

INSURANCE CONTRACT AND LEGAL LIABILITY

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CONTRACT

Indian Contract Act 1872 has defined Contract.

“ A Contract may be defined as an agreement between two or more parties to do or to abstain from doing an act, with an intention to create a legally binding relationship”.

THE INSURANCE CONTRACT

Insurance is a CONTRACT between

The INSURANCE COMPANY

and

The POLICYHOLDER.

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THE INSURANCE CONTRACT

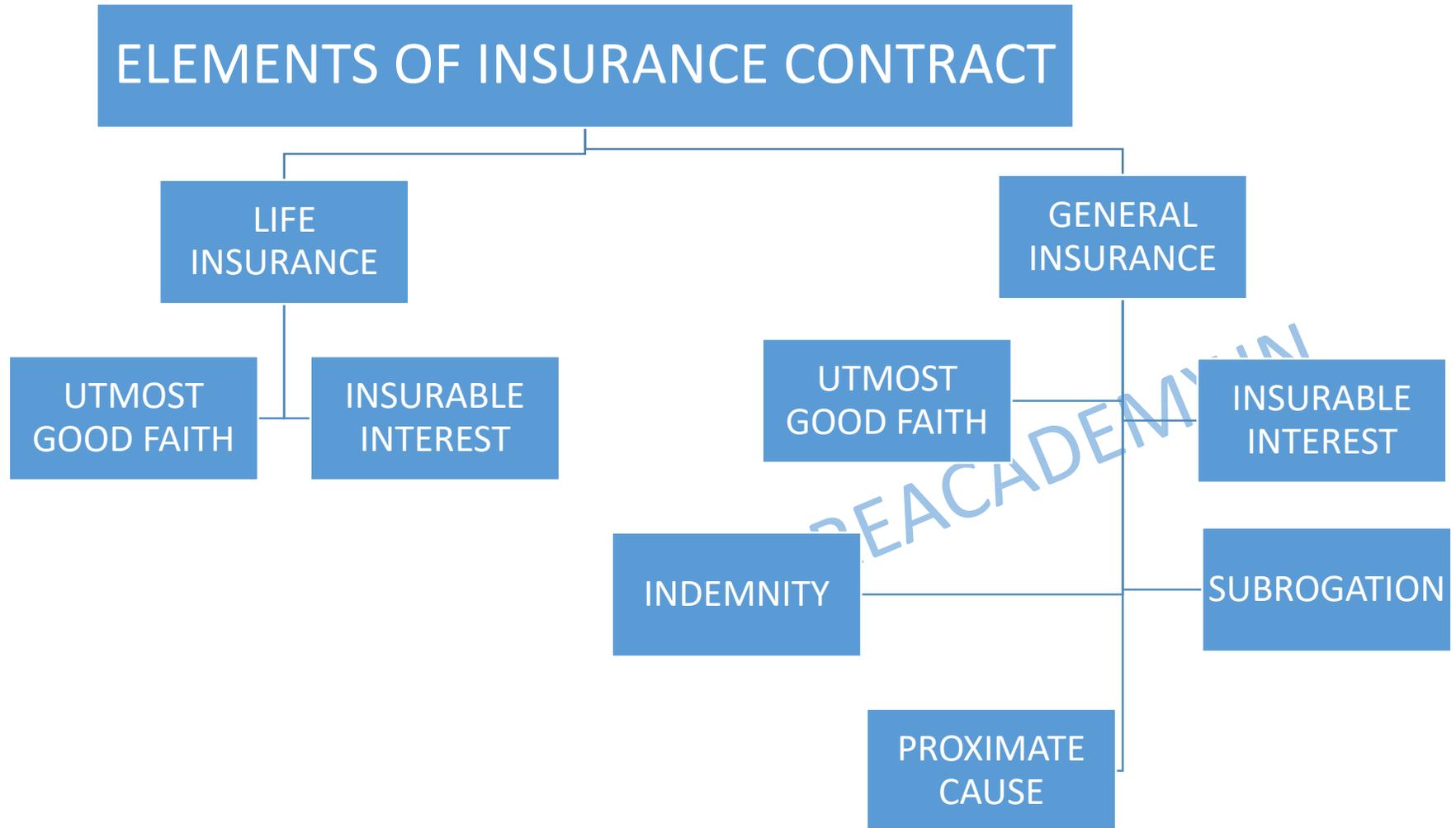
According to Insurance Contract –

- The Insurer agrees to pay to the Policyholder (Insured) a certain sum of money (sum assured)
- On the occurrence **or non-occurrence** of event (death or peril) specified in the Insurance Contract

PROVIDED

- The Policyholder has been paying premium as specified in the Insurance Contract.

INSURANCE CONTRACT



ESSENTIALS OF INSURANCE CONTRACT

- ✓ Offer & Acceptance
- ✓ Consideration
- ✓ Competent Parties
- ✓ Legal Intent
- ✓ Consensus (same mind / ad idem)

COMPETENT PARTIES

The law generally *presumes* that everyone has the *capacity* to contract.
(Exceptions – Minor, Lunatic & Under the influence of alcohol or drugs)

Parties to an agreement must have contractual capacity before the agreement will be binding on both parties.

Competent Parties in Insurance

- (i) The Insurer
- (ii) The Proponent / Proposer

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How to determine the competency of Insurer ?

OFFER & ACCEPTANCE

- ❖ In Life Insurance, Offer can be made by Applicant or Insurer and Acceptance will follow.
- ❖ An Offer may be considered accepted
 - ❖ When Insurance Company issues the Policy (or)
 - ❖ Applicant pays the first premium

Premium Paid along with Application

- No Conditional Receipt is issued – Contract is not in force till policy is delivered to the applicant.
- Conditional Receipt issued – Effective date of contract depends on the provisions of conditional receipt.

OFFER & ACCEPTANCE

CONDITIONS

- Effective from the Date of Application
- Effective from the Date of Medical Examination

Whichever is later.

APPROVAL FORM

Coverage begins from the date the application is approved by the company.

UNCONDITIONAL BINDING RECEIPT

Coverage available from the Date of Application till Policy is issued or Application is rejected.

CONSIDERATION

❖ NO CONSIDERATION = NO VALIDITY OF A CONTRACT.

CONSIDERATION IN INSURANCE

Consideration is the Premium the insured pays.

Promise to Indemnify is the Consideration on the part of the insurer.

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LEGAL CAPACITY

- ❖ Incompetent parties shall not enter into contract.
- ❖ Insurance Company formed as per laws of the country and empowered to solicit Insurance is capable of entering into contract.
- ❖ Persons with legal age (18 yrs) and of sound mind are competent to enter into contract.
- ❖ Contract with Minor age may be made unenforceable if the minor repudiates it at a later date.
- ❖ Insurer is bound by contract as long as underage wishes to continue.
- ❖ If underage repudiates the contract, then law permits him a refund all premium paid.

CONSENSUS

- ❖ The understanding between the Insurer and the Insured should be of same thinking and mind.
- ❖ Reason for taking insurance should be understandable to both parties.

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LEGALITY OF OBJECT

- ❖ A contract must be for legal purpose.
- ❖ A contract must not be contrary to public policy.

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BASIC PARTS OF INSURANCE CONTRACT

- ❖ Declaration – Details of Property or Activity to be insured
- ❖ Definitions – Meanings of words used in contract
- ❖ Agreement – Promises of the Insurer
- ❖ Exclusions – Excluded Perils, Losses and Property
- ❖ Conditions – Limitation of Insurer
- ❖ Miscellaneous Provisions

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BASIC PARTS OF INSURANCE CONTRACT

- ❖ Endorsement – Add /Delete / Modify the provisions of original contract.(General Insurance)
- ❖ Rider – Amends or changes the original policy (Life, Health)
- ❖ Deductibles – Deduction of specified amount from loss
- ❖ Coinsurance – Percentage of coverage
- ❖ Indemnity
- ❖ Insurable Interest
- ❖ Subrogation
- ❖ Utmost Good Faith

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LEGAL CHARACTERISTICS OF INSURANCE CONTRACT

- ❖ Aleatory – One party receive more in value
- ❖ Adhesion – Insured adheres to contract written by Insurer
- ❖ Utmost Good Faith
- ❖ Conditional – On occurrence of specified event or loss
- ❖ Unilateral – Insured pays premium after policy is issued
- ❖ Personal – Generally not transferrable

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PERFORMANCE & DISCHARGE

INSURED

- ✓ Pay Premium
- ✓ Other duties required by the contract

INSURER

- ✓ Indemnify in case of loss

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PERFORMANCE & DISCHARGE

- Breach of Contract
- Condition precedent
- Condition subsequent
- Recission – Termination of contract with mutual agreement
- Incontestable or Indisputable Clause

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INSURANCE POLICY DOCUMENTS – LEGAL IMPLICATIONS

- Breach of Contract
- Condition precedent
- Condition subsequent
- Recission – Termination of contract with mutual agreement
- Incontestable or Indisputable Clause

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COVER NOTE

- Interim receipt issued by Insurer
- Temporary in nature (generally 30 days)
- Issued in Non-marine (General) and Non-Life Policies
- Sec 147(4) of MV Act 1988 – Issue of Cover Note
- Generally same terms and conditions of Insurance Policy
- Ceases once Certificate of Insurance / Policy is issued