

# The Concept of Insurable Interest

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**Abstract---** *This research paper discusses the concept of Insurable Interest which is crucial to the insurance claims as it says that insurance can only be claimed by a person who has a vested interest in the subject matter of the insurance. The paper discusses the nature and types of insurance which are contractual and statutory. The paper elucidates the position of insurable interest when the subject matter is the life of an individual and discusses the concept in relation to husband and wife, parents and children, debtor and creditor & husband and wife. The paper concludes with talking about the need of doing away with Insurable interest in cases of life insurance.*

**Index Terms---** *Insurable Interest, Insurance claim, Life insurance.*

## I. INTRODUCTION

Because of the increase in risk to life today, the need for insurance has also increased manifolds. The purpose of insurance is to shield the insured person financially when some unforeseen events occur. "Insurance is a contract by which one party in consideration of a price (called the premium) paid to him, adequate to the risk, becomes security to the other that he shall not suffer loss, damage or prejudice by the happening of the perils specified to certain things which may be exposed to them."<sup>1</sup> "There must be either some uncertainty whether the event will happen or not, or if the event is one which must happen at some time or another, there must be uncertainty as to the time at which it will happen."<sup>2</sup>

In an insurance contract, one person is compensated by the other for any loss that the former may have occurred. The underlying principles behind this contract are 'uberrime fidei' and insurable interest. Insurable interest can be defined as "the interest which can be or is protected by a contract of insurance."<sup>3</sup> Insurable interest is the sine qua non for an insurance contract to be valid, and is the differentiating factor between a contract of wager and a contract of insurance. Hence an insurance contract without an insurable interest would be rendered void.

Some of the definitions of Insurable interest are as follows:

"Insurable Interest is a relation between insured and the event insured against such as the occurrence of events will cause substantial loss or injury of some kind to the insured."<sup>4</sup>

"When the assured is so stipulated that the happening of the event on which the insurance money is to be payable would as an approximate result involved in the loss or diminution of any right recognized by law or any legal liability,

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<sup>1</sup> *Lucena v Craufurd*, (1806) 2 Bos & PNR 269 at Pg. 301: 127 ER 42 HL.

<sup>2</sup> *Prudential Insurance Co v Inland Revenue Commissioner*, (1904) 2 KB 658.

<sup>3</sup> KSN Murthy & Dr. KVS Sarma, MODERN LAW OF INSURANCE.

<sup>4</sup> EW Patterson, ELEMENTS OF INSURANCE LAW.

there is an insurable interest to the extent of possible loss or liability.”

It is an “an interest of such a nature that the occurrence of the event insured against would cause financial loss to the insured.”<sup>5</sup>

“Insurable interest is the legal right of the insured in insurance. The taking of an insurance policy does not protect the insured property from loss or damage, but protects the insured’s interest in the property.”<sup>6</sup>

## II. THE CONCEPT OF INSURABLE INTEREST

Insurable Interest cannot be an interest through love and affection. Sentimental factors alone cannot constitute insurable interest. For a valid insurable interest, there must be a right in the property that has been insured, or a right arising out of a contract in relation to the property. The interest must be able to be estimated in terms of money, i.e. it must be pecuniary. The loss that would occur to the insured property, must bring financial loss to the owner of the property. The interest that is insured must also be able to be justified in the courts of law, i.e. it must be lawful.

In the case of *Brahma Dutt v. LIC*<sup>7</sup>, a school teacher with a salary of mere Rs. 20 availed a policy for Rs. 35, 000 on his life. He did the same by claiming false statements in the proposal and nominating, Brahma Dutt, a stranger for the policy. Two premiums were paid by the nominee after which the insured person had died, at which, the nominee claimed the insurance amount from the insurance agency. On investigation, it came to the knowledge that the nominee had no insurable interest in the life of the deceased. Thus, the insurance was held to be void and was of the nature of a wagering agreement.

In *New India Assurance Co. Ltd v. G.N. Sainani*<sup>8</sup>, it was held that “insurable interest’ over a property is such interest as shall make the loss of the property to cause pecuniary damage to the assured and under this case it will make a damage to the interest of the insured.”

## III. NATURE OF INSURABLE INTEREST

The two facets of the nature of Insurable interest are that it must be measurable in terms of money as well as it should be able to be enforced in a court of law.

*Geismar v. Sun Alliance and London Insurance Ltd. and Another*<sup>9</sup>, it was decided upon the insurability of the goods purchased abroad but smuggled into the other country without the knowledge of the customs authorities. The purchase of the goods would normally have had an insurable interest but the smuggling of the goods caused prejudice to the interest.

In *Lucena v. Craufurd*, Insurable interest was elucidated to be as follows:

“... A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it. Interest does not necessarily imply a right to the whole, or a part of a thing, nor necessarily and exclusively that which may be subject of privation, but the having some relation to, or concern in the subject of insurance, which

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<sup>5</sup> WH Rodda, FIRE AND PROPERTY INSURANCE.

<sup>6</sup> MN Srinivasan, PRINCIPLES OF INSURANCE LAW.

<sup>7</sup> AIR 1966 All 474.

<sup>8</sup> 1997 (6) SCC 383.

<sup>9</sup> [1977] 3 All ER (QBD) 10 [1806] 2 Bos. & P(NR) 269.

relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment or prejudice to the person insuring; and where a man is so circumstanced with respect to matters exposed to certain risks or dangers as to have a moral certainty of advantage of benefit, but for those risks or dangers, he may be said to interested in the safety of the thing.... The property of a thing and the interest divisible from it may be very different; of the first, the price is generally the measure, but by interest in a thing every benefit or advantage arising out of or depending on such a thing may be considered as comprehending...”

The nature of Insurable interest can be grasped through the aforementioned points:

- A mere emotional interest cannot be the subject matter of insurable interest.
- The interest must have arisen out of a right in the subject property, or a contract made with respect to that property.
- Mere the fact that there would be inconvenience to a person due to loss of the property does not mean that he has an insurable interest in the property.
- The interest is insurable only if it is not illegal or immoral or opposed to public policy.

#### **IV. TYPES OF INSURABLE INTEREST**

##### **IV.I. Contractual:**

The contract of insurance is void ab initio if the insurable interest is missing from it. In an action upon such a contract if the insurer does not raise the plea of want of interest nevertheless the court of its own motion may refuse to enforce the contract.

##### **IV.II. Statutory:**

The statute requires the insurable interest to be of such a nature that it does not fall into the category of wager. Section 30 of the Indian Contracts Act lays down that all contracts by way of wager are void.

#### **V. INSURABLE INTEREST IN LIFE INSURANCE CONTRACTS**

A life Insurance Contract is of such a nature that it depends on chance or uncertainty. In a life insurance contract, the insurer agrees to pay to the insured, a certain sum of money in two cases, i.e. either upon his death or upon the maturity of the policy. The insured, as a form of consideration, pays a specific amount of time within every specific time period. “A contract of life insurance may be defined as one in which one party agrees to pay a given sum of money upon the happening of a particular event contingent upon the duration of human life in consideration of immediate payment of a smaller sum or other equivalent payments by the other”.<sup>10</sup>

In the case of life insurance, the person who is the nominee to the contract shall have an insurable interest in the life

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<sup>10</sup> Bunyon, LIFE INSURANCE; *Joseph v Law Integrity Insurance Co.*, [1912] 82 LJ 187; [1912] 2 Ch 581.

of the insured person. It would be opposed to the public policy for a person who is not in any manner related to the insured person to reap the benefit out of the insurance amount.

The interest is required to exist at the time of enforcement of the insurance contract. It does not need to have continued till the occurrence of loss. It is a general belief that the spouses have an insurable interest in the life of one another. The wife of the insured person is not under an obligation to prove that she has an insurable interest in her husband's life. "It is not necessary for her to prove that she had an insurable interest only because a large sum of money would go from her husband's estate to another, upon his death."<sup>11</sup>

In English law, children and parents have no insurable interests in the lives of each other, as laid down in the case of *Halford v Khymer*.<sup>12</sup> On the other hand, the American law extends the scope of insurable interest to relationships other than spouses as well, such as parent and son, grandparent and grandchildren, etc. in the American case of *Aetna Life Insurance Co. v France*,<sup>13</sup> it was decided that any relative who is financially dependent upon the insured person is deemed to be having the insurable interest in the life of such person.

The Insurance Act of 1938 does not lay down as to what would constitute insurable interest as regards to life insurance. The courts, on the question regarding the same, have relied upon the English and American decisions based on the facts of the case. Thus, "In India, apart from husband, wife or any other close relative, any person, who has a legal right to derive maintenance from a person, can take a life insurance policy on the life of the latter without any proof of insurable interest. Life insurance is a husband's privilege, a wife's right and a child's claim."<sup>14</sup>

Apart from familial relations, contractual relations also give birth to insurable interest. Thus, "a creditor has an insurable interest in the life of the debtor to the extent of his interest."<sup>15</sup> In the case of *Powell v Dewy*<sup>16</sup> partners of a firm were held not to be having an insurable interest in the lives of each other, except if the insured partner is personally indebted to the other partner.

Some specific scenarios are as follows:

## **VI. Husband and Wife**

Spouses have an insurable interest in the lives of each other. In *Griffith v. Flemming*<sup>17</sup>, the husband and wife had opted for a joint life policy wherein both of them were to contribute to the premium. After taking the policy, the wife committed suicide and the assured sum was claimed by the husband. The insurer claimed that the husband, at the time his wife committed suicide had no insurable interest in the life of his wife according to the Life Assurance Act, 1774. It

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<sup>11</sup> *Reed v. Royal Exchange Assurance Co.*, [1795] Peake Add Cas 70.

<sup>12</sup> 1830] 10 B&C 724: 109 ER 619.

<sup>13</sup> [1876] 94 US 561.

<sup>14</sup> SS Hubner, LIFE INSURANCE.

<sup>15</sup> *Godsall v Boldero*, [1807] 9 East 72: 103 ER 500.

<sup>16</sup> [1898] 123 Log NC.

<sup>17</sup> *Id.*, at 19.

was held that “the husband has an interest in his wife’s life which ought to be presumed”.

#### **VI.II. Child and Parents:**

In India, the children as well as the parents have an insurable interest in the lives of each other. Though in England, the scenario is not the same, in case of *Halford v. Khymer*<sup>18</sup> it was held that a father has no insurable interest in the life of his son unless he is getting some pecuniary benefit from him.

#### **VI.III. Debtor and Creditor**

The creditor has the interest on the life of the debtor equivalent to the amount owed to him by the debtor. In the case of *Godsall v. Boldero*<sup>19</sup>, it was held that “if a creditor affects a policy of insurance upon the life of his debtor for greater amount than due, then he will not be able to recover any greater sum than the amount or value of his interest.”

#### **VI.IV. Employer and employee:**

In the case of *Hebdon v. West*<sup>20</sup>, it was held that an employee has an interest in the life of the employer owing to the fact that the employer pays him salary. Thus, the insurable interest in the life of the employer is to the extent of the salary of the employee.

### **VII. CONCLUSION**

The lack of any insurable interest in the subject matter renders the contract as a wager. Insurable interest differs with the kind of insurance policy undertaken. In the case of life insurance, it would depend on the amount assured by the insured, in other types of insurance, it would depend on the loss incurred by the insured person.

Insurable interest is important because if it would not exist, any person stranger to a property would purchase the insurance to it and then harm it intentionally in order to make undue gains out of it.

Gradually, the need of insurable interest as regards to life insurance is being done away with. In Australia, the Life Insurance (Consequential Amendments and Repeals) Act 1995, completely looks over the insurable interest as regards to life insurance. It is pertinent to observe that insurable interest is of utmost importance as regards to insurance availed with respect to any material object. But when the subject matter of the insurance is a person, his right to nominate any person he wants to, regardless of his or her relation to the nominee, ought to be respected by the legislations and the judiciary.

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<sup>18</sup> *Id.*, at 20.

<sup>19</sup> *Id.*, at 24.

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