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PRINCIPLE OF UTMOST GOOD FAITH ON THE NECESSARY DISCOSURE OF INFORMATION IN INSURANCE

Alok Kumar & Tijender Kumar Singh

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PRINCIPLE OF UTMOST GOOD FAITH ON THE NECESSARY DISCLOSURE OF INFORMATION IN INSURANCE

Alok Kumar[*]

Tijender Kumar Singh[**]

[**Abstract:** *Insurance originated in the Mediterranean in the 13th or 14th century and is now a global business. Insurance is a tool to spread risk and distribute risk across many people. The different types of insurance can be classified based on the nature of risk. Regardless of the form of insurance, a policy is voidable by an innocent failure to disclose. It imposes a comprehensive disclosure obligation on insurance applicants, requiring them to reveal important, known, and presumed accurate information. The insured must disclose material facts within his actual and constructive knowledge, albeit the degree of the disclosure will vary depending on the insured's level of understanding. The duty to disclose material facts in the insured's constructive knowledge is strictly limited to those that could have been discovered through reasonable inquiry and that a prudent person applying for the relevant insurance would have discovered. Therefore, even though a fact is discoverable, no disclosure is necessary if a reasonable man applying for insurance could not have discovered it. Insurance occupies an important place in the modern world because the risk, which can be insured, has increased in number and extent owing to the growing complexity of the present-day economic system. It plays a vital role in the life of every citizen and has developed on an enormous scale leading to the evolution of many different types of insurance. The author aims to explain the evolution of this principle while considering the issue of fraud done by insurers and insured.*]

[*] Alok Kumar is an Associate Professor of Law at the Himachal Pradesh National Law University, Shimla, India. *Email*: alok@hpnlu.ac.in.

[**] Tijender Kumar Singh is a Research Associate at the Himachal Pradesh National Law University, Shimla, India. *Email*: tijendersingh@hpnlu.ac.in.

I

INTRODUCTION

Insurance in the modern sense originated in the Mediterranean during 13th or 14th century, thoughGreeks or Romans may have used it even earlier. The oldest types of Insurance are Marine Insurance, recorded in 1347 by A.L. Mayerson in "Introduction to Insurance". This was followed by life insurance after 300 years, and Fire insurance came after the London fire in 1666.[1]

Every risk involves the loss of one or another kind. In older times, the contribution by the person was made at the time of loss. Today, only one business offers all walks of life is insurance. Due to the growing complexity of life, trade and commerce, individual and business firms are turning to insurance to manage various risks. Every individual in this world is subject to unforeseen uncertainties which may make him and his family vulnerable. At this place, only insurance helps him survive, recover from his loss, and continue his life in the usual manner.

Some Definitions' given by scholars are as follows:

"Insurance is a Contract by which the one party, in consideration of a price paid to him adequateto the risk, become security to the other that he shall not suffer loss, damage or prejudice by the happening of the perils specified to certain things to which may be exposed to them."[2] - *Justice Lawrence*

'Insurance is a method of spreading over a large number of persons a possible financial loss serious to be conveniently born by an individual."[3] - *Maclean J. B*

"Insurance is a social device whereby uncertain risks of individuals may be combined in a group and thus made more certain, small periodic contributions by the individuals providing fund out of which those who suffer losses may be reimbursed"[4] - *Riegel R. and Miller. J. S*

In D.S. Hamsell's words, insurance is "a social device providing financial compensationfor the effects of misfortune, the payment being made from the accumulated contributions of all parties participating in the scheme."[5]

In simple terms, "Insurance is a cooperative device to spread the loss caused

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[1] C.L. Tyagi & Madhu Tyagi, INSURANCE LAW AND PRACTICE 1 (2010).

[2] Sachin Rastogi, INSURANCE LAW AND PRINCIPLES 41 (2014).

[3] *Id.*

[4] *Supra* note 1, C.L.Tyagi at p.2.

[5] *Supra* note 2, Sachin Rastogi at p. 41.

by a particular risk over several persons who are exposed to it and who agree to insure themselves against the risk."

According to the functional definition, insurance is a tool that works together to spread risk and a system that distributes risk across many people who have risk insurance. The way to offer security against losses to the insured follows, followed by allocating the loss of each member of society based on the likelihood of loss to their risk.[6]

One of the earliest and most formal definitions of insurance is "By insurance in trade is understood a written contract between parties. This contract is called a policy. The contracting parties are the insured, who pays a consideration called a premium, and the insurer, who receives it. For this premium, the insurer satisfies and makes good to the insured, unless a fraud appears like any loss, damage, or accident that may happen, only according to the tenor of the contract or policy."[7]

II

TYPES OF INSURANCE

Insurance occupies an important place in the modern world because the risk, which can be insured, have increased in number and extent owing to the growing complexity of the present-day economicsystem. It plays a vital role in the life of every citizen and has developed on an enormous scale leading to the evolution of many different types of insurance. In Fact, now a day almost any risk can be made the subject matter of contract of insurance. The different types of insurance have come about by practice within insurance companies, and by the influence of legislation controlling the transacting of the insurance business. Broadly, insurance may be classified into the following categories:

1. Classification based on the nature of insurance, Life Insurance, Fire Insurance, Marine Insurance, Social Insurance and Miscellaneous Insurance
2. If there is classification from a business point of view, Life Insurance and General Insurance.[8]
3. When classifying the insurance from a risk point of view Personal Insurance, Property Insurance, Liability Insurance and Fidelity

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[6] *Supra* note 2, Sachin Rastogi at p. 40.
[7] Magens, AN ESSAY ON INSURANCES, VOL. 1,1 (1755).
[8] *Supra* note 1, C.L.Tyagi at p.4.

Guarantee Insurance are some of types to consider.[9]

However, in the present lesson, we will discuss insurance from a business point of view, personnel insurance and property insurance.

III

ESSENTIALS OF INSURANCE CONTRACTS

An insurance contract is a species of the general contract. A contract of insurance is a species of the general contract. The same principles of law govern it as other contracts. *Section 10*[10] of the*Contract Act* states that a contract is by the free consent of parties competent to contract for a lawful consideration and with a lawful object and not expressly forbidden by law.[11]

Thus, any insurance contract must have the following components:[12] The contract between the parties known as the insurer and the insured must state that the insurer agrees to defend the insured against any loss or harm that may result from the occurrence of the event. The assured agrees to pay the insurer a sum known as a premium regularly as consideration. Lastly, the insurance policy is the written instrument that constitutes the contract.

A 'contract' is an agreement between two or more parties which, if it contains the elements of a valid legal agreement, is enforceable by law. In other words, a 'contract' involves an exchange of promise, and in case of a breach, the parties to the contract can avail of legal remedy. The Indian Contract Act of 1872 governs the contract law in India.

A contract may be defined as an agreement between two or more parties to do or abstain from doing an act intended to create a legally binding relationship. This could be summarised as 'an agreement designed to have legal consequences'.

According to Indian Contract Act, "an agreement enforceable by law is a contract",[13] which satisfies the following essential elements:

1. Agreement (offer and acceptance)
2. Legal Consideration
3. Competence to Contract

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[9] *Id.*

[10]The Indian Contract Act, 1872, S.10.

[11]*Supra* note 1, C.L.Tyagi at p.3.

[12] K.S.N Murthy & K.V.S Sarma, MODERN LAW OF INSURANCE IN INDIA, 28 (2014).

[13] The Indian Contract Act, 1872, S. 2(h).

4. Legal object
5. Certainty
6. Possibility of performance
7. Writing and registration.

Offer and Acceptance

Any legally binding contract must have both an offer and an acceptance. Consider the insurance policy as an illustration. The insurer accepts the offer by providing rates and terms under which he is willing to accept the offer to insure, and the insured submits an offer by filling out a proposal. In a contract, the offer and the acceptance must be stated in precise, unambiguous language.

It is also crucial that the acceptance be made under the same conditions as the offer. For instance, if an insured requests coverage for his home in Delhi's Karol Bagh, the request should be accepted with coverage for that home and not a separate one. The contract is only valid when the first party accepts the terms put forth by the second party, who may make a counteroffer if the second party to whom the offer is made so desires. Consensus ad idem is the term for this.

An offer should be accepted without conditions. Both parties must accept any conditions that are set in order for the contract to be enforceable. Although the offer and acceptance should be in writing, the law does not distinguish between oral and written offers and acceptances.

Consideration

Consideration, a crucial component of a binding contract, is the cost both parties incur in exchange for the promise. This is because each contract component ought to provide something for the other. In an insurance contract, the insured's consideration is the money he pays as a premium, and the insurer promises to reimburse the insured should the contingency insured materialise.

Capacity

The ability of the parties to enter into a contract is the third prerequisite for a legal agreement. The rationale is that the party agreeing should be able to uphold their end of the bargain. A legally binding agreement cannot be entered into by a minor, an individual who is mentally incapacitated, intoxicated, etc. The intention is to prevent taking advantage of those in a fit state.

Similarly, the insurer should be qualified to enter into a contract. Only insurers in India who have been granted a licence by IRDA to conduct insurance business can provide insurance policies.

A beneficiary under an insurance contract may nonetheless be a person not legally capable of entering into a contract due to the rules of Section 11 of the Contract Act of 1872. The property of a minor may be insured by those authorised to act on his behalf.

He would be entitled to recover the insurance money.[14] The court rejected the insurance company's defence that the person on whose behalf the goods were insured was a minor and allowed the minor to recover the insurance money. A minor is allowed to enforce a contract of some benefit to him, under which he is required to bear no obligation.[15]

Legal Purpose

The agreement's or contract's goal should be legitimate. If two parties agree with an illegal motive, the agreement cannot be enforced in court and is invalid. For instance, the contract would be void if an insurance policy was provided to cover a race's outcomes.

According to *Section 23*,[16] the agreement's consideration and purpose must be legal. It has been ruled that a car insurance policy stating no compensation would be paid if an unlicensed individual operated the vehicle at the time of the accident or by a holder of a learning licence is not against the law.[17]

Section 64-VB[18] prohibits the insurer from entering into a contract unless the premium is paid in advance. But in *National Insurance Co. Ltd. v. New Darjeeling Union Tea Co. Ltd.*,[19] the court held that this condition could be waived.

Free Consent

A mere consent is not enough for a valid contract. One of the essentials of a valid contractmentioned in section 10 is that the parties should enter into the contract with their *Free Consent.* When consent is given freely, it is not the result of coercion (Section 15), undue influence (Section 16), fraud (Section 17), misrepresentation (Section 18), or mistake, subject to the provisions of

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[14] *Great American Insurance Co. v. Madan Lal Sonulal*, I.L.R. (1935) 59 Bom. 656.

[15] *Zafar Ahsan v. Zubaida Khatun*, (1929) 27 All LJ 1114.

[16] The Indian Contract Act, 1872, S.23.

[17] *New India Assurance Co. Ltd. v. Kesavan Ramamurthy*, (1977) 2 Andh LD 446 (AP.).

[18] The Insurance Act, 1938, S.64.

[19] *National Insurance Co. Ltd. v. New Darjeeling Union Tea Co. Ltd,* (2001) 1 Cal. LT 218 (Cal.).

Sections 20, 21 and 22.[20]

Where any of the above mention reasons cause the consent to an agreement, then the agreement is a contract voidable at the option of the party whose consent was so caused. For example, if a person is induced to sign an agreement by fraud, he may, on discovering the truth, either uphold the contract or reject it.

Certainty

An agreement must not be vague, loose and uncertain. Both must clearly understand the terms and conditions. The insurer must analyse or clarify the terms and contracts if the proposer is illiterate. Otherwise, there will be no mental accord. In insurance, the terms and conditions are deemed understood as the proposer gives an understanding on the proposal form. The insurance company issues a printed policy document containing all the insurance contract terms and conditions.

Possibility of Performance

The agreement must be capable of being performed. A promise to do an impossible thingcannot be enforced. In an insurance contract, there is every possibility of its performance.

The insurer must be able to pay the money on happening of the event. The insured is expected to make regular premium payments; otherwise, it would defy the meaning ofthe insurance plan.

Writing and Registration

The contract law requires certain formalities of writing and registration etc. The agreements must be in writing, properly signed, stamped and registered for insurance. These formalities are fulfilled as the proposer makes his proposal through a printed form duly signed by him. The insurer issues the original policy document, properly signed and stamped.

IV

PRINCIPLE OF INSURANCE

The insurance industry aims to safeguard a person's or an asset's economic value. In exchange for a nominal premium to be paid by the insured, the insurer undertakes through an insurance contract to make good any loss on the insured property or loss of life (where applicable) that may occur over

[20] The Indian Contarct Act 1872, S.14.

time.

In addition to the requirements above for a valid contract, insurance contracts are also subject to additional rules. They include the principles of Maximum Good Faith, Insurable Interest, the Principles of Indemnity, Subrogation, Contribution, Proximate Cause, and Loss Minimization.[21]

These distinguishing characteristics apply to all varieties of insurance contracts and are founded on fundamental legal concepts. These concepts offer standards upon which insurance contracts are entered into. Therefore, a thorough understanding of these principles is required to interpret insurance contracts. It also aids in contract termination, claim settlement, rule enforcement, and the speedy awarding of verdicts in case of disputes. However, in this paper author will only discuss the principle of Utmost Good Faith or Ubereima Fides. The author aims to explain the evolution of this principle while considering the issue of fraud done by insurers and insured.

V

PRINCIPLE OF UTMOST GOOD FAITH (*UBERRIMA FIDES*)

A fundamental and primary principle of insurance is the Latin maxim *uberrimae fidei*, or, simply, the Principle of Utmost Good Faith. This rule states that the insurer and the insured must execute the insurance agreement in complete good faith, belief, or trust. The person applying for insurance must voluntarily provide the insurer with all his genuine information about the policy's subject matter. If any facts regarding the insurance subject matter are omitted, obscured, faked, or presented incorrectly by the insured, the insurer's liability is void (i.e., legally revoked or cancelled). All insurance contracts must adhere to the *uberrimae fidei* principle.[22]

Though the insurance contract is subject to good faith and is based upon mutual trust and confidence, applying any doctrine or caveat emptor (let the buyer beware) is impossible becauseof the fiduciary nature of insurance.[23] Like with contracts of sale, where the buyer must first satisfy himself as to the nature and quality of products he requires before contracting to purchase anything, the information required for the parties to analyse the contract sufficiently cannot be ascertained.

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[21] THE INSTITUTE OF COMPANIES SECRETARIES IN INDIA, *available at:* https://www.icsi.edu/media/webmodules/Insurance_UPDATE_JUNE2020.pdf (last visited 3 Mar., 2023).

[22] *Carter v. Boehm,* (1766) 3 Burr 1905.

[23] *Supra* note 2, Sachin Rastogi, at 100.

"A positive duty voluntarily to disclose, accurately and fully, all facts material to the risk using proposed, whether requested or not".

Hence, "utmost good faith" is one of the critical foundational insurance ideas. The insurance agreement between the insured and the insurer is a special contract since it guarantees to pay should a risk materialise.

Explaining the reason for this stringent rule in an early case, Lord Mansfield said:[24]

"Insurance is a speculative transaction. The underwriter relies on the insured's representations. It moves forward in the belief that he does not withhold any information that could lead the underwriter to believe that the special facts on which the contingent chance is to be computed do not exist. This would lead the underwriter to estimate the risk as if it does not exist. The policy is invalid since it was fraudulent to conceal such a situation because the risk run differs from the risk understood and intended to be run at the time of the agreement, even if the suppression occurs accidentally. Without malicious intent, the underwriter is fooled, and the policy is null and void. Good faith prohibits either party from using the other party's ignorance of what the other party knows to induce a deal."

The insurer must frequently depend solely on the description and information provided in the proposal form. The subject matter of the insurance may very well have vanished in a flash of flame or been swept away after an insured risk has operated because the insurer has no way of validating these facts. Thus, the insurer would pay the incorrect claims if the Insured made any inaccurate statements, misrepresentations, or fraudulent declarations.

However today, especially with imminent privatisation, it would be logical to expect that insurerswould attempt to become increasingly more customer friendly and provide risk survey and assessment, appraisal, etc. services, directly or through brokers, surveyors, etc. Whether these factors may dilute this principle and to what extent remains to be seen. Our opinion would be that the Assured knows his business and risk best and, whenever in doubt, must attempt to disclose that aspect.

This implies that even after obtaining insurance, during the policy's period of validity, the Assured must notify the insurer of any changes to the business or risk that would increase the risk. Examples of such changes would be changes to the process or storage of any hazardous materials. Additional premium payments may occasionally be necessary. The insurer would

[24] *Carter v. Boehm,* (1766) 3 Burr 1905.

undoubtedly be entitled to avoid making any payments of claims or money under the Policy if it were discovered that an Assured had not disclosed or attempted to hide any material aspects of the risk. Again, an insurer would be entitled to forego any payment of claims under the policy if it is shown that the Insured misrepresented any component of the risk. Nonetheless, the insurer might only partially pay the claim in other instances of misrepresentation when the only consequence was possibly a high premium.

Material Fact

Every event affecting a sensible insurer's decision to fix the premium or accept the risk is considered a material fact. The duty extends not only to facts that the insured knows but also to those that the insured ought to have known as a reasonable person, whether he thinks it material or not.[25] The word "prudent underwriter" has drawn criticism, and there is a propensity to use the term "reasonable underwriter" instead when applying the criterion. It has been suggested that while determining whether a fact is relevant, one should use the perspective of the "reasonably insured" instead of the "reasonable underwriter." Therefore, whether the proposer views the subject as material or the insurer views a fact as material is not at issue. A cautious or reasonable underwriter's perspective will be the criterion.

Facts which increase the risk or, in simple words, the facts if disclosed, the insurer would have rejected to issue a policy.[26]

Facts Which Must Disclosed

Facts that must be reported are those that would affect whether an insurer accepted or declined a risk, set the premium, or determined the terms and conditions of the contract.[27] The fact must be relevant when it is supposed to be shared with the insurer. It is unnecessary to reveal unimportant information when the contract is made, but it becomes relevant afterwards. There is one exception in which the rule is not followed. When a policy condition mandates ongoing disclosure, this would be a typical clause to discover in most general insurance plans. The information that must be disclosed includes information that demonstrates that a specific risk represents a greater exposure than predicted by its nature or class. Outside factors increase the risk beyond what would be expected. Prior losses and claims under other policies must be disclosed. Any conditions or special terms imposed on prior proposals by other insurers are worth disclosure. The

[25] *Joel v. Law Union and Crown Insurance Co.,* (1908) 2 KB 863 CA.

[26] *Banarasi Devi v. New India Assurance Co.,* A.I.R. 1959 Pat. 540.

[27] *Dawson's Bank Ltd. v. Vulcan Insurance Co.,* A.I.R. 1935 PC 1.

existence of other non-indemnity policies like life and accident—complete information regarding the description of the insurance subject. Examples of such information include

- Fire Insurance: The building's construction, intended use, and fire detection and suppression systems.
- Theft insurance: Stock characteristics, market value, and security measures are very relevant.
- Details about regular drivers and the type of automobile, including any specific modifications, under motor insurance
- Sea insurance: Cargo insurance based on the purchase agreement, mode of transportation, and containerisation.
- Age, prior medical history, work, and drinking and smoking habits are all factors in life insurance.
- Information about a person, like age, height, weight and employment history, is relevant under personal accident insurance.

These are but a few samples, not a complete list. There will be a requirement to know specifics about prior loss experience and any information that the proposer should know about all types of insurance. For instance, a landlord needs to be aware of the tenant's type of occupancy of his property.

Facts which need not be disclosed

There are, however, specific facts that it is no duty of the insured to bring to the insurer's notice, for example, facts that the insurer knows or is deemed to know. Lord Mansfield summed them up in an early case: "Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain, from his ignorance of that fact, and his believingthe contrary. There are some circumstances in which material is not necessary to disclose.

- *Legal facts*: Failure to know the law is not excused because everyone is presumed to be aware of it. It is against the law to overload trucks that transport commodities. In an accident, the transporter cannot claim ignorance of this clause as a defence.
- Factors that reduce or eliminate Risk-like building's effective fire suppression system.
- *Facts of Common Knowledge:* The insurer must know about riot-prone zones, conflict hotspots, and the procedures used in a given industry or trade. Every fact that is known or that may legally be assumed to be known by the insurer is deemed known. This includes facts generally known or that

an insurer in the regular course of business should be expected to know.

- Facts that could reasonably be ascertained include, for instance, the prior history of claims the insurer should have on file.
- Things that the insurer's representative overlooks Insurance companies frequently assign surveyors to inspect the premises for burglary and fire insurance. If the surveyor misses any dangerous aspects, however, and as long as the insured does not withhold or hide the information, the insured cannot be held liable. The following information need not be disclosed unless asked for. Any information that is unnecessary to divulge due to an express or implicit need.
- Any matter regarding which the insurer waives disclosure.
- Any fact about which the investigator has received enough information to warrant an investigation.
- Facts covered by the terms of the policy are those that are unnecessary to reveal due to an express or implied warranty, such as the regular maintenance of burglar alarms.

The contract is voidable at the insurer's discretion where non-disclosure, whether benign or fraudulent, also known as concealment, has occurred. When a policy condition does not apply, we are in this situation. A policy condition that can only declare the common law rule often covers the ground.[28]

VI

JUDICIAL EVOLUTION ON MISREPRESENTATION AND DISCLOSURE OF MATERIAL FACTS

As mentioned earlier, marine insurance was the oldest. It witnessed the origin of the Utmost Good Faith principle in *Carter v Boehm*[29] where the fort's governor requested insurance against enemy capture. The governor did not disclose the likelihood of a French attack on the fort to the insurer. Once the fort was attacked, the insurance denied a claim, claiming that the fort's position had not been disclosed, which he considered a crucial detail.

The court ruled in favour of the insured, finding that the insurer knew that the governor had anticipated an attack by taking out insurance. Using such information, the insurer wrote the insurance without further research. Court

[28] THE INSTITUTE OF COMPANIES SECRETARIES IN INDIA, *available at:* https://www.icsi.edu/media/webmodules/Insurance_UPDATE_JUNE2020.pdf (last visited Mar. 3, 2023).

[29] *Supra* note 22.

states:

By so doing, he took the knowledge of the state of the place upon himself. It was a matter as to which he might be informed in various ways. It was not a matter within the personal knowledge of the governor only.

The underwriter relies on the insured's representation. It moves forward in the belief that he does not withhold any information that could lead the underwriter to believe that the circumstance does not exist and lead him to estimate the risk as if it does not. The unique facts that must be considered when computing the contingent chance are typically only known to the insured. The insurance is invalid since it was fraudulent to withhold such information. The insurance is void because the risk run is significantly different from the risk understood and intended to be run at the time of the agreement, even though the suppression should have occurred accidentally and without any malicious intent.[30]

The principle outlined in *Carter* appears to be that matters lying within the exclusive knowledge of the applicant should be disclosed to the insurer in applying for insurance, whether or not the applicant thinks they are material. This is in light of the finding that the state of the fort was not within the exclusive private knowledge of the insured.

In *Mayne v. Walter*[31], Lord Mansfield decided in favour of the insured, whose supercargo was lost due to being taken prisoner by a French privateer. A French ordinance that forbade Dutch ships from transporting supercargo from any nation at war with France was not mentioned by the insured in the insurer's defence—seizure of the cargo as the prize was the ordinance's specified punishment for a violation.

According to Lord Mansfield, the underwriter must assume all risks when both parties are unaware of the legislation. Furthermore, the insurer was responsible for determining whether the such cargo was on board if he was aware of the ordinance. He continued by saying that the claimed concealment must be dishonest for the policy to be void.

Carter established the rule that an insured must reveal material facts that are solely in his knowledge, providing for the avoidance of even an innocent failure to disclose. *Mayne* amended the premise by mandating that only false concealment of material facts should void a policy.

The insurer could have learned of facts not solely known by the insured, but

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[30] Francis Achampong, *Uberrima Fides in English and American Insurance Law: A Comparative Analysis,* 36, ICLQ 2, 329-347 (Apr., 1987).
[31] *Mayne* v. *Walter*, THE MODERN LAW REVIEW, VOL. 32, Rev. 617.

neither of these was unknown to the insured. In the case of *Friere* v. *Woodhouse*,[32] the insurer disputed culpability because the insured had neglected to alert him to the coming of a ship that had sailed alongside his own ship. The court ruled that only information the insured knows must be shared, rejecting the insurer's argument. It is not necessary to divulge information that the insurer could learn from familiar sources of information with proper attention. In this instance, Lloyd's printed lists may have provided information about the other ship's arrival.

In the case of *Lindenau v. Desborough*,[33] the Duke of Saxe-Gotha insured his life through the British insurer's German agents. Later, the Duke passed away from a brain tumour. His doctor had just mentioned that he had trouble speaking, not that he had a tumour. The insurer was forced to rely on the doctor's testimony after the court decided in favour of the insurer and gave significant weight to the insured's nationality. Baylay J stated that:

"All cases of insurance…. the underwriter should be informed of every material circumstance within the assured knowledge. The moral question is whether any particular circumstance was material and not whether the party believed it to be so."[34]

This marked a significant departure from the final definition of the disclosure principle provided by Lord Mansfield in *Mayne*. In Carter, he had limited the duty of disclosure to information that the insured had exclusive knowledge of (as opposed to just knowledge of). In Mayne, he had said that only a fraudulent concealment should invalidate the policy. Bayley J. wholly disregarded Mayne's claim that an innocent non-disclosure would invalidate the policy. This marked the beginning of the disclosure obligation as Mayne had formulated it.

In *Bates* v. *Hewitt*,[35] a marine insurance policy was taken out on Georgia, a Confederate cruiser. The ship, laid up in Liverpool after the war, was well known to the British public. The British press and Parliament had given it considerable attention. The plaintiff had since purchased it.

Because the ship's past was not disclosed, the insurer, an underwriter at Lloyd's, rejected a claim. Despite his lack of recollection at the time of the application, the jury determined that the defendant was aware of the ship's reputation before the insurance was obtained. The jury concluded that the underwriter may have learned about this information from Lloyd's registries.

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[32] *Friere* v. *Woodhouse* (1817) 1 Holt N.P. 5.
[33] *Lindenau v. Desborough* (1828) 8 B. & C. 5.
[34] *Id.*, p.592.
[35] *Bates* v. *Hewitt* (1867) L.R. 2 Q.B. 59.

Despite the jury's verdict, the court ruled that the insured was responsible for disclosing the ship's illustrious past. According to Lord Cockburn CJ:

"No insurance law principle can be more clearly demonstrated than this one: the insurance proposer must provide the insurer with any information that would help the latter evaluate the scope of the risk the insured is being guaranteed against."[36]

The court determined that even though the insurer was made aware of the crucial fact before the insured's application, the non-disclosure constitutes a strong defence if it is true at the time of the application.

Since Georgia's history and reputation were not solely known to the insured, *Bates* represented another departure from *Carter* and *Mayne*. A few courts continued to adhere to the specific obligation set by Lord Mansfield in *Mayn* before the general duty of disclosure outlined in *Lindenau* became firmly established.

With *Joel* v. *Law Union and Crown Insurance*[37], the general duty of disclosure solidified its position over the narrow duty in the twentieth century. According to the Court of Appeal, in that case, the insured had no obligation to reveal information that he was unaware of. However, as long as he was aware of the information, he was responsible for disclosing it if a reasonable person found it material. This obligation was unaffected by his belief that the information was not material.

The *Joel* principle was acknowledged in *Australia and New Zealand Bank Ltd* v. *Colonial and Eagle Wharves Ltd.*,[38] where the insured was found to have an obligation to disclose known information. In his obiter remarks, McNair J remarked that the majority view reinforced the idea that the insured was responsible for reporting information that he would reasonably learn in the regular course of business.

The United States recognises the obligation to disclose material facts to an insurer to whom an application is made. The English way of life in the US was adopted and persisted far into the 20th century. Regardless of the insurer's inquiries, uber-rima fides was applied to all insurance contracts, and the insured was obligated to reveal all material facts to the insurer. The *Carter v. Boehm*, justification for the English rule was approved.

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[36] R. A. Hasson, *The Doctrine of Uberrima Fides in Insurance Law. A Critical Evaluation*, 32 M.L.R. 615, (Nov., 1969).

[37] *Joel* v. *Law Union and Crown Insurance* [1908] 2 K.B. 863 (C.A.).

[38] *Australia and New Zealand Bank Ltd* v. *Colonial and Eagle Wharves Ltd.*, [1960] 2 Lloyd's Rep. 241.

Therefore, Swan J cited Lord Mansfield's well-known adage in *Carter*, which reads as follows:

Insurance is a contract based on speculation. Since the notable facts used to calculate the contingent chance typically only belong to the insured, the underwriter moves forward with the assurance that he is not withholding any general information that could affect the risk. If such information is withheld, the underwriter is misled, even if done accidentally and without malicious intent.

The rule of the disclosure may be codified in each state's insurance code, while the particular wording of the responsibility may vary. A common law obligation of disclosure was also acknowledged by the US Supreme Court in *Stipcich* v. *Metropolitan Life Insurance Company*.[39] There, the court ruled that insurance plans are uberrimae fidei contracts and become voidable at the insurer's discretion if the insured fails to disclose conditions affecting the risk of which he is aware.

Marine insurance and non-marine insurance are separated in the US. In the former, the insured must divulge pertinent information that is within his knowledge.[40] The difficulty in anticipating the dangers that an ocean-going vessel would face, which led to the establishment of the all-risk's basis of insurance, and the impracticality of utilising specialised questionnaires, serve as the foundation for the marine rule. Therefore, unlike in England, the insured is not required to disclose information that is not known to him but that he could have reasonably learned in the course of his business. It has been noted that this rule might not apply when the insured suspects rather than knows, but that concealment would likely only be necessary if the reasons for the suspicion should be made public.

The insured has no obligation to divulge information when the insurer has equal access to it, such as regarding things of public record or a long-standing tradition or use that insurers generally are aware of.[41] The English maritime insurance law acknowledges that public information need not be revealed.[42]

The arguments for the marine rule have been acknowledged as not applying in non-marine insurance. The buyer of insurance is not the sophisticated consumer that a candidate for maritime insurance is. In actuality, he or she typically lacks any competence in insurance-related subjects; the insurer is fully qualified. Additionally, the insurer has virtually unrestricted access to

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[39] *Stipcich* v. *Metropolitan Life Insurance Company* 277 U.S. 311 (1928).

[40] *Gulf Stream Ltd* v. *Reliance Insurance Co.* 409 F.2d 974 (5th Cir. 1969).

[41] *Contractors Realty v. I.N.A.,* 469 F.Supp. 1287 (1979).

[42] Marine Insurance Act 1906, S.18(3).

the insurance's subject matter for inspection purposes. The rule is relaxed in non-marine insurance, where the insurer has access to sufficient questionnaires and inspection opportunities.

In *Blair* v. *National Security Insurance Co*.,[43] the court still ruled in favour of the insured even though she had failed to state that she had suffered numerous losses in the past and was having financial difficulties at the time of the application. The court debated whether the in-question policy was more comparable to a maritime policy or to fire and life insurance policies. The court decided that the marine rule did not apply to inland marine insurance since the reasons underlying the rule did not hold.

The agent entered the incorrect response without reviewing the proposal or double-checking the information provided, and the applicant signed. It was decided that the applicant had violated the policy's non-disclosure clause.[44]

The agent was provided with the correct information but filled out the incorrect responses for some reason, and the applicant signed without reviewing what the agent had written.[45] The insurers were shown to be unreliable.

The "test of what is a material fact and the degree of the good faith which is required is otherwise the same in all classes of insurance," according to the observation. When the term "prudent insurer" is used in the Act, it signifies that the court must ignore the specific insurer's stringent standards and instead utilise the objective standard of commercial usage. "Circumstances that don't need to be disclosed include those that reduce risk and things that are commonly known or relevant to the insurer's line of work. The prospective assured must disclose important circumstances that he is aware of or should be aware of."[46]

According to the ruling, the insurer has a continuous duty to behave in good faith even after the contract has been signed. Any significant changes to the agreement terms cannot be made without the insured party's approval. Since the duty of good faith applies equally to the assured and the insured, it is the responsibility of the insurers and their agents to disclose all material facts that come to their attention.[47]

According to the ruling, the insurance company can cancel the coverage due

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[43] *Blair* v. *National Security Insurance Co.,* 126 F.2d 955 (3rd Cir. 1942).
[44] *Biggar v. Rook Life Assurance Company,* [1902] 1K.B.516.
[45] *Newsholme Brother v. Road Transport and General Insurance Co. Ltd.*, (1929) 34 Ll.L. Rep. 247.
[46] *Krishnawati Puri* v. *LIC* A.I.R. 1975 (Del.) 16.
[47] *United India Insurance Co. Ltd. v. M.K.J. Corpn.,* (1996) 6 S.C.C. 428.

to intentional false statements about the policyholder's drinking habits and failure to disclose a venereal illness.[48]

The assured lied about his health in a false declaration. It was decided that the insured would not be exempt from the legal repercussions of the false declaration despite the insurance company having the assured evaluation by its doctor.[49]

There was an amendment to the Insurance Act of 1938 in 2015. This amendment substitutes section 45, Which talks about three years (earlier two years). Afterwards, a policy must not be questioned for misstatement and fraud.[50] Fraud is now a basis for contesting a life insurance policy within three years of its issuance, thanks to the 2015 amendment to make section 45 more strict and harsh for the insured. There are two grounds mentioned in the section on which a life insurance policy may be called into question:

- Fraud
- Any statement or suppression of material fact to the expectancy of the insured's life was incorrectly made in the proposal.

There will not be a repudiation of the premium sum the insurer has collected if the insured proves that the reason for contesting the policy is fraud.[51] It is also important to remember that misstatement or suppression of fact is not substantial unless it directly impacts the risk the insurer has assumed.[52]

VII

CONCLUSION

The way the doctrine is applied in England may be much better. There is no distinction between marine and non-marine insurance under English law. Regardless of the form of insurance, a policy is voidable by an innocent failure to disclose. It imposes a comprehensive disclosure obligation on insurance applicants, requiring them to reveal important, known, and presumed accurate information. The insured must disclose material facts within his actual and constructive knowledge, albeit the degree of the disclosure will vary depending on the insured's level of understanding. The duty to disclose material facts in the insured's constructive knowledge is strictly limited to those that could have been discovered through reasonable inquiry and that a

[48] *All India General Insurance Co. Ltd* v. *S.P Maheshwari,* A.I.R. 1960 (Mad.) 848.
[49] *Mithoo Lal Nayak* v. *LIC,* A.I.R. 1962 S.C. 814.
[50] The Insurance Act, 1938, S.45.
[51] *Bajaj Allianz Life Insurance Co. Ltd. v. Dalbir Kaur,* (2021) 13 S.C.C. 553.
[52] *Id.*

prudent person applying for the relevant insurance would have discovered. Therefore, even though a fact is discoverable, no disclosure is necessary if a reasonable man applying for insurance could not have discovered it.

General principles of insurance are mentioned in this article and adopted by many countries same or after modification. Suppose these principles, required for the parties to enter into the contract with free consent, are not followed, such as when one of the parties to an insurance contract fails to disclose material facts. In that case, that failure means suppression of material fact, fraud and misrepresentation.

In India Insurance Regulatory and Development Authority (IRDA) regulates the Insurance sector. Whether it is a private or public insurance company, IRDA regulates, and it regulates, this sector with the help of The Insurance Act 1938, The IRDA Act 1999, and rules and regulations issued by him. Recently in 2015, there was an amendment in Insurance Law is came. IRDA also provides a dispute-handling mechanism which is known as the Ombudsman scheme. Suppose any party is grieved and suffers any loss. In that case, he can achieve justice from the schemes mentioned above. If an insured feels cheated and knows that he was not treated well, in the manner he was supposed to be treated, and did not acquire the appropriate claim amount. He can go to the Ombudsman scheme and seek speedy justice, which is much better than going for a civil suit, which takes years to settle, apart from the plaintiff's suffering from mental trauma and wastage of his precious resource of money and time. Though the rules and regulations issued by IRDA are strict, every essential of an insurance contract and every general principle of a contract, like Utmost Good Faith, is followed very strictly by the insurance companies while entering into the contract of insurance. Still, the policyholder does not play any wrong tact with the companies to defraud him. The principle of Utmost Good Faith comes to rescue the insurer in the initial stage. Suppose the insured does not disclose the critical or material fact or tries to suppress or conceal the facts. It shall be considered suppression of material fact, fraud and misrepresentation, which comes into the picture at the time of claiming the policy and then due to utmost good faith, the claim made void. So, disclosing material facts by both parties is essential for genuine and honest claims.