or diminished by judicial construction.

Gulf Resorts, Inc. v. Philippine Charter Insurance Corp., G.R. No. 156167, May 16, 2005

Petitioner cannot rely on the general rule that insurance contracts are contracts of adhesion which should be liberally construed in favor of the insured and strictly against the insurer company which usually prepares it. A contract of adhesion is one wherein a party, usually a corporation, prepares the stipulations in the contract, while the other party merely affixes his signature or his "adhesion" thereto. Through the years, the courts have held that in these type of contracts, the parties do not bargain on equal footing, the weaker party's participation being reduced to the alternative to take it or leave it. Thus, these contracts are viewed as traps for the weaker party whom the courts of justice must protect. Consequently, any ambiguity therein is resolved against the insurer, or construed liberally in favor of the insured. [W]e cannot apply the general rule on contracts of adhesion to the case at bar. Petitioner cannot claim it did not know the provisions of the policy. From the inception of the policy, petitioner had required the respondent to copy *verbatim* the provisions and terms of its latest insurance policy from AHAC-AIU.

Eternal Gardens Memorial Park Corporation v. Philippine American Life Insurance Company, G.R. No. 166245, April 9, 2008

May the inaction of the insurer on the insurance application be considered as approval of the application?

[Answer in the affirmative]

[T]o characterize the insurer and the insured as contracting parties on equal footing is inaccurate at best. Insurance contracts are wholly prepared by the insurer with vast amounts of experience in the industry purposefully used to its advantage. More often than not, insurance contracts are contracts of adhesion containing technical terms and conditions of the industry, confusing if at all understandable to laypersons, that are imposed on those who wish to avail of insurance. As such, insurance contracts are imbued with public interest that must be considered whenever the rights and obligations of the insurer and the insured are to be delineated. Hence, in order to protect the interest of insurance applicants, insurance companies must be obligated to act with haste upon insurance applications, to either deny or approve the same, or otherwise be bound to honor the application as a valid, binding, and effective insurance contract.

Manila Banker's Life Insurance Corporation v. Aban, G.R. No. 175666, July 29, 2013

The ultimate aim of Section 48 of the Insurance Code is to compel insurers to solicit business from or provide insurance coverage only to legitimate and bona fide clients, by requiring them to thoroughly investigate those they insure within two years from effectivity of the policy and while the insured is still alive. If they do not, they will be obligated to honor claims on the policies they issue, regardless of fraud, concealment or misrepresentation. The law assumes that they will do just that and not sit on their laurels, indiscriminately soliciting and accepting insurance business from any Tom, Dick and Harry.

xxx

"An insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the former's interest."



3. Aleatory

By an aleatory contract, one of the parties or both reciprocally bind themselves to give or to do something in consideration of what the other shall give or do upon the happening of an event which is uncertain, or which is to occur at an indeterminate time.⁹

4. Contract of indemnity

"Section 3. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

"The consent of the spouse is not necessary for the validity of an insurance policy taken out by a married person on his or her life or that of his or her children.

"All rights, title and interest in the policy of insurance taken out by an original owner on the life or health of the person insured shall automatically vest in the latter upon the death of the original owner, unless otherwise provided for in the policy.

"Section 4. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

Verendia v. Court of Appeals, G.R. No. 75605, January 22, 1993

Basically a contract of indemnity, an insurance contract is the law between the parties (*Pacific Banking Corporation vs. Court of Appeals 168 SCRA 1 [1988]*). Its terms and conditions constitute the measure of the insurer's liability and compliance therewith is a condition precedent to the insured's right to recovery from the insurer (*Oriental Assurance Corporation vs. Court of Appeals, 200 SCRA 459 [1991], citing Perla Compania de Seguros, Inc. vs. Court of Appeals, 185 SCRA 741 [1991]*). As it is also a contract of adhesion, an insurance contract should be liberally construed in favor of the insured and strictly against the insurer company which usually prepares it (*Western Guaranty Corporation vs. Court of Appeals, 187 SCRA 652 [1980]*).

An insurance contract is a contract of indemnity upon the terms and conditions specified therein. It is settled that the terms of the policy constitute the measure of the insurer's liability. In the absence of statutory prohibition to the contrary, insurance companies have the same rights as individuals to limit their liability and to impose whatever conditions they deem best upon their obligations not inconsistent with public policy. (*Fortune Insurance and Surety Co. v. Court of Appeals*)

⁹ New Civil Code, Article 2010

Exceptions:

- **Life insurance** (because the amount paid by the insurer can never be equal to the value of life insured)
- **Valued Policies** (under which the insurer will pay the value fixed in the policy regardless of actual cash value in case of total loss)

5. *Uberrimae Fides Contract* (or *uberrimae fidei*)

- one of **Abundant Good Faith** not for the insured alone, but equally so for the insurer. It requires the parties to the contract to disclose conditions affecting the risk of which He ought to know.

E. Elements of Insurance

(I-R-A-D-P)

I-nsurable Interest

R-isk of Loss

A-ssumption of Risk

D-istribution of Losses

P-remium

1. Insurable Interest

The insured possesses an interest of some kind *susceptible of pecuniary estimation*, known as "*insurable interest*."

In general (*except in life insurance policies*), a person is deemed to have an insurable interest in the subject matter insured where he has a relation or connection with or concern in it that he will derive pecuniary benefit or advantage from its preservation and will suffer pecuniary loss from its destruction or injury by the happening of the event insured against.

"SEC. 10. Every person has an insurable interest in the life and health:

"(a) Of himself, of his spouse and of his children;

"(b) Of any person on whom he depends wholly or in part for education or support, or in whom he has a pecuniary interest;

"(c) Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and



"(d) Of any person upon whose life any estate or interest vested in him depends.

"SEC. 11. The insured shall have the right to change the beneficiary he designated in the policy, unless he has expressly waived this right in said policy. Notwithstanding the foregoing, in the event the insured does not change the beneficiary during his lifetime, the designation shall be deemed irrevocable.

"SEC. 12. The interest of a beneficiary in a life insurance policy shall be forfeited when the beneficiary is the principal, accomplice, or accessory in willfully bringing about the death of the insured. In such a case, the share forfeited shall pass on to the other beneficiaries, unless otherwise disqualified. In the absence of other beneficiaries, the proceeds shall be paid in accordance with the policy contract. If the policy contract is silent, the proceeds shall be paid to the estate of the insured.

"SEC. 13. Every interest in property, whether real or personal, or any relation thereto, or liability in respect thereof, of such nature that a contemplated peril might directly damnify the insured, is an insurable interest.

"SEC. 14. An insurable interest in property may consist in:
 "(a) An existing interest;
 "(b) An inchoate interest founded on an existing interest; or
 "(c) An expectancy, coupled with an existing interest in that out of which the expectancy arises.

What is an insurable interest?

General Rule: A person is deemed to have an insurable interest in the subject matter insured where he has a relation or connection with or concern in it that he will derive pecuniary benefit or advantage from its preservation and will suffer pecuniary loss from its destruction or injury by the happening of the event insured against.

Exception: The term has a somewhat broader meaning in connection with life insurance. To have an insurable interest in the life of a person, the expectation of benefit from the continued life of that person need not necessarily be of pecuniary nature.

Differentiate insurable interest in life insurance and insurable interest in property insurance.

Insurable interest in life exists when there is reasonable ground founded on the relation of the parties, either pecuniary or contractual or by blood or affinity, to expect some benefit or advantage from the continuance of the life of the insured.

On the other hand, every interest in property, whether real or personal, or any relation thereto, or liability in respect thereof, of such nature that a contemplated peril might *directly* damnify the insured.¹⁰

What are the reasons for the requirement of an insurable interest?

- **As deterrence to the insured** – The requirement of an insurable interest to support a contract of insurance is based upon considerations of public policy which render wager policies invalid. A wager policy is obviously contrary to public interest.
- **As a measure of limit of recovery** – If and to the extent that any particular insurance contract is a contract to pay indemnity, the insurable interest of the insured will be the measure of the upper limit of his provable loss under the contract.

2. Risk of Loss

Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create liability against him...¹¹ The insured is subject to a risk of loss through the *destruction* or *impairment* of that interest by the happening of designated peril.

NOTE: Because of the first element, an insurance contract therefore is a *risk-distributing device*.

3. Assumption of Risk

A contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.¹²

4. Distribution of Losses

Such assumption of risk is part of a general scheme to *distribute actual losses* among a

¹⁰ *Id.* at 4, Section 13

¹¹ *Id.* at 4, Section 3

¹² *Id.* at 4, Section 2



large group or substantial number of persons bearing a similar risk.

5. Premium

"Section 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies, or whenever under the broker and agency agreements with duly licensed intermediaries, a ninety (90)-day credit extension is given. No credit extension to a duly licensed intermediary should exceed ninety (90) days from date of issuance of the policy."

As consideration for the insurer's promise, the insured makes a *ratable contribution* called "premium," to a general insurance fund.

CASES:

Gulf Resorts, Inc. v. Philippine Charter Insurance Corp., G.R. No.156167, May 16, 2005

An **insurance premium** is the consideration paid an insurer for undertaking to indemnify the insured against a specified peril. In fire, casualty, and marine insurance, the premium payable becomes a debt as soon as the risk attaches. In the subject policy, no premium payments were made with regard to earthquake shock coverage, except on the two swimming pools. There is no mention of any premium payable for the other resort properties with regard to earthquake shock. This is consistent with the history of petitioner's previous insurance policies from AHAC-AIU.

Philamcare Health Systems Inc. v. Court of Appeals, G.R. No. 125678, March 18, 2002

In the case at bar, the insurable interest of respondent's husband in obtaining the health care agreement was his own health. The health care agreement was in the nature of non-life insurance, which is primarily a contract of indemnity. Once the member incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingent, the health care provider must pay for the same to the extent agreed upon under the contract.

F. Subject Matter of a Contract of Insurance

Subject matter may be persons or things that have an insurable risk whose requirements are:

- (1) There must be a large number of homogenous exposure units;
- (2) The loss may be accidental and unintentional;
- (3) The loss must be determinable and measurable;

- (4) The loss should not be catastrophic;
- (5) The chance of loss must be calculable;
- (6) The premium must be economically feasible.

G. Event or peril insured against

"Section 86. Unless otherwise provided by the policy, an insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause."

Event may be past or future.

The designated **peril** in insurance is the specific cause of loss that is insured against.

H. Risk defined

Risk is an element of an insurance contract that the insured is subject to a risk of loss by the happening of a designated peril.

- Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create liability against him...¹³

Pure risk	Speculative risk
Situation where the possibility is either the person involved will suffer loss or he will not to suffer loss	Situation that may result in a gain or loss (Ex. Gambling)

Insurance Risk is → "Actuarial Risk"

Fortuitous Event

Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

Condition

Article 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.

¹³ *Id.* at 4, Section 3



Every obligation which contains a resolutive condition shall also be demandable, without prejudice to the effects of the happening of the event.

xxx

Article 1185. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation.

Loss

Loss is the end result of the risk insured against. It involves diminution of value or disappearance of value resulting from a risk.

Peril

Peril is the specific cause of loss that is insured against while risk is the uncertainty that the property or person insured will be lost or damaged by reason of the designated or some peril.

Hazard

Hazards are circumstances or conditions that create or increase the risk of loss. Hazards may either be:

Physical hazard – physical condition of the thing or the person that increases the chance of loss.

Moral hazard – involves dishonesty or character defects in the individual that increase the chance of loss.

Morale hazard – includes carelessness or indifference to a loss because of existence of insurance.

I. Right of subrogation

If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.¹⁴

¹⁴ New Civil Code, Article 2207

What are the purposes of subrogation?

- To make the person who caused the loss legally responsible for it
- To prevent the insured from receiving double recovery from the wrongdoer and the insurer
- To prevent the tortfeasors from being free from liability and is thus founded on consideration of public policy

What are the rules on subrogation?

- Applicable only to property insurance – the value of human life is regarded as unlimited and therefore, no recovery from a third party can be deemed adequate to compensate the insured's beneficiary.
- The right of insurer against a third party is limited to the amount recoverable from latter by the insured.

What if the amount paid by the insurance company does not fully cover the injury or loss?

The aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Art. 2207, NCC)

Exceptions (to right of subrogation)

- Where the insured by his own act releases the wrongdoer or third party liable for loss or damage from liability;
- The insurer loses his rights against the wrongdoer since the insurer can only be subrogated to only such rights as the insured may have;
- Where the insurer pays the insured the value of the loss without notifying the carrier who has in good faith settled the insured claim for loss.

Manila Mahogany Manufacturing Corporation v. Court of Appeals and Zenith Insurance Corp.

[G.R. No. L-52756 October 12, 1987]

FACTS

Petitioner Manila Mahogany insured its Mercedes Benz 4-door sedan with respondent Zenith Insurance, which was bumped and damaged by a truck owned by San Miguel Corporation. For the damage caused, respondent company paid petitioner five thousand pesos (P5,000.00) in amicable settlement. Petitioner's general manager executed a Release of Claim, subrogating respondent company to all its right to action against San Miguel Corporation. Respondent



company wrote Insurance Adjusters, Inc. to demand reimbursement from San Miguel Corporation of the amount it had paid petitioner. Insurance Adjusters, Inc. refused reimbursement, alleging that San Miguel Corporation had already paid petitioner P4,500.00 for the damages to petitioner's motor vehicle, as evidenced by a cash voucher and a Release of Claim. Respondent insurance company thus demanded from petitioner reimbursement of the sum of paid by San Miguel Corporation. Petitioner refused. Hence, respondent company filed suit in the City Court of Manila for the recovery of said money.

ISSUE

Whether or not petitioner Manila Mahogany should reimburse private respondent Zenith Insurance on the ground that San Miguel Corporation already paid the former.

RULING

Yes. When Manila Mahogany executed Release of Claim discharging San Miguel Corporation from "*all actions, claims, demands and rights of action that now exist or hereafter arising out of or as a consequence of the accident*" after the insurer had paid the proceeds of the policy- the compromise agreement of P5,000.00 being based on the insurance policy-the insurer is entitled to recover from the insured the amount of insurance money paid. Since petitioner by its own acts released San Miguel Corporation, thereby defeating private respondents, the right of subrogation, the right of action of petitioner against the insurer was also nullified.

Federal Express Corporation v. American Home Assurance Company and PhilAm Insurance Company Inc.

[G.R. No. 150094. August 18, 2004]

FACTS

Burlington, an agent of [Petitioner] Federal Express Corporation, insured the cargoes with American Home Assurance Company (AHAC) and turned over the custody of said cargoes to Federal Express which transported the same to Manila. Prior to the arrival of the cargoes, Federal Express informed GETC Cargo International Corporation, the customs broker hired by the consignee to facilitate the release of its cargoes from the Bureau of Customs, of the impending arrival of its client's cargoes. The shipment was declared 'total loss' for the unusable shipment. Thereafter, [respondents] filed an action for damages against the [petitioner] imputing negligence on either or both (Burlington and Federal Express) of them in the handling of the cargo.

ISSUE

Whether or not petitioner Federal Express is liable for damage to or loss of the insured goods.

RULING

NO. While in the exercise of its subrogatory right an insurer may proceed against an erring carrier, private respondent failed to comply with a condition precedent in a contract of carriage. When an airway bill – or any contract of carriage for that matter – has a stipulation that requires a notice of claim for loss of or damage to goods shipped and the stipulation is not complied with, its enforcement can be prevented and the liability cannot be imposed on the carrier. To stress, notice is a condition precedent, and the carrier is not liable if notice is not given in accordance with the stipulation. Failure to comply with such a stipulation bars

recovery for the loss or damage suffered. Being a condition precedent, the notice must precede a suit for enforcement. In the present case, there is neither an allegation nor a showing of respondents' compliance with this requirement within the prescribed period. While respondents may have had a cause of action then, they cannot now enforce it for their failure to comply with the aforesaid condition precedent.

Keppel Cebu Shipyard Inc. v. Pioneer Insurance and Surety Corp.

[G.R. No. 180880-81. September 25, 2009]

FACTS

KCSI and WG&A Jebsens Shipmanagement, Inc. (WG&A) executed a Shiprepair Agreement wherein KCSI would renovate and reconstruct WG&A's M/V "Superferry 3" using its dry docking facilities pursuant to its restrictive safety and security rules and regulations. Prior to the execution of the Shiprepair Agreement, "Superferry 3" was already insured by WG&A with Pioneer. In the course of its repair, M/V "Superferry 3" was gutted by fire. Claiming that the extent of the damage was pervasive, WG&A declared the vessel's damage as a "total constructive loss" and, hence, filed an insurance claim with Pioneer. Armed with the subrogation receipt, Pioneer tried to collect from KCSI, but the latter denied any responsibility for the loss of the subject vessel. Arbitration ensued, the Construction Industry Arbitration Commission (CIAC) rendered its Decision declaring both WG&A and KCSI guilty of negligence. However, the award amount was limited to only PhP50 Million.

ISSUE

Whether or not the right of subrogation covers total constructive loss of "Superferry 3".

RULING

YES. There existed a total constructive loss so that it had to pay WG&A the full amount of the insurance coverage and, by operation of law, it was entitled to be subrogated to the rights of WG&A to claim the amount of the loss. The Supreme Court held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay. KCSI is ordered to pay Pioneer the net amount of P329,747,351.91 plus legal interests.

Malayan Insurance v. Alberto and Reyes

[G.R. No. 194320. February 1, 2012]

FACTS

An accident occurred at the corner of EDSA and Ayala Avenue, Makati City, involving four (4) vehicles. Having insured the vehicle against such risks, Malayan Insurance claimed in its Complaint that it paid the damages sustained by the assured. Respondent questioned the subrogation by Malayan. Trial Court ruled in favor of Malayan. Respondent



appealed contending that the evidence on record has failed to establish not only negligence on the part of respondents, but also compliance with the other requisites and the consequent right of Malayan Insurance to subrogation. These were raised for the first time in the appellate court and noted that the police report, which has been made part of the records of the trial court, was not properly identified by the police officer who conducted the on-the-spot investigation of the subject collision.

ISSUE

Whether or not the subrogation by Malayan Insurance is proper and valid.

RULING

YES. Malayan has been properly and validly subrogated to the rights and interests of the assured by operation of law. Respondents are now deemed to have waived their right to make an objection. It is worth mentioning that just like any other disputable presumptions or inferences, the presumption of negligence may be rebutted or overcome by other evidence to the contrary. It is unfortunate, however, that respondents failed to present any evidence before the trial court. Bearing in mind that the claim check voucher and the Release of Claim and Subrogation Receipt presented by Malayan Insurance are already part of the evidence on record, and since it is not disputed that the insurance company, indeed, paid already to the assured, then there is a valid subrogation in the case at bar.

II. CONTRACT OF INSURANCE

A. Requisites

There is no contract unless the following requisites concur:¹⁵

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.

B. Perfection

Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.¹⁶

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.¹⁷

Cognition Theory

- The theory being applied under the New Civil Code;

¹⁵ New Civil Code, Article 1318

¹⁶ New Civil Code, Article 1319 (1)

¹⁷ New Civil Code, Article 1319 (2)

- [Insurance] contract is perfected the moment the offeror learns of the acceptance of his offer by the other party.

Development Bank of the Philippines v. Court of Appeals

G.R. No. L-109937 March 21, 1994

FACTS

Juan B. Dans applied for a loan with the Development Bank of the Philippines (DBP), Basilan Branch. As the principal mortgagor, Dans, then 76 years of age, was advised by DBP to obtain a mortgage redemption insurance (MRI) with the DBP Mortgage Redemption Insurance Pool (DBP MRI Pool). A reduced amount of loan was approved and released by DBP, and deducted the amount of P1,476.00 as payment for the MRI premium. Days after, Dans died of cardiac arrest. DBP informed his wife that her husband was not eligible of MRI, being over the acceptance age limit of 60 years at the time of application, and offered the return of premium. The wife as administratrix of the estate, filed a complaint against DBP, which was later sustained *in toto* by the appellate court.

ISSUE

Whether or not there is a perfected contract of insurance.

RULING

NO. The MRI coverage shall take effect: (1) when the application shall be approved by the insurance pool; and (2) when the full premium is paid during the continued good health of the applicant. These two conditions, being joined conjunctively, must concur. Undisputably, the power to approve MRI applications is lodged with the DBP MRI Pool. The pool, however, did not approve the application of Dans. There is also no showing that it accepted the sum of P1,476.00, which DBP credited to its account with full knowledge that it was payment for Dan's premium. There was, as a result, no perfected contract of insurance; hence, the DBP MRI Pool cannot be held liable on a contract that does not exist.

Enriquez v. Sun Life Assurance Company of Canada

G.R. No. L-15895. November 29, 1920.

FACTS

Joaquin Herrero made application to the Sun Life Assurance Company of Canada through its office in Manila for a life annuity. Two days later he paid the sum of P6,000 to the manager of the company's Manila office and was given a receipt. The pertinent fact is, that according to the provisional receipt, three things had to be accomplished by the insurance company before there was a contract:

- (1) *There had to be a medical examination of the applicant;*
- (2) *there had to be approval of the application by the head office of the company; and*
- (3) *this approval had in some way to be communicated by the company to the applicant.*

The application was immediately forwarded to the head office of the company at Montreal, Canada. On December 4, 1917, the policy was issued at Montreal. On December 18, 1917, Attorney Aurelio A. Torres wrote to the Manila office of



the company stating that Herrer desired to withdraw his application. The following day the local office replied to Mr. Torres, stating that the policy had been issued, and called attention to the notification of November 26, 1917. This letter was received by Mr. Torres on the morning of December 21, 1917. Mr. Herrer died on December 20, 1917.

ISSUE

Whether or not there was a perfected contract of insurance.

RULING

NO. The law applicable to the case is found to be the second paragraph of article 1262 of the (old) Civil Code providing that an acceptance made by letter shall not bind the person making the offer except from the time it came to his knowledge. The further admitted facts are that the head office in Montreal did accept the application, did cable the Manila office to that effect, did actually issue the policy and did, through its agent in Manila, actually write the letter of notification and place it in the usual channels for transmission to the addressee. The fact as to the letter of notification thus fails to concur with the essential elements of the general rule pertaining to the mailing and delivery of mail matter as announced by the American courts, namely, when a letter or other mail matter is addressed and mailed with postage prepaid there is a rebuttable presumption of fact that it was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails. But if any one of these elemental facts fails to appear, it is fatal to the presumption. For instance, a letter will not be presumed to have been received by the addressee unless it is shown that it was deposited in the post-office, properly addressed and stamped.

Instance of Cebu, which rendered the adverse decision as earlier referred to against both petitioners.

ISSUE

Whether or not the binding deposit receipt constituted a temporary contract of life insurance.

RULING

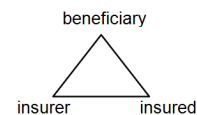
NO. Clearly implied from the aforesaid conditions is that the binding deposit receipt in question is merely an acknowledgment, on behalf of the company, that the latter's branch office had received from the applicant the insurance premium and had accepted the application subject for processing by the insurance company; and that the latter will either approve or reject the same on the basis of whether or not the applicant is "insurable on standard rates." Since petitioner Pacific Life disapproved the insurance application of respondent Ngo Hing, the binding deposit receipt in question had never become in force at any time.

C. Parties to Contract of Insurance

"Section 6. Every corporation, partnership, or association, duly authorized to transact insurance business as elsewhere provided in this Code, may be an insurer."

"Section 7. Anyone except a public enemy may be insured."

1. Insurer, insured, beneficiary



2. Art. 38, 39, NCC

Minority, insanity or imbecility, the state of being a deaf-mute, prodigality and civil interdiction are mere restrictions on capacity to act, and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations, such as easements.¹⁸

The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. The consequences of these circumstances are governed in this Code, other codes, the Rules of Court, and in special laws. Capacity to act is not limited on account of religious belief or political opinion.¹⁹

3. Rule on married women

Equality in Capacity to Act. – Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances.²⁰

Great Pacific Life Assurance Company v. Court of Appeals

G.R. No. L-31845 April 30, 1979

FACTS

Private respondent Ngo Hing filed an application with the Great Pacific Life Assurance Company (hereinafter referred to as Pacific Life) for a twenty-year endowment policy on the life of his one-year old daughter Helen Go and received a binding deposit receipt with the following conditions:

- (1) that the company shall be satisfied that the applicant was insurable on standard rates;
- (2) that if the company does not accept the application and offers to issue a policy for a different plan, the insurance contract shall not be binding until the applicant accepts the policy offered; otherwise, the deposit shall be refunded; and
- (3) that if the applicant is not insurable according to the standard rates, and the company disapproves the application, the insurance applied for shall not be in force at any time, and the premium paid shall be returned to the applicant.

The application was disapproved. The non-acceptance of the insurance plan by Pacific Life was allegedly not communicated by petitioner Mondragon to private respondent Ngo Hing. Helen Go died. Thereupon, private respondent sought the payment of the proceeds of the insurance, but having failed in his effort, he filed the action for the recovery of the same before the Court of First

¹⁸ NCC, Article 38

¹⁹ NCC, Article 39 (1)

²⁰ Republic Act No. 7192, Section 5



The consent of the spouse is not necessary for the validity of an insurance policy taken out by a married person on his or her life or that of his or her children.²¹

A married woman, twenty-one years of age or over, is qualified for all acts of civil life, except in cases specified by law.²²

General Rule

- Women's capacity to act is not impaired by marriage;
- Provision on insurance is not limited to common children of the spouses;

Exceptions

- If the beneficiary is a debtor of the spouses, taking of insurance can be considered as an act of administration where it should be jointly undertaken under absolute community of property regime. In case of disagreement, it is the husband that will prevail;²³
- If the beneficiary is a stranger to any of the spouses, taking of insurance can be in the nature of donation that should be approved by both of them under absolute community of property regime.²⁴

4. Rule on minors

"Section 182.²⁵ An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or otherwise contingently on the continuance or cessation of life.

"Every contract or pledge for the payment of endowments or annuities shall be considered a life insurance contract for purposes of this Code.

"In the absence of a judicial guardian, the father, or in the latter's absence or incapacity, the mother, of any minor, who is an insured or a beneficiary under a contract of life, health, or accident insurance, may exercise, in behalf of said minor, any right under the policy, without necessity of court authority or the giving of a bond, where the interest of the minor in the particular act involved does not exceed Five hundred thousand pesos (P500,000.00) or in such reasonable amount as may be determined by the Commissioner. Such right may include, but shall not be limited to, obtaining a policy loan, surrendering the policy,

²¹ *Id.* at 4, Section 3 (2)

²² NCC, Article 39 (2); *Note*: R.A. No. 6809 lowers age of majority to 18.

²³ Family Code, Article 96

²⁴ Family Code, Article 98

²⁵ *Id.* at 4

receiving the proceeds of the Policy, and giving the minor's consent to any transaction on the policy.

"In the absence or in case of the incapacity of the father or mother, the grandparent, the eldest brother or sister at least eighteen (18) years of age, or any relative who has actual custody of the minor insured or beneficiary, shall act as a guardian without need of a court order or judicial appointment as such guardian, as long as such person is not otherwise disqualified or incapacitated. Payment made by the insurer pursuant to this section shall relieve such insurer of any liability under the contract.

Contracts entered into by minors

An insurance contract entered into between the minor and an insurance company is voidable.

5. Public enemy

Public enemy is a State (and citizens thereof) which is at war with the Philippines.

Effect of war:

If there is no war yet at the time of the taking of policy but war ensues between the Philippines and the country of the insured, the insurance policy is deemed abrogated.

6. Capacity of party insured (natural, juridical persons)

Article 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

7. The insurer

"Section 191. The provisions of the Corporation Code, as amended, shall apply to all insurance corporations now or hereafter engaged in business in the Philippines insofar as they do not conflict with the provisions of this chapter.

"Section 192. No corporation, partnership, or association of persons shall transact any insurance business in the Philippines except as agent of a corporation, partnership or association authorized to do the business of insurance in the Philippines, unless possessed of the capital and assets required of an insurance corporation doing the same kind of business in the Philippines and invested in the same manner; unless the Commissioner shall have granted it a certificate to the effect that it has complied with all the provisions of this Code.

"Every entity receiving any such certificate of authority shall be subject to the insurance and other applicable laws of the



Philippines and to the jurisdiction and supervision of the Commissioner.

"Section 193. No insurance company shall transact any insurance business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Commissioner upon application therefor and payment by the company concerned of the fees hereinafter prescribed.

"The Commissioner may refuse to issue a certificate of authority to any insurance company if, in his judgment, such refusal will best promote the interest of the people of this country. No such certificate of authority shall be granted to any such company until the Commissioner shall have satisfied himself by such examination as he may make and such evidence as he may require that such company is qualified by the laws of the Philippines to transact business therein, that the grant of such authority appears to be justified in the light of local economic requirements, and that the direction and administration, as well as the integrity and responsibility of the organizers and administrators, the financial organization and the amount of capital, reasonably assure the safety of the interests of the policyholders and the public.

"In order to maintain the quality of the management of the insurance companies and afford better protection to policyholders and the public in general, any person of good moral character, unquestioned integrity and recognized competence may be elected or appointed director or officer of insurance companies in accordance with the pertinent provisions contained in the corporate governance circulars prescribed by the Commissioner. In addition hereto, the Commissioner shall prescribe the qualifications of directors, executive officers and other key officials of insurance companies for purposes of this section.

"No person shall concurrently be a Director and/or Officer of an insurance company and an adjustment company.

"Before issuing such certificate of authority, the Commissioner must be satisfied that the name of the company is not that of any other known company transacting a similar business in the Philippines, or a name so similar as to be calculated to mislead the public. The Commissioner may issue rules and regulations on the use of names of insurance companies and other supervised persons or entities.

"The certificate of authority issued by the Commissioner shall expire on the last day of December, three (3) years following its date of issuance, and shall be renewable every three (3) years thereafter, subject to the company's continuing compliance with the provisions of this Code, circulars, instructions, rulings or decisions of the Commission.

"Every company receiving any such certificates of authority shall be subject to the provisions of this Code and other related laws and to the jurisdiction and supervision of the Commissioner.

"No insurance company may be authorized to transact in the Philippines the business of life and non-life insurance concurrently, unless specifically authorized to do so by the Commissioner: Provided, That the terms life and non-life insurance shall be deemed to include health, accident and disability insurance.

"No insurance company shall have equity in an adjustment company and neither shall an adjustment company have equity in an insurance company.

"No insurance company issued with a valid certificate of authority to transact insurance business anywhere in the Philippines by the Insurance Commissioner, shall be barred, prevented, or disenfranchised from issuing any insurance policy or from transacting any insurance business within the scope or coverage of its certificate of authority, anywhere in the Philippines, by any local government unit or authority, for whatever guise or reason whatsoever, including under any kind of ordinance, accreditation system, or scheme. Any local ordinance or local government unit regulatory issuance imposing such restriction or disenfranchisement on any insurance company shall be deemed null and void *ab initio*.

"Section 238. (a) No insurance company authorized to transact business in the Philippines shall issue, deliver, sell or use any variable contract in the Philippines, unless and until such company shall have satisfied the Commissioner that its financial and general condition and its methods of operations, including the issue and sale of variable contracts, are not and will not be hazardous to the public or to its policy and contract owners. No foreign insurance company shall be authorized to issue, deliver or sell any variable contract in the Philippines, unless it is likewise authorized to do so by the laws of its domicile.

"(b) The term **variable contract** shall mean any policy or contract on either a group or on an individual basis issued by an insurance company providing for benefits or other contractual payments or values thereunder to vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account in which amounts received in connection with such contracts shall have been placed and accounted for separately and apart from other investments and accounts. This contract may also provide benefits or values incidental thereto payable in fixed or variable amounts, or both. It shall not be deemed to be a security or securities as defined in The Securities Act, as amended, or in the Investment Company Act, as amended, nor subject to regulations under said Acts.

"(c) In determining the qualifications of a company requesting authority to issue, deliver, sell or use variable contracts, the Commissioner shall always consider the following:

"(1) The history, financial and general condition of the company: Provided, That such company, if a foreign company, must have deposited with the Commissioner for the benefit and security of its variable contract owners in the Philippines, securities satisfactory to the Commissioner consisting of bonds of the Government of the Philippines or its instrumentalities with an actual market value of Two million pesos (P2,000,000.00);

"(2) The character, responsibility and fitness of the officers and directors of the company; and

"(3) The law and regulation under which the company is authorized in the state of domicile to issue such contracts.



"(d) If after notice and hearing, the Commissioner shall find that the company is qualified to issue, deliver, sell or use variable contracts in accordance with this Code and the regulations and rules issued thereunder, the corresponding order of authorization shall be issued. Any decision or order denying authority to issue, deliver, sell or use variable contracts shall clearly and distinctly state the reasons and grounds on which it is based.

Section 268. Any **domestic stock life insurance company** doing business in the Philippines may convert itself into an incorporated mutual life insurer. To that end it may provide and carry out a plan for the acquisition of the outstanding shares of its capital stock for the benefit of its policyholders, or any class or classes of its policyholders, by complying with the requirements of this chapter.

"Section 403. Any society, association or corporation, without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments, but in no case shall include any society, association, or corporation with such mutual benefit features and which shall be carried out purely from voluntary contributions collected not regularly and/or no fixed amount from whomsoever may contribute, shall be known as a **mutual benefit association** within the intent of this Code.

"Any society, association, or corporation principally organized as a labor union shall be governed by the Labor Code notwithstanding any mutual benefit feature provisions in its charter as incident to its organization.

"In no case shall a mutual benefit association be organized and authorized to transact business as a charitable or benevolent organization, and whenever it has this feature as incident to its existence, the corresponding charter provision shall be revised to conform with the provision of this section. Mutual benefit association, already licensed to transact business as such on the date this Code becomes effective, having charitable or benevolent feature shall abandon such incidental purpose upon effectivity of this Code if they desire to continue operating as such mutual benefit associations.

"Section 404. A mutual benefit association, before it may transact as such, must first secure a license from the Commissioner. The application for such license shall be filed with the Commissioner together with certified true copies of the articles of incorporation or the constitution and bylaws of the association, and all amendments thereto, and such other documents or testimonies as the Commissioner may require. "No license shall be granted to a mutual benefit association until the Commissioner shall have been satisfied by such examination as he may make and such evidence as he may require that the association is qualified under existing laws to operate and transact business as such. The Commissioner may refuse to issue a license to any mutual benefit association if, in his judgment, such refusal will best promote

the interest of the members of such association and of the people of this country. Any license issued shall expire on the last day of December of the third year following its issuance and, upon proper application, may be renewed if the association is continuing to comply with existing laws, rules and regulations, orders, instructions, rulings and decisions of the Commissioner. Every association receiving any such license shall be subject to the supervision of the Commissioner: Provided, That no such license shall be granted to any such association if such association has no actuary.

"Section 405. No mutual benefit association shall be issued a license to operate as such unless it has constituted and established a Guaranty Fund by depositing with the Commissioner an initial minimum amount of Five million pesos (P5,000,000.00) in cash, or in government securities with a total value equal to such amount, to answer for any valid benefit claim of any of its members.

"All moneys received by the Commissioner for this purpose must be deposited by him in interest-bearing deposits with any bank or banks authorized to transact business in the Philippines for the account of the particular association constituting the Guaranty Fund.

"Any accrual to such fund, be it interest earned or dividend additions on moneys or securities so deposited, may, with the prior approval of the Commissioner, be withdrawn by the association if there is no pending benefit claim against it, including interest thereon or dividend additions thereto.

"The Commissioner, prior to or after licensing a mutual benefit association, may require such association to increase its Guaranty Fund from the initial minimum amount required to an amount equal to the capital investment required of an existing domestic insurance company under Section 209 of this Code.

Mutual benefit associations are not *per se* insurance companies.

8. The beneficiary

"Section 11. The insured shall have the right to change the beneficiary he designated in the policy, unless he has expressly waived this right in said policy. Notwithstanding the foregoing, in the event the insured does not change the beneficiary during his lifetime, the designation shall be deemed irrevocable.

"Section 53. The insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made unless otherwise specified in the policy.

"Section 182. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or otherwise contingently on the continuance or cessation of life.

"Every contract or pledge for the payment of endowments or annuities shall be considered a life insurance contract for purposes of this Code.



The beneficiary may be a third person. Unless he is the insured himself, the beneficiary is not one of the contracting parties. However, a third party beneficiary named in the policy has the right to file an action against the insurer in case of loss. No other party can recover the proceeds other than the beneficiary.

What if there is no beneficiary?

If there is no designated beneficiary, the laws of succession are applicable and the proceeds shall form part of the estate of the deceased insured.

Family Code

Art. 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum(10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated. The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely supplementary except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.

D. Subject matter of insurance

Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against.²⁶

The consent of the spouse is not necessary for the validity of an insurance policy taken out by a married person on his or her life or that of his or her children.²⁷

All rights, title and interest in the policy of insurance taken out by an original owner on the life or health of the person insured shall automatically vest in the latter upon the death

²⁶ *Id.* at 4, Section 3 (1)

²⁷ *Id.* at 4, Section 3 (2)

of the original owner, unless otherwise provided for in the policy.²⁸

E. Insurance not wagering a contract

The law does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.²⁹

III. INSURABLE INTEREST

A. Concept

[T]here must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the insured. Otherwise, the contract is merely a wager, by which the party taking the policy directly interested in the early death of the assured. Such policies have the tendency to create a desire for the event. They are therefore, independently of any statute on the subject, condemned, as being against public policy.³⁰

In short: an insurable interest is, in the point of view of the insured, the *raison d'être* of the continued existence of persons or things subject of insurance. (author's personal view)

B. Reasons/ Purposes

- Public policy requires an insurable interest to prevent wagering under the guise of insurance, and to reduce to a safe level the temptation to destroy the insured property.
- Lack of insurable interest is a defense created for the benefit of society, not for the benefit of insurance company.
- The presence of insurable interest reduces moral hazard
- Insurable interest helps in measuring loss of the insured.

General Rule

If the insured has no insurable interest over the life or property he insures, the insurance contract is considered **unenforceable**.

²⁸ *Id.* at 4, Section 3 (3)

²⁹ *Id.* at 4, Section 4

³⁰ *Warnock v. Davies*, 104 U.S. 775 (1882)



C. Insurable Interest in Life Insurance

"SEC. 12. The interest of a beneficiary in a life insurance policy shall be forfeited when the beneficiary is the principal, accomplice, or accessory in willfully bringing about the death of the insured. In such a case, the share forfeited shall pass on to the other beneficiaries, unless otherwise disqualified. In the absence of other beneficiaries, the proceeds shall be paid in accordance with the policy contract. If the policy contract is silent, the proceeds shall be paid to the estate of the insured.

[Check back Art. 10]

Insurable interest in life and health:

- Himself
- His **spouse**
- His **children**
- Any person on whom he depends wholly or in part for **education**
- Any person on whom he depends wholly or in part for **support**
- Any person under a legal obligation to him for the **payment** of money, or respecting property or services, of which death or illness might delay or prevent the performance
- Any person upon whose life any **estate** vested in him depends
- Any person upon whose life any **interest** vested in him depends

According to class:

1. Own's life
2. Life of another person
 - a. Relationship by blood
 - b. Business relationship
 - c. Other pecuniary interest

Mortgage redemption insurance – is a device (group life insurance) for the protection of both mortgagor and mortgagee.

D. Insurable Interest in Property Insurance

"SEC. 13. Every interest in property, whether real or personal, or any relation thereto, or liability in respect thereof, of such nature that a contemplated peril might directly damnify the insured, is an insurable interest.

"SEC. 14. An insurable interest in property may consist in:

"(a) An existing interest;

"(b) An inchoate interest founded on an existing interest; or

"(c) An expectancy, coupled with an existing interest in that out of which the expectancy arises.

"SEC. 15. A carrier or depository of any kind has an insurable interest in a thing held by him as such, to the extent of his liability but not to exceed the value thereof.

"SEC. 16. A mere contingent or expectant interest in any thing, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

"SEC. 17. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

"SEC. 18. No contract or policy of insurance on property shall be enforceable except for the benefit of some person having an insurable interest in the property insured.

1. Kinds of insurable interest in property

Gaisano Cagayan, Inc. v. Insurance Company of North America

G.R. No. 147839. June 8, 2006

FACTS

Respondent paid the fire insurance claims of Intercapitol Marketing Corporation (IMC), the maker of Wrangler Blue Jeans and Levi Strauss (Phils.) Inc. (LSPI). The insurance policies provide for coverage on "book debts in connection with ready-made clothing materials which have been sold or delivered to various customers and dealers of the Insured anywhere in the Philippines. Respondent filed a complaint for damages against petitioner because of the fire incident. In its Answer with Counter Claim, petitioner contends that it could not be held liable because the property covered by the insurance policies were destroyed due to fortuitous event or force majeure. Petitioner also avers that despite delivery of the goods to them, IMC and LSPI assumed the risk of loss when they secured fire insurance policies over the goods.

ISSUE

Whether or not there is an insurable interest on book debts.

RULING

YES. Section 13 of our Insurance Code defines insurable interest as "every interest in property, whether real or personal, or any relation thereto, or liability in respect thereof, of such nature that a contemplated peril might directly damnify the insured." Parenthetically, under Section 14 of the same Code, an insurable interest in property may consist in: (a) an existing interest; (b) an inchoate interest founded on existing interest; or (c) an expectancy, coupled with an existing interest in that out of which the expectancy arises.

Therefore, an insurable interest in property does not necessarily imply a property interest in, or a lien upon, or possession of, the subject matter of the insurance, and neither the title nor a beneficial interest is requisite to the existence of such an interest, it is sufficient that the insured is so situated with reference to the property that he would be liable to loss should it be injured or destroyed by the peril against which it is insured. Anyone has an insurable interest in property who derives a benefit from its existence or would suffer loss from its destruction. Indeed, a vendor or seller retains an insurable interest in the property sold so long as



he has any interest therein, in other words, so long as he would suffer by its destruction, as where he has a vendor's lien. In this case, the insurable interest of IMC and LSPI pertain to the unpaid accounts appearing in their Books of Account 45 days after the time of the loss covered by the policies, and the petitioner is liable for such unpaid accounts. (*underscoring supplied*)

2. In case of mortgaged property

"SEC. 8. Unless the policy otherwise provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to a mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his, prior to the loss, which would otherwise avoid the insurance, will have the same effect, although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee therein named, with the same effect as if it had been performed by the mortgagor.

"SEC. 9. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect the rights of said assignee.

a. Standard or union mortgage clause (Sec.9, ICP)

These clauses create collateral, independent contracts between the insurer and mortgagee, and provide that the rights of the mortgagee shall not be defeated by the acts or defaults of the mortgagor. Under clauses of this class, we have the general rule that the mortgagee's rights remain unaffected by any default or breach of condition by the mortgagor to which the mortgagee is not a party.

b. Open mortgage or loss payable clause (Sec.8, ICP)

These clauses merely designate the mortgagee as payee, to the extent of his interest, of such sum as may become payable under the provisions and conditions of the policy. Under such clause, the mortgagee is made merely a beneficiary under the contract, recognized as such by the insurer, but not made a party to the contract itself. Any default on the part of the mortgagor, by which the terms of the policy defeat his rights, will also defeat all rights of the mortgagee under the contract, even though the latter may not have been in any fault.

3. Separate insurable interest of mortgagor and mortgagee

Each has an insurable interest in the property mortgaged and this interest is separate and distinct from the other. Therefore, insurance taken by one in his name only and in his favor alone does not inure to the benefit of the other.

The same is not open to objection that there is double insurance.³¹

[See Section 53, R.A. No. 10607 (see p.15)]

"SEC. 95. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

As to a mortgaged property, the mortgagor and the mortgagee have each an independent insurable interest therein and both interests may be one policy, or each may take out a separate policy covering his interest, either at the same or at separate times.

- The mortgagor's insurable interest covers the full value of the mortgaged property, even though the mortgage debt is equivalent to the full value of the property.
- The mortgagee's insurable interest is to the extent of the debt, since the property is relied upon as security thereof, and in insuring he is not insuring the property but his interest or lien thereon. His insurable interest is prima facie the value mortgaged and extends only to the amount of the debt, not exceeding the value of the mortgaged property.

Geagonia v. Court of Appeals

G.R. No. 114427. February 6, 1995

FACTS

The petitioner is the owner of Norman's Mart located in the public market who obtained from the private respondent fire insurance policy which covered: "Stock-in-trade consisting principally of dry goods such as RTW's for men and women wear and other usual to assured's business." The policy required the insured to notify the insurer of any other existing insurance. Otherwise, all benefits under said policy shall be deemed forfeited, provided that the condition shall not apply when loss or damage is not more than P200,000.00. Fire of accidental origin broke out and the petitioner's insured stock-in-trade were completely destroyed prompting him to file with the private respondent a claim under the policy. The private respondent denied the claim because it found that at the time of the loss the petitioner's stocks-in-trade were likewise covered by other fire insurance policies for P100,000.00 each, issued by the Cebu Branch of the Philippines First Insurance Co., Inc. (PFIC). The basis of the private respondent's denial was the petitioner's alleged violation of the policy condition referring to "double insurance".

ISSUE

Whether or not there is a violation of "double insurance".

RULING

NO. The insurable interests of a mortgagor and a mortgagee on the mortgaged property are distinct and separate. Since the two policies of the PFIC do not cover the same interest as that covered by the policy of the private respondent, no

³¹ Old section 8 of Insurance Code



double insurance exists. The non-disclosure then of the former policies was not fatal to the petitioner's right to recover on the private respondent's policy. By stating within the policy itself that such condition shall not apply if the total insurance in force at the time of loss does not exceed P200,000.00, the private respondent was amenable to assume a co-insurer's liability up to a loss not exceeding P200,000.00. What it had in mind was to discourage over-insurance. Indeed, the rationale behind the incorporation of "other insurance" clause in fire policies is to prevent over-insurance and thus avert the perpetration of fraud. When a property owner obtains insurance policies from two or more insurers in a total amount that exceeds the property's value, the insured may have an inducement to destroy the property for the purpose of collecting the insurance. The public as well as the insurer is interested in preventing a situation in which a fire would be profitable to the insured.

as shown by their contemporaneous acts, must be given due consideration in order to better serve the interest of justice and equity. GOYU cannot seek relief under Section 53 of the Insurance Code which provides that the proceeds of insurance shall exclusively apply to the interest of the person in whose name or for whose benefit it is made. The peculiarity of the circumstances obtaining in the instant case presents a justification to take exception to the strict application of said provision, it having been sufficiently established that it was the intention of the parties to designate RCBC as the party for whose benefit the insurance policies were taken out.

RCBC, et al. v. Court of Appeals G.R. No. 128833. April 20, 1998

FACTS

Goyu and Sons, Inc. (GOYU) applied for credit facilities and accommodations with Rizal Commercial Banking Corporation (RCBC). As security, GOYU executed two real estate mortgages and two chattel mortgages in favor of RCBC. Under each of these four mortgage contracts, GOYU committed itself to insure the mortgaged property with an insurance company approved by RCBC, and subsequently, to endorse and deliver the insurance policies to RCBC. GOYU obtained in its name a total of ten insurance policies from Malayan Insurance (MICO) thru Alchester, its insurance agent. GOYU's factory buildings in Valenzuela were later gutted by fire. Consequently, GOYU submitted its claim for indemnity on account of the loss insured against. MICO denied the claim on the ground that the insurance policies were either attached pursuant to writs of attachments/garnishments issued by various courts or that the insurance proceeds were also claimed by other creditors of GOYU alleging better rights to the proceeds than the insured. GOYU filed a complaint for specific performance and damages. RCBC, one of GOYU's creditors, also filed with MICO its formal claim over the proceeds of the insurance policies, but said claims were also denied for the same reasons that MICO denied GOYU's claims. Both the Trial Court and Court of Appeals sustained MICO and RCBC's liabilities.

ISSUE

Whether or not RCBC, as mortgagee, has any right over the insurance policies taken by GOYU, the mortgagor, in case of the occurrence of loss.

RULING

YES. RCBC has preferential rights over the MICO insurance policies. It is basic and fundamental that the first mortgagee has superior rights over junior mortgagees or attaching creditors. It is also settled that a mortgagor and a mortgagee have separate and distinct insurable interests in the same mortgaged property, such that each one of them may insure the same property for his own sole benefit. There is no question that GOYU could insure the mortgaged property for its own exclusive benefit. In the present case, although it appears that GOYU obtained the subject insurance policies naming itself as the sole payee, the intentions of the parties

ART. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person.

4. When should insurable interest in property exist?

"SEC. 19. An interest in property insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime; and interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs.

5. Insurable interest of beneficiary

In property

The beneficiary must have insurable interest in the property that is the object of the insurance. The contract will be considered a wagering contract if the beneficiary will be allowed to recover even if he has no insurable interest on the subject property.³²

In life insurance

If the insured takes out an insurance on his own life, he can designate anybody whether or not the beneficiary has insurable interest on the life of another designating himself or herself as beneficiary, insurable interest of the part of the insured is necessary. Insurable interest on the part of beneficiary is likewise necessary if one takes out an insurance on the life of another and designates a third person as the beneficiary.³³

6. Effect of change of interest in the thing insured

³² *Infra*, p.79

³³ *Infra*, pp.79-80



"SEC. 20. Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

"SEC. 21. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

"SEC. 22. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

"SEC. 23. A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

"SEC. 24. A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

"SEC. 57. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

"SEC. 58. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

7. Assignee

"SEC. 181. Life insurance is insurance on human lives and insurance appertaining thereto or connected therewith.

"Every contract or undertaking for the payment of annuities including contracts for the payment of lump sums under a retirement program where a life insurance company manages or acts as a trustee for such retirement program shall be considered a life insurance contract for purposes of this Code.

[Section 18, R.A. No. 10607 (see p.17)]

In life insurance

A life insurance policy can be transferred even without the consent or notice to the insurer. By express provision of Section 184 of the Insurance Code, it is not necessary that the transferee has insurable interest.³⁴

Since a policy of insurance upon life may pass by transfer, will or succession to any person whether he

³⁴ *Infra*, p.81

has insurance interest or not, the transferee may recover whatever the insured may have recovered under the policy. (*Great Pacific Life Assurance Corp. v. Court of Appeals, supra*)

In property insurance

It is necessary that the transferee has insurable interest over the thing insured.

"SEC. 85. An agreement not to transfer the claim of the insured against the insurer after the loss has happened, is void if made before the loss except as otherwise provided in the case of life insurance.

Spouses Cha v. Court of Appeals

G.R. No. 124520. August 18, 1997

FACTS

Petitioner-spouses Nilo Cha and Stella Uy-Cha, as lessees, entered into a lease contract with private respondent CKS Development Corporation (hereinafter CKS), as lessor. One of the stipulations of the one (1) year lease contract states:

"18. . . . The LESSEE shall not insure against fire the chattels, merchandise, textiles, goods and effects placed at any stall or store or space in the leased premises without first obtaining the written consent and approval of the LESSOR. If the LESSEE obtain(s) the insurance thereof without the consent of the LESSOR then the policy is deemed assigned and transferred to the LESSOR for its own benefit; . . ."

Notwithstanding the above stipulation in the lease contract, the Cha spouses insured against loss by fire the merchandise inside the leased premises. On the day that the lease contract was to expire, fire broke out inside the leased premises. When CKS learned of the insurance earlier procured by the Cha spouses (without its consent), it wrote the insurer (United) a demand letter asking that the proceeds of the insurance contract (between the Cha spouses and United) be paid directly to CKS, based on its lease contract with the Cha spouses. United refused to pay CKS. Hence, the latter filed a complaint against the Cha spouses and United.

ISSUE

Whether or not the a stipulation in the lease contract may validly assign/transfer the proceeds of insurance to CKS.

RULING

NO. CKS has no insurable interest in the goods and merchandise inside the leased premises under the provisions of the Insurance Code. Respondent CKS cannot, under the Insurance Code, be validly a beneficiary of the fire insurance policy taken by the petitioner-spouses over their merchandise. This insurable interest over said merchandise remains with the insured, the Cha spouses. The automatic assignment of the policy to CKS under the provision of the lease contract previously quoted is void for being contrary to law and/or public policy. The proceeds of the fire insurance policy thus rightfully belong to the spouses Nilo Cha and Stella Uy-Cha (herein co-petitioners). The insurer (United) cannot be compelled to pay the proceeds of the fire insurance policy to a person (CKS) who has no insurable interest in the property insured.

COVERAGE OF MIDTERMS



IV. DEVICE FOR ASCERTAINING AND CONTROLLING RISK AND LOSS

A. Concealment

1. Concept
2. Duty to communicate
3. Test of Materiality
4. Effect of Concealment
5. Matters which need not be communicated
6. Waiver of information

B. Representation

1. Concept
2. Kinds of representation
3. Test of materiality
4. Effect of alteration or withdrawal
5. Time to which representation refers
6. Effect when representation refers
7. When presumed false; effect of falsity

C. Remedies Available in case of concealment or false representation

1. When rescission by insurer may be exercised
2. When life insurance policy becomes incontestable
 - a. Requisites for incontestability
 - b. Theory and object of incontestability
 - c. Defenses not barred by incontestability

D. Warranties

1. Concept; distinguished from representation
2. Kinds of warranties
3. Time which warranty refers
4. Effect of breach

Cases:

- Great Pacific Life Assurance v. CA (316 SCRA 678)
- Sun Life Assurance Co. of Canada v. CA (G.R. No. 105135, June 22, 1995)

- Philamcare health Systems Inc. v. CA (379 SCRA 356);
- Vda. De Canilang v. CA (G.R. No. 92492, June 17, 1993)
- Tan v. CA (June 29, 1989)
- Prudential Guarantee v. Trans-Asia Shipping Lines, Inc. (G.R. No. 151890, June 20, 2006)

V. THE POLICY OF INSURANCE

- A. Definition and Form
- B. Fine Print Rule
- C. Contents of Policy
- D. Papers attached to the policy and their binding effect (rider, warranties, clause, endorsement)
- E. Kinds of policy
- F. Cover notes
- G. Cancellation of policy
- H. Time to commence action on policy; effect of stipulation

Cases:

- Pacific Timber Export Corporation v. CA (112 SCRA 199)
- Great Pacific Life Assurance Corporation v. CA (89 SCRA 543)
- PhilAm Life and General Insurance Co. v. Judge Valencia-Bagalacsa (G.R. No. 139776, August 1, 2002)

VI. PREMIUM

A. Concept

[P]remium is the *elixir vitae* of the insurance business because by law the insurer must maintain a legal reserve fund to meet its contingent obligations to the public, hence, the imperative need for its prompt payment and full satisfaction. All actuarial calculations and various tabulations of probabilities of losses under the risks insured against are based on the sound hypothesis of prompt payment of premiums. Upon this bedrock insurance firms are enabled to offer the assurance of security to the public at favorable rates.³⁵

³⁵Tibay v. Court of Appeals, G.R. No. 119655, May 24, 1996



B. Effect of Non-Payment of premium; Exceptions

"SEC. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies, or whenever under the broker and agency agreements with duly licensed intermediaries, a ninety (90)-day credit extension is given. No credit extension to a duly licensed intermediary should exceed ninety (90) days from date of issuance of the policy.

"SEC. 79. An acknowledgment in a policy or contract of insurance or the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

C. When insured entitled return of premiums

"SEC. 80. A person insured is entitled to a return of premium, as follows:

"(a) To the whole premium if no part of his interest in the thing insured be exposed to any of the perils insured against;

"(b) Where the insurance is made for a definite period of time and the insured surrenders his policy, to such portion of the premium as corresponds with the unexpired time, at a pro rata rate, unless a short period rate has been agreed upon and appears on the face of the policy, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued: *Provided*, That no holder of a life insurance policy may avail himself of the privileges of this paragraph without sufficient cause as otherwise provided by law.

"SEC. 81. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

"SEC. 82. A person insured is entitled to a return of the premium when the contract is voidable, and subsequently annulled under the provisions of the Civil Code; or on account of the fraud or misrepresentation of the insurer, or of his agent, or on account of facts, or the existence of which the insured was ignorant of without his fault; or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

"A person insured is not entitled to a return of premium if the policy is annulled, rescinded or if a claim is denied by reason of fraud.

"SEC. 83. In case of an over insurance by several insurers other than life, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

"SEC. 84. An insurer may contract and accept payments, in addition to regular premium, for the purpose of paying future premiums on the policy or to increase the benefits thereof.

D. Payment through salary deductions

"SEC. 78. Employees of the Republic of the Philippines, including its political subdivisions and instrumentalities, and government-owned or -controlled corporations, may pay their insurance premiums and loan obligations through salary deduction: Provided, That the treasurer, cashier, paymaster or official of the entity employing the government employee is authorized, notwithstanding the provisions of any existing law, rules and regulations to the contrary, to make deductions from the salary, wage or income of the latter pursuant to the agreement between the insurer and the government employee and to remit such deductions to the insurer concerned, and collect such reasonable fee for its services.

E. Future premiums

An insurer may contract and accept payments, in addition to regular premium, for the purpose of paying future premiums on the policy or to increase the benefits thereof.³⁶

Makati Tuscany Condominium Corp. v. Court of Appeals, G.R. No. 95546. November 6, 1992

FACTS

Sometime in early 1982, private respondent American Home Assurance Co. (AHAC), represented by American International Underwriters (Phils.), Inc., issued in favor of petitioner Makati Tuscany Condominium Corporation (TUSCANY) Insurance Policy #1 on the latter's building and premises, for a period beginning 1 March 1982 and ending 1 March 1983, with a total premium of P466,103.05. The premium was paid on installments, all of which were accepted by private respondent. On 10 February 1983, private respondent issued to petitioner Insurance Policy #2, which replaced and renewed the previous policy, for a term covering 1 March 1983 to 1 March 1984. The premium in the same amount was again paid on installments. All payments were likewise accepted by private respondent. On 20 January 1984, the policy was again renewed and private respondent issued to petitioner Insurance Policy #3 for the period 1 March 1984 to 1 March 1985. On this renewed policy, petitioner made two installment payments, both accepted by private respondent, P52,000.00 and P100,000.00. Thereafter, petitioner refused to pay the balance of the premium. Consequently, private respondent filed an action to recover the unpaid balance of P314,103.05 for last Insurance Policy #3.

ISSUE

Whether or not payment by installment of the premiums due on an insurance policy invalidates the contract of insurance.

RULING

NO. The subject policies are valid even if the premiums were paid on installments. The records clearly show that petitioner and private respondent intended subject insurance policies to be binding and effective notwithstanding the staggered

³⁶ Section 84, R.A. No. 10607



payment of the premiums. The initial insurance contract entered into in 1982 was renewed in 1983, then in 1984. In those three (3) years, the insurer accepted all the installment payments. Such acceptance of payments speaks loudly of the insurer's intention to honor the policies it issued to petitioner. Certainly, basic principles of equity and fairness would not allow the insurer to continue collecting and accepting the premiums, although paid on installments, and later deny liability on the lame excuse that the premiums were not prepared in full.

It appearing from the peculiar circumstances that the parties actually intended to make three (3) insurance contracts valid, effective and binding, petitioner may not be allowed to renege on its obligation to pay the balance of the premium after the expiration of the whole term of the third policy in March 1985. Moreover, as correctly observed by the appellate court, where the risk is entire and the contract is indivisible, the insured is not entitled to a refund of the premiums paid if the insurer was exposed to the risk insured for any period, however brief or momentary.

**UCPB General Insurance Co., Inc.
v. Masagana Telemart, Inc.**
[G.R. No. 137172. April 4, 2001]

FACTS

In the Supreme Court's decision (between the same parties) of 15 June 1999, the main issue "whether the fire insurance policies issued by petitioner to the respondent... had been extended or renewed by an implied credit arrangement though actual payment of premium was tendered on a later date and after the occurrence of the (fire) risk insured against." was resolved in the negative in view of Section 77 of the Insurance Code. It reversed and set aside the decision of the Court of Appeals. In the motion filed, petitioner questions the ruling and posits that Sec.77 of Insurance Code which states that "...no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid..." admits of exceptions as in this case.

ISSUE

Whether or not Sec. 77 of the Insurance Code admits of exceptions in property insurance.

RULING

YES. The first exception is provided by Section 77 itself, and that is, in case of a life or industrial life policy whenever the grace period provision applies. The second is that covered by Section 78 of the Insurance Code, which provides: "Any acknowledgment in a policy or contract of insurance of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until premium is actually paid." A third exception was laid down in *Makati Tuscan Condominium Corporation vs. Court of Appeals*, wherein the Court ruled that Section 77 may not apply if the parties have agreed to the payment in installments of the premium and partial payment has been made at the time of loss; that the subject policies are valid even if the premiums were paid on installments. *Tuscan* also provided a fourth exception to Section 77, namely, that the insurer may grant credit extension for the payment of the premium. This simply

means that if the insurer has granted the insured a credit term for the payment of the premium and loss occurs before the expiration of the term, recovery on the policy should be allowed even though the premium is paid after the loss but within the credit term. Moreover, there is nothing in Section 77 which prohibits the parties in an insurance contract to provide a credit term within which to pay the premiums. That agreement is not against the law, morals, good customs, public order or public policy. The agreement binds the parties.

American Home Assurance Co. v. Chua
[G.R. No. 130421. June 28, 1999]

FACTS

Petitioner is a domestic corporation engaged in the insurance business. Respondent obtained from petitioner a fire insurance covering the stock-in-trade of his business, Moonlight Enterprises, located at Valencia, Bukidnon. The insurance was due to expire on 25 March 1990. On 5 April 1990 respondent issued PCIBank Check to petitioner's agent, James Uy, as payment for the renewal of the policy. In turn, the latter delivered Renewal Certificate to respondent. The check was drawn against a Manila bank and deposited in petitioner's bank account in Cagayan de Oro City. The corresponding official receipt was issued on 10 April. Subsequently, a new insurance policy was issued for the period 25 March 1990 to 25 March 1991. On 6 April 1990 Moonlight Enterprises was completely razed by fire. Respondent filed an insurance claim with petitioner and four other co-insurers. Petitioner refused to honor the claim notwithstanding several demands by respondent, thus, the latter filed an action against petitioner before the trial court. In its defense, petitioner claimed there was no existing insurance contract when the fire occurred since respondent did not pay the premium.

ISSUE

Whether or not there was a valid payment of premium that would result to a valid and binding contract of insurance, considering respondent's checks was cashed after the occurrence of fire.

RULING

YES. Section 78 (now Section 79) of the Insurance Code explicitly provides: "An acknowledgment in a policy or contract of insurance of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid." This Section establishes a legal fiction of payment and should be interpreted as an exception to Section 77. Here, according to the trial court, the renewal certificate issued to respondent contained the acknowledgment that premium had been paid. It is not disputed that the check drawn by respondent in favor of petitioner and delivered to its agent was honored when presented and petitioner forthwith issued its official receipt. The best evidence of such authority is the fact that petitioner accepted the check and issued the official receipt for the payment. It is, as well, bound by its agent's acknowledgment of receipt of payment. Since there was a valid payment of premium, then there is a valid and binding contract of insurance that would hold herein insurer liable.



Spouses Tibay v. Court of Appeals

[G.R. No. 119655, May 24, 1996]

FACTS

Private respondent Fortune Life and General Insurance Co., Inc. (FORTUNE) issued Fire Insurance Policy in favor of Violeta R. Tibay and/or Nicolas Roraldo on their two-storey residential building located at Makati City, together with all their personal effects therein, with provision that "(t)his policy xxx is not in force until the premium has been fully paid and duly received by the Company x x x". Petitioner Violeta Tibay only paid P600.00 leaving a considerable balance unpaid. The insured building was completely destroyed by fire. Two days later Violeta Tibay paid the balance of the premium. On the same day, she filed with FORTUNE a claim on the fire insurance policy. FORTUNE denied the claim of Violeta for violation of Policy Condition No. 2 and of Sec. 77 of the Insurance Code. Violeta and the other petitioners sued FORTUNE for damages. The trial court ruled for petitioners. The Court of Appeals reversed the court *a quo* by declaring FORTUNE not to be liable to plaintiff-appellees therein but ordering defendant-appellant to return to the former the premium plus interest until full payment.

ISSUE

Whether or not fire insurance policy is valid, binding and enforceable upon mere partial payment of premium.

RULING

NO. The Policy provides for payment of premium in full. Premium is the *elixir vitae* of the insurance business because by law the insurer must maintain a legal reserve fund to meet its contingent obligations to the public, hence, the imperative need for its prompt payment and full satisfaction. Accordingly, where the premium has only been partially paid and the balance paid only after the peril insured against has occurred, the insurance contract did not take effect and the insured cannot collect at all on the policy. This is fully supported by Sec. 77 of the Insurance Code. Thus, no *vinculum juris* whereby the insurer bound itself to indemnify the assured according to law ever resulted from the fractional payment of premium. The insurance contract itself expressly provided that the policy would be effective only when the premium was paid in full. It would have been altogether different were it not so stipulated. Ergo, petitioners had absolute freedom of choice whether or not to be insured by FORTUNE under the terms of its policy and they freely opted to adhere thereto.

A maxim of recognized practicality is the rule that the expressed exception or exemption excludes others. *Exceptio firm at regulim in casibus non exceptis*. The express mention of exceptions operates to exclude other exceptions; conversely, those which are not within the enumerated exceptions are deemed included in the general rule. Thus, under Sec. 77, as well as Sec. 78 (now Sec.79), until the premium is paid, and the law has not expressly excepted partial payments, there is no valid and binding contract. Hence, in the absence of clear waiver of prepayment in full by the insurer, the insured cannot collect on the proceeds of the policy.

Philippine Phoenix Surety & Insurance , Inc. v. Woodworks, Inc.

[G.R. No. L-22684, August 31, 1967]

FACTS

Plaintiff-appellee Philippine Phoenix Surety & Insurance Co., Inc. issued to defendant a fire policy; that the premiums of said policy amounted to P6,051.95; the margin fee pursuant to the adopted plan as an implementation of Republic Act 2609 amounted to P363.72; the documentary stamps attached to the policy was P96.42; that the defendant-appellant Woodworks, Inc. paid P3,000.00 under official receipt of plaintiff; Plaintiff-appellee commenced an action for specific performance seeking payment of the remaining balance in premiums. Defendant-appellant argued that non-payment of premium produced cancellation of the contract of insurance.

ISSUE

Whether or not there is a perfected contract of insurance upon partial payment of premium.

RULING

YES. There is, consequently, no doubt at all that, as between the insurer and the insured, there was not only a perfected contract of insurance but a partially performed one as far as the payment of the agreed premium was concerned. Thereafter the obligation of the insurer to pay the insured the amount for which the policy was issued in case the conditions therefor had been complied with, arose and became binding upon it, while the obligation of the insured to pay the remainder of the total amount of the premium due became demandable. Appellant's theory that non-payment by it of the premium due, produced the cancellation of the contract of insurance. Such theory would place exclusively in the hands of one of the contracting parties the right to decide whether the contract should stand or not. Rather the correct view would be that the contract had become perfected, the parties could demand from each other the performance of whatever obligations they had assumed. In the case of the insurer, it is obvious that it had the right to demand from the insured the completion of the payment of the premium due or sue for the rescission of the contract. As it chose to demand specific performance of the insured's obligation to pay the balance of the premium, the latter's duty to pay is indeed indubitable.

VII. PERSONS ENTITLED TO RECOVER ON THE POLICY AND CONDITIONS TO RECOVERY

A. Beneficiary

The insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made unless otherwise specified in the policy.³⁷

Change of Beneficiary

The insured shall have the right to change the beneficiary he designated in the policy, unless he has expressly waived this right in said policy.

³⁷ Section 53, R.A. No. 10607; also see pp.15, 18, 19, *infra*



Notwithstanding the foregoing, in the event the insured does not change the beneficiary during his lifetime, the designation shall be deemed irrevocable.³⁸

Disqualified Beneficiary

The interest of a beneficiary in a life insurance policy shall be forfeited when the beneficiary is the principal, accomplice, or accessory in willfully bringing about the death of the insured. In such a case, the share forfeited shall pass on to the other beneficiaries, unless otherwise disqualified. In the absence of other beneficiaries, the proceeds shall be paid in accordance with the policy contract. If the policy contract is silent, the proceeds shall be paid to the estate of the insured.³⁹

"SEC. 56. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, only he who can show that it was intended to include him, can claim the benefit of the policy.

"SEC. 57. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

B. Limitations on appointment of beneficiary

Any person who is forbidden from receiving any donation under Article 739 (of the Civil Code) cannot be named beneficiary of a life insurance policy by the person who cannot make any donation to him, according to said article.⁴⁰

The following donations shall be void:⁴¹

- (a) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
- (b) Those made between persons found guilty of the same criminal offense, in consideration thereof;
- (c) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

C. Rule when insurance is made by an agent or trustee

SEC. 54. When an insurance contract is executed with an agent or trustee as the insured, the fact that his principal or

beneficiary is the real party in interest may be indicated by describing the insured as agent or trustee, or by other general words in the policy.

D. Rule when insurance is made by a partner or part owner

"SEC. 55. To render an insurance effected by one partner or part-owner, applicable to the interest of his co-partners or other part-owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

E. Loss

An agreement not to transfer the claim of the insured against the insurer after the loss has happened, is void if made before the loss except as otherwise provided in the case of life insurance.⁴²

Unless otherwise provided by the policy, an insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.⁴³

"SEC. 87. An insurer is liable where the thing insured is rescued from a peril insured against that would otherwise have caused a loss, if, in the course of such rescue, the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

"SEC. 88. Where a peril is especially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted although the immediate cause of the loss was a peril which was not excepted.

"SEC. 89. An insurer is not liable for a loss caused by the willful act or through the connivance of the insured; but he is not exonerated by the negligence of the insured, or of the insurance agents or others.

"SEC. 175. No policy of fire insurance shall be pledged, hypothecated, or transferred to any person, firm or company who acts as agent for or otherwise represents the issuing company, and any such pledge, hypothecation, or transfer hereafter made shall be void and of no effect insofar as it may affect other creditors of the insured.

"SEC. 184. A policy of insurance upon life or health may pass by transfer, will or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

³⁸ Section 11, R.A. No. 10607; also see p.7, *infra*

³⁹ Section 12, R.A. No. 10607; also see p.7, *infra*

⁴⁰ Article 2012, New Civil Code; also see p.1, *infra*

⁴¹ Article 739, New Civil Code also; see p.1, *infra*

⁴² Section 85, R.A. No. 10607; also see p.20, *infra*

⁴³ Section 86, R.A. No. 10607; also see p.8, *infra*



"SEC. 185. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

F. Notice and proof of loss

"SEC. 90. In case of loss upon an insurance against fire, an insurer is exonerated, if written notice thereof be not given to him by an insured, or some person entitled to the benefit of the insurance, without unnecessary delay. For other non-life insurance, the Commissioner may specify the period for the submission of the notice of loss.

"SEC. 91. When a preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

"SEC. 92. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

"SEC. 93. Delay in the presentation to an insurer of notice or proof of loss is waived if caused by any act of him, or if he omits to take objection promptly and specifically upon that ground.

"SEC. 94. If the policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified or testified.

Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.⁴⁴

Bonifacio Bros. Inc. et al. v. Mora et al. [G.R. No. L-20853, May 29, 1967]

FACTS

Enrique Mora, owner of Oldsmobile sedan model 1956, bearing plate No. QC- mortgaged the same to the H.S. Reyes, Inc., with the condition that the former would insure the automobile with the latter as beneficiary. The automobile was thereafter insured on June 23, 1959 with the State Bonding & Insurance Co., Inc., and motor car insurance policy A-0615 was issued to Enrique Mora containing the clause:

"4. *The Insured may authorize the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that: — (a) The estimated cost of such repair does not exceed the Authorized Repair Limit, (b) A detailed estimate of the cost is forwarded to the Company without delay, subject to the condition that "Loss, if any is payable to H.S. Reyes, Inc.,"*

by virtue of the fact that said Oldsmobile sedan was mortgaged in favor of the said H.S. Reyes, Inc. and that under a clause in said insurance policy, any loss was made payable to the H.S. Reyes, Inc. as Mortgagee;"

During the effectivity of the insurance contract, the car met with an accident. The insurance company then assigned the accident to the Bayne Adjustment Co. for investigation and appraisal of the damage. Enrique Mora, without the knowledge and consent of the H.S. Reyes, Inc., authorized the Bonifacio Bros. Inc. to furnish the labor and materials, some of which were supplied by the Ayala Auto Parts Co. For the cost of labor and materials, Enrique Mora was billed at P2,102.73 through Bayne Adjustment Co. The insurance company after claiming a franchise in the amount of P100, drew a check in the amount of P2,002.73, as proceeds of the insurance policy, payable to the order of Enrique Mora or H.S. Reyes, Inc., and entrusted the check to the H.H. Bayne Adjustment Co. for disposition and delivery to the proper party. In the meantime, the car was delivered to Enrique Mora without the consent of the H.S. Reyes, Inc., and without payment to the Bonifacio Bros. Inc. and the Ayala Auto Parts Co. of the cost of repairs and materials.

ISSUE

Who among the following has better right over the insurance proceeds: Enrique Mora, H.S. Reyes, Inc., Bonifacio Bros., Inc. or Ayala Auto Parts Company?

RULING

It is H.S. Reyes, Inc.

It is fundamental that contracts take effect only between the parties thereto, except in some specific instances provided by law where the contract contains some stipulation in favor of a third person. Such stipulation is known as stipulation *pour autrui* or a provision in favor of a third person not a pay to the contract. In this connection, the rule that the fairest test to determine whether the interest of a third person in a contract is a stipulation *pour autrui* or merely an incidental interest, is to rely upon the intention of the parties as disclosed by their contract. In the instant case, the insurance contract does not contain any words or clauses to disclose an intent to give any benefit to any repairmen or material men in case of repair of the car in question. The parties to the insurance contract omitted such stipulation, which is a circumstance that supports the said conclusion. On the other hand, the "loss payable" clause of the insurance policy stipulates that "*Loss, if any, is payable to H.S. Reyes, Inc.*" indicating that it was only the H.S. Reyes, Inc. which they intended to benefit.

The Insular Life Assurance Company, Ltd. v. Ebrado

G.R. No. L-44059, October 28, 1977

This is a novel question in insurance law: Can a common-law wife named as beneficiary in the life insurance policy of a legally married man claim the proceeds thereof in case of death of the latter?

Answer in the negative.

(see page 2)

⁴⁴ Section 185, R.A. No. 10607; also see p.23, *infra*



Vda. De Consuegra v. GSIS

[G.R. No. L-28093, January 30, 1971]

FACTS

The late Jose Consuegra, at the time of his death, was employed as a shop foreman of the office of the District Engineer in the province of Surigao del Norte. In his lifetime, Consuegra contracted two marriages, the first with herein respondent Rosario Diaz, out of which marriage were born two children; and the second, which was contracted in good faith while the first marriage was subsisting, with herein petitioner Basilia Berdin in the same parish and municipality, out of which marriage were born seven children. It is the contention of appellants that the designated beneficiaries in the life insurance of the late Jose Consuegra should also be the exclusive beneficiaries in the retirement insurance of said deceased. In other words, it is the submission of appellants that because the deceased Jose Consuegra failed to designate the beneficiaries in his retirement insurance, the appellants who were the beneficiaries named in the life insurance should automatically be considered the beneficiaries to receive the retirement insurance benefits.

ISSUE

Whether or not the designated life insurance beneficiaries of the late Jose Consuegra are also the exclusive beneficiaries in the retirement insurance of the said deceased.

RULING

NO. The beneficiary named in the life insurance does not automatically become the beneficiary in the retirement insurance unless the same beneficiary in the life insurance is so designated in the application for retirement insurance. In the case of the proceeds of a life insurance, the same are paid to whoever is named the beneficiary in the life insurance policy. As in the case of a life insurance provided for in the Insurance Act (Act 2427, as amended), the beneficiary in a life insurance under the GSIS may not necessarily be a heir of the insured. The insured in a life insurance may designate any person as beneficiary unless disqualified to be so under the provisions of the Civil Code. And in the absence of any beneficiary named in the life insurance policy, the proceeds of the insurance will go to the estate of the insured. Retirement insurance is primarily intended for the benefit of the employee — to provide for his old age, or incapacity, after rendering service in the government for a required number of years. If the employee reaches the age of retirement, he gets the retirement benefits even to the exclusion of the beneficiary or beneficiaries named in his application for retirement insurance. The beneficiary of the retirement insurance can only claim the proceeds of the retirement insurance if the employee dies before retirement. If the employee failed or overlooked to state the beneficiary of his retirement insurance, the retirement benefits will accrue to his estate and will be given to his legal heirs in accordance with law, as in the case of a life insurance if no beneficiary is named in the insurance policy.

Go v. Redfern

[G.R. No. L-47705, April 25, 1941]

Ref: <http://phillawstudent.blogspot.com>

FACTS

Redfern obtained an insurance policy against accidents from the International Assurance Co, Ltd. Redfern later died from an accident. The mother of the deceased, presenting the necessary evidence of the death of Redfern, sought to claim the proceeds of the insurance policy from the insurance company. The company, however, denied such claim, on the ground that the insurance policy was amended in the lifetime of Redfern to include another beneficiary, Concordia Go. Hence, an action was filed to determine who has the right to collect the insurance proceeds of the deceased Redfern. The mother claimed that the addition of the co-beneficiary is illegal. Go, on her part, alleged the contrary. The trial court ruled in favor of Angela Redfern, the mother. Go appealed.

ISSUE

Whether or not the addition of Concordia Go as co-beneficiary is valid.

RULING

YES. When designated in a policy, the beneficiary acquires a right of which he cannot be deprived of without his consent, unless the right has been reserved specifically to the insured to modify the policy. Unless the insured has reserved specifically the right to change or to modify the policy, with respect to the beneficiary, said policy constitutes an acquired right of the beneficiary, which cannot be modified except with the consent of the latter. In this case, it is admitted that Redfern did not reserve expressly his right to change or modify the policy. Change implies the idea of an alteration. The addition of Go's name as one of the beneficiaries of the policy constitutes change as all addition is an alteration. The addition of Go's name changed the policy inasmuch as there are two beneficiaries instead of one, and thus in effect the original beneficiary cannot receive the full amount of the policy.

Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Cooperative, Inc.

[G.R. No. L-47705, April 25, 1941]

FACTS

Petitioner and the respondent entered into a contract of fire insurance. Under Fire Insurance Policy, the petitioner insured the respondent's stocks-in-trade against fire loss, damage or liability for one year from June 20, 1989 at 4:00 p.m. On July 1, 1989, the respondent's building was gutted by fire and reduced to ashes, resulting in the total loss of the respondent's stocks-in-trade, pieces of furnitures and fixtures, equipments and records. Due to the loss, the respondent filed an insurance claim with the petitioner under its Fire Insurance Policy. The petitioner, however, denied the insurance claim on the ground that the building was set on fire by two (2) NPA rebels who wanted to obtain canned goods, rice and medicines as provisions for their comrades in the forest, and that such loss was an excepted risk under paragraph No. 6 of the policy conditions of Fire Insurance Policy. Finding the denial of its claim unacceptable, the respondent then instituted in the trial court the complaint for recovery of "loss, damage or liability" against petitioner. In the course of trial, petitioner relied on what is declared later as "hearsay evidence".

**ISSUE**

Whether or not petitioner is still liable despite express stipulation of excepted risk.

RULING

YES. Where a risk is excepted by the terms of a policy which insures against other perils or hazards, loss from such a risk constitutes a defense which the insurer may urge, since it has not assumed that risk, and from this it follows that an insurer seeking to defeat a claim because of an exception or limitation in the policy has the burden of proving that the loss comes within the purview of the exception or limitation set up. If a proof is made of a loss apparently within a contract of insurance, the burden is upon the insurer to prove that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability. Stated otherwise, since the petitioner in this case is defending on the ground of non-coverage and relying upon an exemption or exception clause in the fire insurance policy, it has the burden of proving the facts upon which such excepted risk is based, by a preponderance of evidence. In this case, petitioner failed to do so. Petitioner heavily relied on "hearsay evidence" where the witnesses have no personal knowledge and a police report that was never been a subject of an independent investigation. Petitioner's evidence to prove its defense is sadly wanting and thus, gives rise to its liability to the respondent under Fire Insurance Policy.

VIII. DOUBLE INSURANCE**A. Definition and requisites**

A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.⁴⁵

B. Distinguished from reinsurance

<i>Double Insurance</i>	<i>Reinsurance</i>
It exists where the same person is insured by several insurers separately in respect to the same subject and interest	Insurer procures a third person to insure him against loss or liability by reason of such original insurance

C. Stipulation against double insurance

The implication, double-insurance is not prohibited.

"SEC. 64. No policy of insurance other than life shall be cancelled by the insurer except upon prior notice thereof to the insured, and no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:

xxx

"(f) Discovery of other insurance coverage that makes the total insurance in excess of the value of the property insured;

⁴⁵ Section 95, R.A. No. 10607; also see p. 18, *infra*

GENERAL RULE

Taking other insurance coverage is not prohibited provided that the total insurance is not in excess of the value of the property insured.

D. Rules for payment where there is over insurance by double insurance

"SEC. 96. Where the insured in a policy other than life is over insured by double insurance:

"(a) The insured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may select, up to the amount for which the insurers are severally liable under their respective contracts;

"(b) Where the policy under which the insured claims is a valued policy, any sum received by him under any other policy shall be deducted from the value of the policy without regard to the actual value of the subject matter insured;

"(c) Where the policy under which the insured claims is an unvalued policy, any sum received by him under any policy shall be deducted against the full insurable value, for any sum received by him under any policy;

"(d) Where the insured receives any sum in excess of the valuation in the case of valued policies, or of the insurable value in the case of unvalued policies, he must hold such sum in trust for the insurers, according to their right of contribution among themselves;

"(e) Each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract.

IX. REINSURANCE**A. Definition**

"SEC. 97. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

B. Nature

"SEC. 99. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

"SEC. 100. The original insured has no interest in a contract of reinsurance.

C. Distinguished from double insurance

(see table, *supra*)

D. Duty of reinsured to disclose facts

"SEC. 98. Where an insurer obtains reinsurance, except under automatic reinsurance treaties, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.