



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 432

**COURSE TITLE: LAW OF BANKING AND INSURANCE
II**

COURSE WRITER: Dr. Violet Aigbokhaevbo
Faculty of Law
University of Benin
Benin City, Edo State.

EDITOR: Prof. J. Anifalaje
Faculty of Law
University of Ibadan

COURSE LECTURES: F. Anene, N. Nduka, E. O.
Ugbejeh, S Godwin- Clark
NOUN

AG. DEAN: Dr. Godwin I. Oyakhiromen
School of Law
NOUN

**LAW OF BANKING AND INSURANCE
TABLE OF CONTENT**

MODULE 1: INTRODUCTION TO INSURANCE LAW.

UNIT 1 – HISTORICAL BACKGROUND

UNIT 2 – NATURE OF INSURANCE

UNIT 3 – FUNCTION OF INSURANCE

MODULE 2: FUNDAMENTALS OF INSURANCE

- UNIT 1 - INSURANCE UNDERWRITING**
- UNIT 2 - FORMATION OF INSURANCE CONTRACT**
- UNIT 3 - PARTIES TO AN INSURANCE CONTRACT**
- UNIT 4 - WARRANTIES AND CONDITIONS**

MODULE 3: ASSIGNMENT OF INSURANCE POLICIES

MODULE 4: CLASSIFICATION OF INSURANCE

- UNIT 1 - LIFE INSURANCE**
- UNIT 2 - PERSONAL ACCIDENT INSURANCE**
- UNIT 3 - MARINE INSURANCE**
- UNIT 4 - MOTOR VEHICLE INSURANCE**
- UNIT 5 - FIRE INSURANCE**
- UNIT 6 - LIABILITY INSURANCE**

MODULE 5: PRINCIPLES OF INSURANCE

- UNIT 1 - PRINCIPLE OF INSURABLE INTEREST**
- UNIT 2 - PRINCIPLE OF INDEMNITY**
- UNIT 3 - PRINCIPLE OF UTMOST GOOD FAITH
(UBERRIMAE FIDEI)**
- UNIT 4 - PRINCIPLE OF SUBROGATION**
- UNIT 5 - PRINCIPLE OF CONTRIBUTION AND
DOUBLE INSURANCE**

MODULE 6: CLAIMS UNDER INSURANCE POLICY

- UNIT 1 - CLAIMS**
- UNIT 2 - INSURANCE CLAIMS PROCEDURE**
- UNIT 3 - FRAUDULENT CLAIMS**

MODULE 7: RE-INSURANCE

LAW OF BANKING AND INSURANCE II

MODULE 1

INTRODUCTION TO INSURANCE LAW

UNIT 1: HISTORICAL BACKGROUND

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 EVOLUTION OF INSURANCE IN NIGERIA

3.1 PRE- INDEPENDENCE

3.2 MODERN INSURANCE

- 3.3 INDEPENDENCE**
- 4.0 GROWTH OF INSURANCE BUSINESS IN NIGERIA**
- 5.0 INSURANCE ACT**
- 6.0 CLASSIFICATION OF INSURANCE**
- 7.0 PERSONS WHO MAY CARRY ON INSURANCE BUSINESS
IN NIGERIA**
- 8.0 INSURANCE TO BE REGISTERED**
- 9.0 CANCELLATION OF REGISTRATION**
- 10.0 CONCLUSION**
- 11.0 SUMMARY**
- 12.0 TUTOR MARKED ASSIGNMENT**
- 13.0 SUGGESTED FURTHER ANSWERS**

MODULE 1

INTRODUCTION TO INSURANCE LAW

UNIT 1

1.0 HISTORICAL BACKGROUND

The origin of the concept of insurance is traceable to the business practices adopted by Italian merchants in the beginning of the 14th century which was similar in structure to modern day insurance practices. The risks associated with shipping of goods facilitated the evolution of risk insurance policy. Overtime, the popularity of the practice increased. The practice spread to London which was the then hub of maritime business. The practice essentially involved merchants entering into agreement to bear the risk inherent in movement of goods. They also resolved trade related disputes according to the custom of their trade. In 1601 on the instigation of merchants, a chamber of assurance was established by statute to regulate insurance business.

2.0. OBJECTIVE

The objective of this module is to acquaint students with the history and evolution of insurance in Nigeria as well as the companies eligible to practice insurance business in Nigeria, their registration and some of the factors that could contribute to the cancellation of registered insurance companies.

3.0 EVOLUTION OF INSURANCE

By mid 18th century, Lord Mansfield introduced reforms which culminated in the common law court applying principles derived from the trade customs of merchants and the traditional common law concepts to resolve matters arising from contracts of insurance. With time, the jurisdiction of the court over insurance matters became firmly entrenched. Marine insurance was the pioneer type

of insurance and was predominantly operated at a coffee shop belonging to a man called Lloyd. The practice was that any merchant desiring insurance cover would circulate a piece of paper requesting for cover from any of the persons present. The slip of paper provided information about the ship, the voyage plan, details of the cargo and other particulars they deemed necessary. Willing insurers, initialed the slip. When the aggregate target of the insurance required was underwritten, the contract of insurance was deemed to have been perfected. Over the years Lloyd expanded his business and became the global leader in the issuance of insurance policies especially marine insurance policies. The principles adopted in the course of carrying on marine insurance business have influenced other classes of insurance business including fire insurance and personal accident insurance.

3.1 PRE- INDEPENDENCE

During the pre colonial era in Nigeria, indigenous people, tribes and communities practiced some form of insurance. Age grades, tribal associations, communal associations and social clubs in return for members paying some form of dues were assured of the support of other members in times of adversity like failed harvest, deaths ailment etc. Levies were imposed and donations sourced to ensure that such members were protected and provided for adequately. Aggregate communal resources were often utilized to bail out members suffering from calamities. This could be held analogous to insurance practices.

3.2 MODERN INSURANCE

Modern day insurance practice was introduced to Nigeria by foreign merchants trading in goods from European countries. Insurance companies in Europe extended the risk cover provided for such merchants to their trading activities in Nigeria. These insurance

companies subsequently appointed agents in Nigeria to transact business on their behalf locally. These Nigerian agencies later metamorphosed into local branches of the parent insurance companies in Europe.

3.3 INDEPENDENCE

After the Nigerian Independence in 1960, Nigerian insurance companies were registered to operate in Nigeria and grew from one to twenty five by 1970, there was in existence in Nigeria over one hundred and fifty insurance companies. The expanding insurance business started providing a wide range of services including product liability insurance, workmen compensation insurance, goods in transit insurance as well as bond, credit and suretyship insurance.

4.0 GROWTH OF INSURANCE BUSINESS

Due to the lucrative or profit assured nature of insurance business insurance sprung up all over Nigeria. Many insurance companies relying up poor regulation encouraged dishonesty lack of accountability in the sector. Fraudulent business men took advantage of the illiteracy and poverty which was prevalent in Nigeria to sell bogus insurance policies. Public outcry necessitated government intervention in 1976, the insurance Act was enacted. It aimed at strict regulation of insurance business in Nigeria with a view to flushing out miscreants in the sector and revoking the licence was the insurance licence of the companies that were not viable.

5.0 INSURANCE ACT

The Insurance Act applies to all insurance businesses and insurers other than insurance business carrier on or by insurers of the following description-

- (a) A friendly society or association of persons established for the purpose of aiding its members or their dependants
- (b) A company or body corporate or unincorporated association established outside Nigeria engaged solely in reinsurance transaction with an authorized insurer pursuant to this Act.

6.0 CLASSIFICATION OF INSURANCE

It classifies into life insurance and general insurance

The two classes of insurance shall be examined in subsequent modules

7.0 PERSONS WHO MAY CARRY ON INSURANCE BUSINESS IN NIGERIA

No person in Nigeria is authorized to carry on any class of insurance business in Nigeria except

- (a) A company duly incorporated as a limited liability company under the companies and allied matters Act
- (b) A body duly established by or pursuant to any other enactment to transact the business of insurance or reinsurance

See Section 3 of the Insurance Act.

8.0 INSURANCE TO BE REGISTERED

No insurer is allowed to commence insurance business in Nigeria unless the insurer is registered by the Commission under the Act.

See section 4(1) of the Act

Where the Commission is satisfied that it is not in the public interest or the interest of the policy holders or persons who may become policy holders the company will not be register – see section 4(2) of the Act

9.0 CANCELLATION OF REGISTRATION

Cancellation of registration may be done by the Commission for several reasons ranging from non compliance with the insurance Act, failure to comply with the stipulated margin of solvency in the insurance act, carrying out an insurances business and an alternate business which is detrimental to the insurance business failure to pay claims promptly to bankruptcy of the insurer – see section 8 of the insurance Act.

The growth of the insurance sector has introduced specialized practices in specific sectors e.g the Nigerian deposit insurance corporation (NDIC) which insures banks' deposit, the Nigerian Social Insurance Trust Fund (NSITF) which provides annuity insurance and ancillary pension services.

10.0 CONCLUSION

Modern insurance practices thrive in Nigeria but relics of the traditional form of insurance exist in urban and most rural areas. This due to ignorance poverty and lack of trust for insurance agents. Locals are sometime intimidated by the extensive paper work and information contained in insurance contracts. The sectoral regulation engaged in by Federal Government of Nigeria has helped to sanities the sector and reduce the incidence of sharp practices relating to insurance contracts.

11.0 SUMMARY

1. Insurance contracts in Nigeria is traceable to the business practices of Italian merchants in the beginning of the 14th century.
2. The Pioneer type of insurance was marine insurance
3. During the pre-colonial era, indigenous tribes, people and communal practice which involved pooling communal resources or taxing themselves or sourcing for funds to assist

ailing members, children of deceased or impoverished members. This is analogous to insurance practices.

4. Modern insurance business was introduced into Nigeria by European traders engaged in commercial transactions in Nigeria.
5. Expanding insurance business in Nigeria provide a wide range of services ranging from product liability insurance, workmen compensation insurance to transit insurance to suretyship insurance.
6. Specialized practices in the insurance sector has also grown e.g Nigerian Deposit Insurance corporation (N.D.I.C) and Nigerian Social Insurance Trust Fund (NSITF). They insure banks deposits, and annuity insurance and ancillary pension services respectively
7. Only companies and bodies duly registered in Nigeria or established pursuant to other enactments to carry out business of insurance or reinsurance are authorized to practice insurance in Nigeria.
8. Any insure desirous of practice in Nigeria is mandated by the insurance Act to be registered to so operate.
9. An insurer's registration may be cancelled for the reasons stipulated in section 8 including non compliance with the provisions of the insurance Act, failure to pay claims promptly and bankruptcy.

12.0 TUTOR MARKED ASSIGNMENT

- 1a. The concept of insurance is alien to Nigerian culture. Do you agree?
- 1b. State the origin of insurance business in Nigeria.

13.0 SUGGESTED FURTHER READING

Irukwu, T. O. Insurance Law and Practice in Nigeria (Lagos: Amfitop
1999)

UNIT 2: NATURE OF INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 DEFINITION OF INSURANCE

4.0 INSURANCE CONTRACT

5.0 CHARACTERISTICS OF INSURANCE CONTRACT

6.0 TYPES OF INSURANCE

7.0 TYPES OF INSURANCE COMPANY

8.0 CRITICISM OF INSURANCE COMPANIES

9.0 CONCLUSION:

10.0 SUMMARY

11.0 TUTOR MARKED ASSIGNMENT

12.0 SUGGESTED FURTHER READINGS

UNIT 2

NATURE OF INSURANCE

1.0 INTRODUCTION

Insurance is a specie of business that specifically deals with risk management. It is concerned with appraising and controlling risk. It is an intricate legal, economic and social device for the handling of risks to life and property.

An insurance company differs in nature from other business concerns. It commences without liabilities and involves the payment of periodic sums known as premiums to the insurer and by the exchange agree to cover risks that may occur in the future.

2.0 OBJECTIVE

The objective of this unit is to acquaint student with the essential nature of an insurance transaction, and equip them with the capacity to distinguish it from other specie of contract.

3.0 DEFINITION OF INSURANCE

Section 102 of the insurance Act, 2003 however provides that insurance includes "Assurance". Insurance has been described as a transaction in which the insurer (the insurance company) for a certain consideration (premium) promises to reimburse (indemnify) the insured or render services in the case of certain accidental losses suffered during the subsistence of the agreement.

Insurance is incapable of being specifically defined. In *Department of Trade and Industry v St Christopher Motorist Association Ltd* (1974) AIIER 395 Templeman J opined that it was undesirable that there should be an all embracing definition because of the tendency to obscure and occasionally exclude that which ought to be included.

4.0 INSURANCE CONTRACT

The insured receives a contract called insurance policy which stipulates the conditions and circumstances under which the insured will be financially compensated. In most cases, the policy holder pays part of the losses referred to as the deductible while the insurer pays the rest e.g. car insurance, health insurance, disability insurance, life insurance and business insurance.

5.0 CHARACTERISTICS OF INSURANCE CONTRACT

A contract of insurance has the following characteristics

- Dependence on the happening of a specified event which must be uncertain or fortuitous
- There must be an insurable interest in the subject matter of the insurance.
- There must be a legal duty or obligation to pay an agreed sum on the happening of the contingency or specified event.

An insurance is distinct from a wagering contract (gambling) because an insured has an insurable interest in the subject matter of the insurance while a wager (gambler) has no other interest apart from his stake. It is the risk of loss that motivates an insured to enter into a contract of insurance while a wager creates the risk he hopes to take advantage of. Wagering contracts are null and void under section 56(1) of the Insurance Act 2003.

6.0 TYPES OF INSURANCE

Insurance transactions are as varied as the vicissitudes sought to be insured against. They include

- (a) **Automobile or Motor insurance:** it is the commonest form of motor insurance. It may cover legal liability claims against the driver and loss or damage to the vehicle

- (b) **Health Insurance:** It covers medical bills incurred as a result of illness, injury or accident which impacts on the health of the insured.
- (c) **Life insurance:** Provides for family members and other named beneficiaries to make up for loss of the insured's income
- (d) **Fire insurance:** it is usually taken to indemnify the insured against loss of property due to fire outbreak.
- (e) **Credit insurance:** It provides payment for some or all loans back where the borrower either due to unemployment, disability or death is unable to pay.
- (f) **Annuities:** Annuities and pensions provides for the payment of benefit for life. It insures against the possibility that a retiree will outlive his financial resources.

A single policy may cover multiple risks

7.0 TYPES OF INSURANCE COMPANY

Insurance companies are usually classified into two as follows

- (i) **Life Insurance Companies:** Companies which sell life insurance, annuities and pensions products.
- (ii) **Non Life or general insurance companies:** Other types of insurance apart from life insurance

Insurance companies are further distinguished into reinsurance companies which consists of insurance companies which provide cover or insure other insurance companies against loss and brokers.

Brokers are paid a fee by the customer to shop around for the best insurance policy among many companies

8.0 CRITICISM OF INSURANCE COMPANIES

Insurance companies have been criticized on the basis that the financial security it offers encourages risk taking by the insured.

It is exploitative. To reduce their financial exposure, insurance companies have contractual clauses either limiting or excluding their liability from providing cover from liability ordinarily insured against.

Due to the intricacies in insurance contract, issues of fees, regulation and risk coverage are poorly negotiated by them and they are often preyed on by insurance companies.

The insured is sometimes made to pay higher premium premised on marital status, occupation and level of education without proper data to show that such status makes the insured more predisposed to the risk insured against.

In some insurance transactions like Health insurance inspite of assurances, the insured is deprived of the best available health care due to the conflict between the maintenance of a healthy profit margin by the insurer and the need to ensure that the insured stays healthy. This conflict has often degenerated to wasting time and expense on litigation by the insured and insurer. Many countries have nationalized their health sector as a healthier method of dealing with this conflict. In Nigeria, the National Health Insurance scheme Act was enacted in May 1999 with the objective of ensuring access to good healthcare service to every Nigerian and protecting Nigerian families from financial hardship of huge medical bills and other related matters. It has been dogged by allegations of inefficiency and compromising the health of the populace. In spite of the above criticisms of insurance, it is incontrovertible that there is solace in providing coverage for future risks.

9.0 CONCLUSION:

An insurance contract is in nature an indemnity transaction distinct from other contractual transactions. Performance of obligations by parties to an insurance contract is at the core of its efficiency

10.0 SUMMARY

1. Insurance is a specie of contract that specifically deals with risk management.
2. Insurance include Health insurance, Automobile insurance, life insurance, fire insurance, credit insurance and annuities.
3. Insurance companies are classified into two – Life insurance and Non life insurance
4. Insurance companies also function as reinsurers for other insurance companies and brokers.
5. Insurance companies have been criticized on the basis that they sometimes take advantage of the inequality of bargaining power between them and the insured.
6. There is some assurance in providing for future risk coverage.

11.0 TUTOR- MARKED ASSIGNMENTS.

- (1a) State 3 benefits and disadvantage of insurance
- (1b) Discuss the nature of insurance
- (2) Discuss the types of insurance.

12.0 SUGGESTED FURTHER READING

Irukwu, T.O Insurance Law and Practice in Nigeria (Lagos: Amfitop 1999)

MODULE 1

UNIT 3: FUNCTION OF INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 PRIMARY FUNCTIONS

4.0 SECONDARY FUNCTIONS

5.0 CONCLUSION

6.0 SUMMARY

7.0 TUTOR MARKED ASSIGNMENT

8.0 SUGGESTED FURTHER READINGS

UNIT 3

FUNCTION OF INSURANCE

1.0 INTRODUCTION

Insurance is the provision of security against pecuniary losses that can arise on the happening of an unforeseen event. It is a shield against financial storm it is to restore you as much as possible to the same condition the insured was before the occurrence of the loss insured against.

Individuals have tangible assets e.g. houses, cars, factories and ships or intangible assets e.g. a singer's voice can be insured because they risk becoming non functional on the occurrence of a disaster or an accident. To ensure security against future losses or risk is the primary function of insurance. However there are secondary and other functions

2.0 OBJECTIVE

The objective of this unit is to acquaint student with the primary and secondary functions of insurance with a view to appreciating the necessity for insurance coverage as a shield against future exigencies.

3.0 PRIMARY FUNCTIONS:

- (i) Providing protection is the elementary function of insurance. This is in order to provide security against future risk, or accidents. Although insurance cannot prevent or arrest risk, it cushions the loss by providing economic cover by sharing the risk with others;
- (ii) Collective risk bearing by insurance ensure financial loss is shared or divided among larger number of people.
- (iii) Risk evaluation by insurance fixes the likely volume of risk by assessing diverse factors that give rise to risk. Risk is the

basis for ascertaining the premium that is payable on an insurance policy.

- (iv) Provision of certainty by insurance, changes uncertainty to certainty.

4.0 SECONDARY FUNCTIONS:

- (i) Preventing losses by insurance assists to warn individual and businessmen to prevent unfortunate aftermath of risk by observing safety instructions, installation of alarm system.
- (ii) Covering larger risks with small capital by insurance provide business with security of investment
- (iii) Insurance helps in the development of larger industries by affording them the opportunity to grow by covering their risk.
- (iv) Insurance provide risk free trade with the issuance of a variety of policies under the marine insurance cover.
- (v) It is a medium of earning foreign exchange through insurance polices
- (vi) Insurance functions as a savings and investment tool by restricting unnecessary expenses by the insured and enables him also take advantage of income tax exemptions.

5.0 CONCLUSION

Insurance involves the transfer of risk from the insured to the insurer in consideration for the payment of periodic sums referred to as premium. The essential function of insurance is to provide indemnity or reimbursement for the insured in the event of the occurrence of the risk, loss damage insured against. In Nigeria insurance transactions are regulated by the insurance Act 2003 which established the National Insurance Commission which is the regulatory agency responsible for enforcing compliance with the act.

6.0 SUMMARY

- a. Insurance is the provision of an indemnity cover to the insured against the occurrence of future risk, loss or damage to tangible and intangible assets.
- b. Insurance functions as a saving and investment tool
- c. The Primary function of insurance
 - i provision of protection
 - ii collective risk bearing
 - iii risk evaluation
 - iv provision of certainty
- d. Secondary function
 - i loss prevention
 - ii large risks coverage with minimum capital-
 - iii industrial development
 - iv saving and investment tool
 - v foreign exchange earning medium
 - vi it offers a risk free trade by providing the necessary cover.
- e. Insurance is expanding it's frontiers

7.0 TUTOR- MARKED ASSIGNMENTS.

- (1) Analyse the function of Insurance.

8.0 SUGGESTED FURTHER READING

Colinvaux Law of Insurance (London: Sweet & Maxwell 2010)

Ekpu A. O & Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

Irukwu, 10 Insurance Law and Practice in Nigeria (Ibadan: Heinemann 1991)

Yerokun .O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

MODULE 2 FUNDAMENTALS OF INSURANCE

UNIT 1 INSURANCE UNDERWRITING

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 INSURANCE UNDERWRITING

**4.0 FACTORS TO BE CONSIDERED IN INSURANCE
UNDERWRITING**

5.0 DUTIES OF THE UNDERWRITER

6.0 LIABILITY OF THE UNDERWRITER

7.0 CONCLUSION

8.0 SUMMARY

9.0 TUTOR MARKED ASSIGNMENT

10.0 SUGGESTED FURTHER READING

MODULE 2

UNIT 1 INSURANCE UNDERWRITING

1.0 INTRODUCTION

Underwriting is the process utilized by large financial service provider to assess the eligibility of a customer to receive their products. The name "underwriting" originated from the practice of the Lloyd's of London. Insurance market financial bankers who in exchange for a premium would write their names under the risk information written on a Lloyd's slip created for the purpose

2.0. OBJECTIVE

Underwriting is essential to insurance transactions. This unit seeks to acquaint the students with the term "underwriter" their functions and factors be considered in risk underwriting.

3.0 INSURANCE UNDERWRITING

Insurance underwriting involves the evaluation of the risk and exposure of potential clients. Insurance underwriters evaluate how much coverage a client should receive, how much they should be paid for it and whether the insurer should accept the risk and insure them. The functions of the underwriter is to enhance the profit of the insurance company by protecting it from risks that they estimate will make a loss. Underwriting is essentially the process of issuing insurance policy

4.0 FACTORS TO BE CONSIDERED IN INSURANCE UNDERWRITING

The factors to be considered in insurance underwriting is dependent on the risk. Each insurance company has its own set of underwriting guidelines in the determination of whether or not to underwrite the risk. For example in a motor vehicle insurance the factors to be considered would include the age of the car, the drinking habit of

the driver, the use to which the vehicle is put, the goods carried by the vehicle e.g if it is utilized for the carriage of inflammable materials, higher premium would be required to be paid. The health of the driver will also be relevant.

5.0 DUTIES OF THE UNDERWRITER

Underwriters are essential to insurance transactions. They assist insurance companies to

- (a) Protect the insurance company from acquiring business that is not profitable
- (b) Advising the company on the risk to provide coverage
- (c) Provide the company with an equitable policy which can be sold
- (d) Designing programs for individuals and corporations in search of protection.
- (e) Analyzing information on insurance application to assess the acceptability of the risk.
- (f) Risk assessment and classification of risks into classes for the purpose of determining the premium to be paid
- (g) Conduct independent investigation of applicants.
- (h) Setting policy terms and conditions for each risk accepted
- (i) The underwriter owes fiduciary duties to the insurer.

6.0 LIABILITY OF THE UNDERWRITER

An underwriter is liable for failure to state a material fact in a registration form which compromises the insurer.

7.0 CONCLUSION

The major problem confronting the underwriter is to ensure that the sum insured at the inception of the policy takes cognizance of inflationary trends.

8.0 SUMMARY

1. underwriting is the process utilized by financial service providers to assess a customer's eligibility to receive their products
2. Insurance underwriting involves risk evaluation and exposure of potential clients
3. The primary function of the underwriter is enhancement of the profit of the insurer.
4. The factors to be considered in underwriting a risk is largely dependent on the risk sought to be underwritten
5. An underwriter owes the insurer fiduciary duties
6. The duties of the underwriter includes the protection of the insurer, acquiring programs for individuals and corporations in search of protection risk assessment and classification as well as investigation of applicants
7. Underwriters are liable for failure to obtain material facts in the course of their investigation

9.0 TUTOR- MARKED ASSIGNMENTS.

- (1a) Define underwriting?
- (1b) State the duties of an underwriter
- (2) Analyse the factors to be considered in insurance underwriting.

10.0 SUGGESTED FURTHER READING

John Birds' Modern Insurance Law (London: Sweet and Maxwell, 2007)

A. O. Ekpu and Tonwe S.O. The Law and Practice of insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 2

UNIT 2 FORMATION OF INSURANCE CONTRACT

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 INSURANCE CONTRACT

4.0 OFFER AND ACCEPTANCE

5.0 COUNTER OFFER

6.0 WHAT IS PREMIUM

7.0 COVER NOTE

8.0 CONCLUSION

9.0 SUMMARY

10.0 TUTOR MARKED ASSIGNMENT

11.0 SUGGESTED FURTHER READING

MODULE 2

UNIT 2 FORMATION OF INSURANCE CONTRACT

1.0 INTRODUCTION

The essentials of an insurance transaction is risk coverage and indemnity and discussed in the previous module. It is necessary to understand the meaning of the contract of insurance and what constitutes an insurance offer and acceptance and the obligations and rights exercisable in an insurance contract to render it valid.

The insurance contract is subject to the general rules regulating contractual obligations which requires offer, acceptance, valuable consideration and an intention to create legal relations or a binding legal contract between parties to an insurance transactions with full knowledge of all related materials facts

2.0. OBJECTIVE

The objective of this module is to provide the basis for the students to understand what constitutes a valid offer and acceptance in an insurance contract. This is because without a valid offer and acceptance there can be no enforceable or legally recognized insurance contracts. The necessity for parties to show ultimate good faith by disclosing all information necessary to assist them in deciding whether or not to proceed with the transaction is also examined.

3.0 INSURANCE CONTRACT

An insurance contract is a contract whereby for a specified consideration, one party undertakes to compensate the other for loss relating to a particular subject as a result of the occurrence of designated hazards.

In an insurance contract, one party referred to as the insured or assured, pays a specified amount of money called a premium to another party, the insurer who in turn agrees to compensate the insured for specific future losses. The losses covered are listed in the contract and the contract is called a policy.

4.0 OFFER AND ACCEPTANCE

An offer to enter into an insurance contract may be made by a prospective insured or by an insurer. The insurer could make the offer by stating the premium payable in respect of a risk proposed to be insured and invite the insured to accept it. The insured could accept by signing the proposal form. Where it is an e — form, the insured acceptance would be by clicking the appropriate button indicated on the form.

The agreement for an insurance policy usually consists of the nature of the risk, duration of the risk covered and the amount to be paid as premium. In practice most insurance proposal forms stipulate that the offer is subject to the insurer's usual terms and conditions. Where the insured accepts, the transaction is concluded and the agreed premium starts to run.

5.0 COUNTER OFFER

Where it is agreed between the parties that the acceptance of the insurance proposal is subject to the payment of the first premium, it implies that either party should be free to withdraw until the payment of the premium which constitutes the acceptance. This generally constitutes a counter offer and there is no binding contract pending the payment of premium.

In *Canning v Farquhar (1886) 16 QBD 727* a proposal for life insurance was "accepted on December 12 on the terms that no insurance was to take effect until the first premium was paid. The

premium was tendered on January 9, but four days previously, the proposer had fallen and suffered serious injuries from which he subsequently died. The Court of Appeal held that the insurer was not bound.

Similarly in *Industrial And General Insurance Company Limited v Kechinyere Adogu (2010) 1 NWLR (PT1175) 337* the court held that the receipt of an insurance premium is a condition precedent to a valid contract of insurance and there is no cover in respect of an insurance risk unless the premium is paid in advance. In other words a valid insurance contract is made when a premium for insurance is paid in advance.

In the instant case, the Mercedes Benz car was insured on December 18, 2002 for a term of twelve months for a premium of N520, 000. 00. a deposit of N220, 000. 00 was paid. The car was robbed at gun point on February 15, 2003. At the time of the robbery, the Respondent had not paid up the premium of N520, 000 she was supposed to pay at the time the contract was entered into. Two days after the robbery incident, the Respondent went back to the Appellant to pay the second instalment of N300, 000 to complete the payment of the premium. The court held that at the time of the robbery, there was no valid contract of insurance between the parties as the payment of the premium which was a condition precedent was not fulfilled.

6.0 WHAT IS PREMIUM?

Premium is the periodic payment made on an insurance policy by the insured. It is what entitles the insured to a claim against the insurer in the event of the occurrence of the risk insured against.

7.0 COVER NOTE

On the completion of a proposal in respect of an insurance policy by the insured, the insurers may be desirous of studying the proposal to come to a finding as to whether or not to accept the risk to be insured. In the interim, the insured may need an immediate insurance cover as a temporary cover. The temporary cover is referred to as cover note.

8.0 CONCLUSION

The validity of an insurance contract is contingent upon the parties to an insurance contract meeting their obligations as at when due and complying with the terms of the insurance contract.

9.0 SUMMARY

- i. Insurance transactions are regulated by the general contractual rules relating to offer and acceptance. A counter offer vitiates the initial offer
- ii. A cover note is the interim cover issued to the insured by the insurer pending the execution of the insurance contract
- iii. Without the payment of premium by the insured, there can be no valid insurance contract.

10.0 TUTOR MARKED ASSIGNMENT

- (1) What constitutes a valid insurance transaction?
- (2) On August 1, 2012 Modupe insured her legs for N1,000,000 and agreed with the insurer XYZ insurance on the condition that she would communicate her acceptance of the premium payment to the insurer within 7 days. On August 3, 2012, On her way to the airport, she was hit by a truck and her legs were crushed She is planning to institute proceedings against XYZ insurance to enforce specific performance of the insurance. Advice her.

11.0 SUGGESTED FURTHER READING

Okany, M.C., Nigerian Commercial Law (Onitsha: Africana- Fep Publishers, 2001).

MODULE 2

UNIT 3 PARTIES TO AN INSURANCE CONTRACT

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 MAIN CONTENT

4.0 INSURER

5.0 INSURED

6.0 PARTIES

7.0 THIRD PARTIES

8.0 INTERMEDIARIES

9.0 AGENTS

10.0 INSURANCE BROKERS

11.0 LOSS ADJUSTER

12.0 QUALIFICATIONS FOR INSURANCE INTERMEDIARIES

13.0 CONCLUSION

14.0 SUMMARY

15.0 TUTOR MARKED ASSIGNMENT

16.0 SUGGESTED ANSWERS

17.0 SUGGESTED FURTHER READING

MODULE 2

UNIT 3 PARTIES TO AN INSURANCE CONTRACT

1.0 INTRODUCTION

An insurance contract is comprised of two principal parties — the insurer and the insured. It could also be a tripartite agreement involving third parties or beneficiaries. The parties to an insurance contracts and the consideration to be paid are always specified and the beneficiaries of the transaction are also agreed between the parties.

2.0. OBJECTIVE

The objective of this module is to examine the concept of an insurance contract and acquaint the students with the various participants in an insurance transaction with a view to providing a better understanding of the roles of these participants.

3.0 MAIN CONTENT

In this module the parties to an insurance contract shall be examined and the scope of their authority shall be deciphered while drawing attention to the fact that like other contracts, it is necessary for consideration to be furnished before the benefits of an insurance contract can accrue to a party.

4.0 INSURER

An insurer is a person who carries insurance risk and is recognized as duly established to transact the business of insurance or reinsurance by the National Insurance Commission (NAICOM) which was established pursuant to the National Insurance Commission Act 1997. Persons who may commence or carry on insurance business in Nigeria are stated in section 3 of the Insurance Act Cap 117, Laws of the Federation of Nigeria 2004 to include

- (a) a company duly incorporated as a limited liability company under the Companies and Allied Matters Act 1990
- (b) a body duly established by or pursuant to any other enactment to transact the business of insurance or reinsurance.

5.0 INSURED

The insured is a person who takes out an insurance policy to protect himself and named persons or objects in the policy against the happening of a risk or incident. An insured can be a natural or artificial person i.e corporation.

6.0 PARTIES

Some insurance transactions may involve more than two parties. In other words, third parties may be involved in insurance transactions e.g in life insurance policies. The insured may be different from the person insuring. In other words, the beneficiary of the insurance policy could be a third party.

7.0 THIRD PARTIES

Where third parties are involved in an insurance contract, the insured can take out an insurance to provide indemnity for bodily harm or death occasioned to such third parties and may also include damages to movable and immovable properties belonging to third parties.

A contract of insurance affects parties to it. It cannot be enforced by or against a person who is not a party even if the contract is made for his benefit. Even if its established that an insured took up a policy of insurance with an insurer, a third party cannot sue the insurer *ab initio* as there is no privity of contract between them.

See the following cases

Sun Insurance P/c v Adegoroye (2005) 11 NWLT (PT 831) p. 379

AJUFO v AJARBOR (1978) 6 - 7 Sc 39

R.E.A.N v Anumunu (2003) 6 NWLR (PT 815) p.52

8.0 INTERMEDIARIES

The business of insurance is conducted through intermediaries who are statutorily regulated. Some of these intermediaries include agents, insurance brokers and loss adjuster. Their various roles shall be discussed subsequently.

9.0 AGENTS

An insurer can carry on the business of insurance through accredited agents who have the capacity to bind the principal (insurer) in transactions with third parties. Insurance agents are specifically licensed and authorized by an insurer on its behalf to solicit risk and collect premiums on behalf of the insurer. He earns a commission and other remuneration from the insurer for rendering such services. A disclosure or representation made by the insured to an insurance agent shall be deemed to be a disclosure or representation to the insurer provided the agent is acting with his authority. Where an insurer acts outside the scope of his authority, the acts done are not binding on the insurer. The supreme court in *Ngillari v N.L.C.O.N (1998) 5 NWLR (PT 560) I*, stated that the agent is presumed to have not only the express authority bestowed upon him by his principal but also impliedly the further authority to do all things necessary in the ordinary course of selling insurance policy by making sure that he presents correctly the terms and conditions of the insurance before accepting payment of premium from the insured.

However, where an agent assists an Applicant to fill or complete an application or proposal form for an insurance policy, he does so as the agent of the Applicant

See section 54 of the Insurance Act and *Northern Assurance Company Ltd v Idugboe (1966) 1 All NLR 84*.

10.0 INSURANCE BROKERS

An insurance broker is a special class of insurance agent who acts in a professional capacity as an intermediary to arrange insurance cover for the insured. He utilizes his professional skills and expertise to ensure that he obtains the most favourable terms and conditions for his client.

Section 36 of the insurance Act stipulates the conditions for the registration of brokers

11.0 LOSS ADJUSTER

A loss adjuster is an intermediary in an insurance contract who for money or other valuable consideration engages in the assessment of losses and the adjustment of claims arising from insurance contracts for or on behalf of any insurer or person in non life insurance claims.

12.0 QUALIFICATIONS FOR INSURANCE INTERMEDIARIES

Section 34 - 36 of the insurance Act provides that insurance agents, brokers and loss adjusters must be registered under the Act and a certificate issued to them to so act. The insurance commission reserves the right to revoke any license issued for non compliance with its provisions.

13.0 CONCLUSION

Insurance business is often conducted through intermediaries like agents, brokers and loss adjusters who are statutorily regulated. Their ability to bind the insurer is limited to acts carried out within the scope of their authority.

14.0 SUMMARY

1. Parties to an insurance contract mostly consist of the insurer, insured and third party beneficiaries
2. Insurance business involves facilitators like agents, insurance brokers, loss adjusters who function as intermediaries.
3. Section 34 – 36 of the insurance Act provide that agents, brokers and loss adjusters must be registered under the Act to legitimately practice in such capacity.
4. Non compliance with the requisite registration renders them susceptible to losing their right to practice
5. Their ability to bind the insurer is restricted to Acts done within the scope of their authority

15.0 TUTOR MARKED ASSIGNMENT

1. Discuss the role of three insurance intermediaries in the execution of an insurance contract.
2. Yukubu an insurance agent assisted Zana to fill an insurance form and she appended her signature. The form did not indicate that Zana had previously taken out a life insurance policy with Zinod insurance company or that she was asthmatic. The insurance company has decided to nullify the transaction on the grounds of fraudulent non disclosure Zana is contending that in the course of filling the insurance form she disclosed the said facts to the insurance company's agent who she is insisting filled the form on behalf of the insurance company. Advice Zana

16.0 SUGGESTED ANSWERS

- Students are expected to comment on the fact that non disclosure of material facts like the health of the accused and

the existence of a previous policy covering the same risk is a fundamental breach which renders the insurance transaction void.

- Akpata & anor. v African Alliance Insurance Corp. Ltd is instructive.
- Section 54 of the insurance Act and Northern Assurance Company Ltd v Idugboe (1966) 1 All NLR 84, where it was held that where agent assists an Applicant to fill an insurance policy, he does so as the agent of the insured and not the insurer.
- Yakubu filled the form as Zana's agent and the insurance company is entitled to void the insurance contract.

17.0 SUGGESTED FURTHER READING

Insurance Act 2003.

MC Okany, Nigerian Commercial Law (Onitsha: Africana- Fep Publishers, 2001).

A. O Ekpu and S.C Tonwe The law and practice of insurance in Nigeria (Lagos: Amfitop, 1999).

John Bird, Birds' Modern Insurance Law (London: Sweet & Maxwell, 2007)

MODULE 2

UNIT 4 WARRANTIES AND CONDITIONS

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 WARRANTY

4.0 SUBDIVISION OF WARRANTIES

5.0 CONDITION

6.0 DIFFERENCE BETWEEN WARRANTY AND CONDITION

7.0 CONCLUSION

8.0 SUMMARY

9.0 TUTOR MARKED ASSIGNMENT

10.0 SUGGESTED FURTHER READING

MODULE 2

UNIT 4 WARRANTIES AND CONDITIONS

1.0 INTRODUCTION

A warranty is an assurance by one party to the other party that certain facts or conditions are true or will occur. Where this turns out to be untrue, the other party is at liberty to seek redress. In insurance contracts, terms are usually stated in the form of condition precedent to be fulfilled for the validity of the contract and warranties which are ancillary to the contract.

Not all misstatements made by an insured party however gives the insurer the right to cancel a policy or refuse a claim. To qualify as a warranty or condition, the statement must be expressly included in the contract and the provisions must clearly show that the parties intended that the rights of the insured would depend on the veracity of the statement.

2.0. OBJECTIVE

The objective of this module is to expose students to terms used in insurance contracts and how they are classified with a view to distinguishing between breaches which are superficial to the contract (warranty) a breach of which entitles the other party to damages and a fundamental breach (conditions) which entitles the other party to a repudiation of the insurance contract.

3.0 WARRANTY

A warranty is in the general law of contract which applies to insurance contract relates to minor or superficial parts of the transaction a breach of which entitles the injured party to damages for the inconvenience or loss suffered. It generally may not entitle the injured party to a repudiation of the insurance contract.

In *Mattar v Norwich Union Fire Insurance Society Ltd & Anor* (1965) ALL NLR164 The Plaintiff had undertaken to keep a stock of books or stock sheets showing the aggregate of goods he had in hand. The Supreme Court held that his failure to do so was a breach of a warranty in the policy containing a precise condition of detail and the breach was fatal to his claim.

Until recently, it was customary in non marine insurance contracts to treat a warranty as a fundamental term, breach of which entitles the insurer to repudiate the contract. The trend was reversed by the decision of the House of Lords in *Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd, the Goodluck* (1991) 2 W.L.R. 1279 where it held that remedy for a breach of warranty was not automatic discharge but damages.

4.0 SUBDIVISION OF WARRANTIES

Warranties in insurance contracts can be subdivided into affirmative warranty and promissory warranty. An affirmative warranty is a statement relating to facts at the time the contract of insurance was entered into. A promissory warranty is a statement about future or facts that will continue to be true during the subsistence or term of the policy. An untruthful affirmative warranty renders the contract of insurance *void ab initio*. The insurer may cancel the coverage of the policy at such a time when the promissory warranty becomes untrue. e.g. where a property is covered by a fire insurance policy and the insured undertakes that it would never be utilized as a chemical industry. If the insured reneges, the insurer can withdraw its cover.

5.0 CONDITION

Terms of an insurance policy are sometimes referred to as conditions some of these terms may not be directly related to the

risk covered or to statement of fact but may be in the nature of collateral promises or stipulations.

6.0 DIFFERENCE BETWEEN WARRANTY AND CONDITION

The difference between warranty and condition is that condition goes directly to the root of the contract when it is broken, the insurer can treat the insurance contract as vitiated while a breach of warranty is a breach of a term that is subsidiary to the main purpose of the insurance which entitles the insurer to damages and does not affect the discharge of the contract of insurance.

It is however provided by section 55 of the insurance Act 2003 that:

- (2) *in a contract of insurance, a breach of term whether called a warranty or a condition shall not give rise to any right by or afford a defense to the insured unless the term is material and relevant to the risk or loss insured against.*
- (3) *Notwithstanding any provision in any written law or enactment to the contrary, where there is a breach of a term of a contract of insurance, the insurer shall not be entitled to repudiate the whole or any part of the contract or a claim brought on the grounds of the breach unless-*
 - (a) *The breach amounts to a fraud or*
 - (b) *It is a breach of fundamental term of the contract.*
- (4) *Where there is a breach of a material term of a contract of insurance and the insured makes a claim against the insured and the insurer is not entitled to repudiate the whole or any part of the contract, the insurer shall be liable to indemnify the insured only to the extent of the loss which would have been suffered if there was no breach of the term.*
- (5) *Nothing in this section shall prevent the insurer from repudiating a contract of insurance on the ground of a breach*

of a material term before the occurrence of the risk or loss insured against.

- (6) *In subsection (2) of this section "Fundamental term" means a warranty, condition or other term of an insurance contract which a prudent insurer will regard as material and relevant in accepting to underwrite a risk and in fixing the amount of premium.*

7.0 CONCLUSION

Warranties and conditions are at the core of the insurance contract and considered fundamental terms. A breach of which would entitle the insurer to cancel the policy. It is however not every breach of a condition or warranty that is considered material enough to invalidate the contract. Each contract is construed according to the dictates of the terms stipulated in the contract

8.0 SUMMARY

- (1) A warranty is an assurance by one party to the other that certain facts are true and will occur.
- (2) A breach of warranty entitles the injured party to damages.
- (3) Warranties are subdivided into affirmative warranty and promissory warranty.
- (4) Conditions are terms that are fundamental to the contract.
- (5) A breach of a condition stated in the insurance policy entitles the insured to repudiate the contract.
- (6) Section 55 of the insurance Act 2003 states that a breach of a term in an insurance contract whether it is referred to as warranty or condition shall not give rise to any right or operate as a defence unless it is relevant and material to the transaction.

- (7) Whether a breach of warranty or condition is sufficient to repudiate a transaction depends on the stipulation in the insurance contract.

9.0 TUTOR MARKED ASSIGNMENT

- 1a. what are warranties?
- 1b. what are conditions?
2. Distinguish between conditions and warranties

10.0 SUGGESTED FURTHER READING

MC Okany, Nigerian Commercial Law (Onitsha: Africana- Fep Publishers, 2001).

A. O Ekpu and S.C Tonwe The law and practice of insurance in Nigeria (Lagos: Amfitop, 1999).

John Bird, Birds' Modern Insurance Law (London: Sweet & Maxwell, 2007)

MODULE 3

ASSIGNMENTS OF INSURANCE POLICIES.

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 MAIN CONTENT

4.0 MEANING OF ASSIGNMENT

5.0 FORMS OF ASSIGNMENT

6.0 NOTICE OF ASSIGNMENT

7.0 ENDORSEMENT ON POLICY INDICATING ASSIGNMENT

8.0 ACKNOWLEDGEMENT OF NOTICE

9.0 EFFECT OF ASSIGNMENT

10.0 CONCLUSION

11.0 SUMMARY

12.0 TUTOR MARKED ASSIGNMENT

13.0 SUGGESTED FURTHER READING

MODULE 3

ASSIGNMENTS OF INSURANCE POLICIES.

1.0 INTRODUCTION

An insurance policy is a chose in action and freely assignable chose in action refers to intangible objects that cannot be possessed but serve as a right or access to things of value e.g. Bills of Exchange, Insurance Policies, Patents and Cheques.

2.0. OBJECTIVE

The objective of this module is to discuss assignment as a mode of transfer of the interest in an insurance policy. The forms of assignment and the effect of assigning an insurance policy shall be examined with a view to equipping the students intellectually to appreciate the necessity for intimating parties to an insurance transaction of any subsequent transaction related to the insurance policy.

3.0 MAIN CONTENT

The main content deals with assignment of insurance policies and examines the meaning of Assignment, form of assignment and effect of assignment and implication of a subsequent transaction on an insurance policy

4.0 MEANING OF ASSIGNMENT.

An assignment of a policy of insurance is the transfer of the policy by the insured known as the Assignor to a third party who was not initially a party to the contract of insurance known as the Assignee. The Assignment is to enable the third party or assignee collect the proceeds of the insurance policy

An insurance policy is however regarded as personal transaction between the insurer and insured and a unilateral assignment of the

subject matter of the policy is unsustainable except with the consent of the insurers in non life and non marine insurance contracts.

In *Peters v General Accident Fire and Life Assurance Corp Ltd* (1938) 2 All ER 267 the vendor of a van handed over his insurance policy issued by the Defendant insurers to the purchaser. When he negligently drove his van and injured the claimant, it was held that the insurers were not liable for the judgment sum awarded against the purchaser as the vendor could not assign his motor policy to the purchaser without the consent of the insurers.

In *Rayner v Preston (1881) 18 Ch 1* an insured building was destroyed by fire after it was purchased by the Plaintiff. It was held that the Plaintiff was not entitled to the benefit accruing from the insurance policy since it was a personal contract between the former owner of the building and the insurers.

5.0 FORMS OF ASSIGNMENT

There are two forms of assignment - legal and equitable assignment section 60 of the insurance Act 2003 provides that a person who —

- (a) is entitled by assignment or other derivative title to a policy of insurance
- (b) has, at the time when action is brought on the policy, the right in equity to receive and to give an effectual discharge to the insurer liable under such policy for money thereby assured or secured.

Shall be entitled to sue in the name of such person to recover such money, but the assignee shall not have a better title than the insured.

Where the insurance policy is a life insurance policy to confer validity on the assignment section 61 of the insurance Act stipulates that a notice of the date and purport of the assignment should be given to the insurer liable under the policy at his principal address of business. The date on which the notice is received shall be the regulatory factor in determining the priority of all claims under the assignment.

See section 61(2) of the insurance Act which provides that any assignment which does not comply with statutory regulation is deemed to be an equitable assignment. The methods of creating equitable assignment include:

- (a) Mere deposit of an insurance policy with the intention to assign or charge the policy.
- (b) A memorandum in writing to assign the policy to another

6.0 NOTICE OF ASSIGNMENT

No assignment of a policy of life insurance can confer on the Assignee or his personal representative any right to sue for the amount of the policy or the insured money unless a written notice of the date and purport of the assignment is given to the insurer liable under the policy at his principal address of business – 61(1) of the insurance Act 2003

Priority of claims is regulated by the date on which the notice is received by the insurer

- Section 61(2) of the insurance Act 2003

7.0 ENDORSEMENT ON POLICY INDICATING ASSIGNMENT.

The assignment could be endorsed on the policy or indicated on a separate document as follows:

" I of In consideration of do hereby assign unto his executors, administrators and assignees,

(within mentioned) policy of life insurance granted of
(here describe the policy)

In witness whereof I have hereunto set my hand and seal this
..... day of 20

See section 62 of the insurance Act

8.0 ACKNOWLEDGEMENT OF NOTICE

The insurer is expected to on receipt of the notice of assignment deliver an acknowledgement of the receipt of the notice to the insured in writing either personally or through a person duly authorized by the insurer

9.0 EFFECT OF ASSIGNMENT

An assignment of an insurance policy places the assignee or third party in the position of the assignor (insured) and entitles him to the benefits accruing to the assignee under the policy. He cannot acquire more rights than the assignor. To be able to enforce the rights conferred on the assignee, the insurance policy has to be stamped.

In *International Bank For West Africa v Crusader Insurance Co.*, it was held that an unstamped policy confers no right on the assignor or his personal representative to sue for the debt due or money accruing to the assured in an insurance policy.

10.0 CONCLUSION

An insurance transaction is essentially a contract between the insurer and the insured which is executed when the insurer signs the insurance policy and insured pays the agreed premium as at when due. To ensure the sustainability of claims under the insurance policy it is expedient that the insurer be notified of any subsequent transaction involving the insurance policy.

11.0 SUMMARY

1. Assignment is the transfer of the policy by the insured known as the "Assignor" to a third party who was not part of the insurance transaction known as the "Assignee".
2. Assignment of non life insurance has to be with the knowledge and consent of the insurer.
3. Assignment consists of legal assignment and equitable assignment.
4. An assignment which is not statutory regulation compliant is deemed to be an equitable assignment.
5. Inequitable assignment is created by mere deposit of title deeds or a memorandum in writing to assign the policy to another.
6. The effect of an assignment of insurance policy is to place the assignee in the position of the assignor as beneficiary of the policy.
7. Right to assign constitutes a proprietary right which the holder of a policy (insured) is at liberty to exercise.

12.0 TUTOR MARKED ASSIGNMENT

- 1a. Discuss the forms of assignment?
- 1b. State the effect of assignment of an insurance policy to a third party.

13.0 SUGGESTED FURTHER READING

Ekpu A.O., and Tonwe S.C., *The Law and Practice of Insurance in Nigeria* (Lagos: Amfitop, 1999).

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 1 LIFE INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 LIFE INSURANCE

4.0 CLASSIFICATION OF INSURANCE

4.1 WHOLE LIFE INSURANCE

4.2 ENDOWMENT INSURANCE

4.3 TERM INSURANCE

5.0 INSURABLE INTEREST

6.0 CONCLUSION

7.0 SUMMARY

8.0 TUTOR MARKED ASSIGNMENT

9.0 SUGGESTED FURTHER READING

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 1 LIFE INSURANCE

1.0 INTRODUCTION

The classification of insurance business over the years has significantly expanded premised on economic growth and development in Nigeria. Insurance transactions transcend vast spectra of business. Typically, insurance business is categorized into life insurance business and non life or other insurance business. Life Insurance business is further categorized into individual life insurance business and group life insurance. Non life or general insurance business is subdivided into:

- (i) Fire insurance
- (ii) Accident insurance
- (iii) Motor vehicle insurance
- (iv) Workmen's compensation insurance
- (v) Goods-in —transit insurance
- (vi) Marine and aviation insurance
- (vii) Oil and gas insurance
- (viii) Contractors "all risks" and engineering risk insurance
- (ix) Credit, bond and suretyship insurance
- (x) Railway rolling stock insurance
- (xi) Miscellaneous insurance business

Life insurance, Marine insurance, Fire insurance, Motor vehicle insurance and personal accident insurance will be discussed subsequently

2.0. OBJECTIVE

The objective of this module is to acquaint the students with the various classes of insurance, their peculiarities and the rights and obligations of the parties to the insurance contracts with a view to

improving their ability to distinguish between the classes of insurance and the ambit of their coverage.

3.0 LIFE INSURANCE

Life insurance is the contract of insurance in which one party agrees to pay a specified sum of money on the happening of a specific event. It is contingent upon the duration of human life in consideration of periodic payment or premium by another party. The concept of life insurance was contrived to ensure that dependants are not rendered destitute on the death of their "bread winner" Life insurance policies often include exclusion clauses and limiting terms to the effect that the insured shall be excluded from liability on the occurrence of specified incidents including suicide, terrorist attacks war, riot, fraud and earthquake.

4.0 CLASSIFICATION OF INSURANCE

Life insurance is further classified into the following

4.1 WHOLE LIFE INSURANCE:

It provides for the payment of a specified sum of money to named beneficiaries on the death of the life insurance in consideration of an agreed premium as consideration which may be paid periodically or as lump sum. it is a medium of providing for ones dependants in case of premature death which is a necessary end for all mortals.

4.2 ENDOWMENT INSURANCE:

It provides for the payment of a stipulated sum when the life insured attains a specified age or on the death of the insured which ever occurs first. Endowment insurance apart from been a viable arrangement for one's dependant, could also provide substantial savings for aged insurer.

4.3 TERM INSURANCE:

It is a short term insurance transaction where the insurer undertakes to pay the insured sum on the death of the insured within the term stipulated in the insurance policy. It differs from the endowment insurance because the sum insured cannot be paid unless the insured dies within the term stipulated in the policy. It is usually recommended for creditors wishing to insure the life of their debtors and persons engaged in hazardous activities.

5.0 INSURABLE INTEREST

A person seeking to take out an insurance policy on the life of another must establish that he has an insurable interest in the life insured. Section 56(1) of the insurance Act 2003 provides that a policy of insurance made by a person on the life of any other person or on any other event whatsoever shall be null and void where the person for whose benefit or on whose account the policy of insurance is made has no insurable interest in the policy of insurance or where it is made by gaming or wagering.

Section 56 (2) of the insurance Act 2003 also provides that a person shall be deemed to have an insurable interest in the life of any other person or in any other event where he stands in any legal relationship to that person or event or be prejudiced by death of that person or the loss from the occurrence of the event.

The insurance Act extends legal relationship to relationship which exists between persons under customary law or Islamic law where one person assumes responsibility for the maintenance and care of the other.

Since a life insurance is not a contract of indemnity, insurable interest is required to exist only at the time of the contract and not

thereafter. This is in contrast to indemnity policies where insurable interest must exist at the time of the loss.

See Dalby v India and London life Assurance Co. (1854) 15 CB 365.

Where an insured or beneficiary facilitates the happening of the event so he can claim from the insurer on grounds of public policy, the insurance is adjudged void.

6.0 CONCLUSION

Life insurance policy is founded on the high premium placed on human life, its sanctity and the need to ensure that it is well provided for on the occurrence of any event that tends to compromise it. The requirement of insurable interest is to regulate insurance transaction and insulate it from the acquisition of meddlesome insurance coverage.

7.0 SUMMARY

1. Insurance business is classified into insurance business and non insurance business.
2. Non life insurance is further subdivided into fire insurance, accident insurance, motor vehicle insurance etc.
3. Life insurance refers to the classes of contract where one party agrees to pay a specified sum of money to another party on the happening of a specific event.
4. Life insurance was designed to ensure that loved ones are not left destitute on the death of their benefactor.
5. Life insurance is classified into whole life insurance, endowment insurance and term insurance.
6. A person seeking to take out an insurance policy on the life of another must establish that he has an insurable interest in the person's life or the policy will be null and void – section 56(1) of insurance Act 2003

7. Section 56(2) states that insurable interest is deemed to exist where a person has a legal relationship with another or is in a position to be prejudiced by the death of the person or the occurrence of the risk insured against.
8. Life insurance policy is not a contract of indemnity. Insurable interest is only expected to exist at the time of entering the insurance contract.
9. Where an insured or beneficiary facilitates the happening of the event insured against.
10. Life insurance often include exclusion clauses and limiting terms which regulate the insurer's liability on the occurrence of stipulated events like suicide, earthquake, violence , riot, fraud etc.

8.0 TUTOR MARKED ASSIGNMENT

- 1(a) What is a life insurance policy?
 - (b) Distinguish whole life insurance from endowment insurance.
 - (c) Distinguish Endowment insurance from term insurance
2. Explain the concept of insurable interest in life insurance policies

9.0 SUGGESTED FURTHER READING

- Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)
- Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 2: PERSONAL ACCIDENT INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 COVERAGE PROVIDED

4.0 LIMITS OF COVERAGE

5.0 INSURABLE INTEREST

6.0 TYPES OF PERSONAL ACCIDENT POLICIES

7.0 PERSONAL ACCIDENT INSURANCE RISK CATEGORIES

7.1 HIGH RISK

7.2 MEDIUM RISK

7.3 LOW RISK

8.0 CONCLUSION

9.0 SUMMARY

10.0 TUTOR MARKED ASSIGNMENT

11.0 SUGGESTED FURTHER READING

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 2: PERSONAL ACCIDENT INSURANCE

1.0 INTRODUCTION

Accident insurance refers to accidental death and dismemberment insurance that involves the payment of a specified sum of money on the death or injury of the insured. The payment could be lump sum or installment. Personal accident insurance involves a person or group of persons taking out an insurance policy to provide for the payment of money to themselves or members of their family in the event that they suffer partial, total, temporary or permanent physical disability or injury in an accident that is not staged or contrived but is caused by an accidental occurrence. A singer may insure her voice and a footballer may insure his legs against injury while playing football.

2.0 OBJECTIVE

This unit aims at exposing the students to personal accident insurance and the benefits of the contract with a view to distinguishing it from other types of insurance contracts.

3.0 COVERAGE PROVIDED

The coverage provided by personal accident insurance includes the provision of compensation to the insured person due to death arising from accident coverage, it also provides for temporary and permanent disability and medical expenses of the insured and his beneficiary. The coverage could be extended to sever treatment in other jurisdictions.

The scope of coverage provided and the scale of benefits accruing to the insured varies from one insurer to the other.

4.0 LIMITS OF COVERAGE.

Most personal accident insurance contracts unlike life insurance policies do not cover death arising from natural causes or illness. It also excludes death or injury arising from willful exposure to danger or injury, alcohol abuse induced injury, pre existing medical condition induced injury e.g epilepsy and drug abuse related injuries death or disability. This is because it relates to "accident" based death or disability or medical expenses.

5.0 INSURABLE INTEREST

Every person taking out a personal accident insurance policy must have an insurable interest in the health or life sought to be insured

6.0 TYPES OF PERSONAL ACCIDENT POLICIES.

There are several types of personal accident policies. They include:

- i. Cash for accident: This involves the payment of cash to the insured when he suffers an injury. It is to assist the insured to pay his medical and ancillary expenses.
- ii. Accidental death: Where death occurs as result of auto crash, fall or accidental occurrence, the beneficiaries of the insurance policy are entitled to be paid an agreed sum of money to cushion the effect of the death of their benefactor. It is distinguishable from life insurance policy as it is restricted to accidental deaths and not death from natural causes or illness.
- iii. Disability insurance: where the injury is so severe as to disable the insured and deprive him of the capacity to work, the disability insurance policy is designed to provide sufficient coverage for the insured to have an upkeep and take care of his basic necessities

7.0 PERSONAL ACCIDENT INSURANCE RISK CATEGORIES.

As earlier observed, personal accident insurance provides coverage for accidental losses which result in loss of life, dismemberment, loss of speech, hearing or sight. There are however persons who by the nature of their employment are predisposed to accidental death and disability due to their risk situations. They include individual who -

- (a) are deployed to war zones
- (b) perform manual labour in construction sites
- (c) manually operate tools machines and equipment
- (d) travel frequently
- (e) live or work in crime endemic areas
- (f) work with hazardous chemicals

the individuals are classified into:

7.1 HIGH RISK:

This includes individuals who work in underground mines, with explosives and electricians who deal with high tension electricity supply, circus performers, high rise construction, soldiers, journalist and other people functioning in war zones and law enforcement agents working in crime endemic zones. Doctors and medical personnel's working in infectious disease endemic regions e.g Human Immune Virus (HIV) Cholera and Hepatitis are included in this category. The insured is required to pay higher premiums

7.2 MEDIUM RISK:

Individuals who drive heavy trucks engineers who function as supervisor, builders, mechanics, professional athletes and veterinarians. The rate of premium payable by the insured is lesser

than what is required to be paid by an individual in the high risk category.

7.3 LOW RISK:

Individuals associated with low risk have comparative lesser rate of premium payments include teachers, bankers, lawyers, accountants, architects and individuals working in corporations with standardized safety regulations.

Categorization of risk is dependent on the environment where the insured is operating or residing and its propensity for accidents.

8.0 CONCLUSION

Personal accident insurance is often utilized as a stop gap policy to compliment life insurance as it is necessary to protect loved ones and oneself financially in case one suffers an accidental death, injury or disability

9.0 SUMMARY

1. Accidental insurance refers to accidental death and dismemberment insurance that involves the payment of a specified sum of money on the death or injury of the insured
2. Personal accident insurance involves a person or group of persons taking out an insurance policy to provide for payment of money to themselves or members of their family in the event that they suffer partial, total, temporary or permanent disability.
3. To benefit from personal accident insurance the accident must not be staged or contrived or be traceable to willful exposure to danger, injury or alcohol induced injury, drug abuse related

incident or pre existing medical condition as it only covers accidental occurrences.

4. Every person desirous of taking out a personal accident insurance policy must have an insurable interest in the health or life sought to be insured.
5. The various types of personal accident policies include cash for accident, accidental death and disability insurance.
6. Personal accident risk is categorized as high risk, medium risk and low risk.
7. Categorization of risk is dependent on the environment the insured is operating and its propensity for accidental events which could result in death injuries or dismemberment.
8. Personal accident insurance is often utilized in conjunction with other insurance policies including life insurance

10.0 TUTOR MARKED ASSIGNMENT

- 1 (a) What is Personal accident insurance?
 - (b) What are the types of Personal accident insurance?
 - (c) Analyze the limiting factors of its coverage
2. Discuss the categorization of personal accident insurance

11.0 SUGGESTED FURTHER READING

Ekpu A. O and Tonwe S. O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

Irukwu J.O Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

MODULE 4

UNIT 3: MARINE INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 CONCEPT OF MARINE INSURANCE

4.0 WHAT IS MARINE ADVENTURE

5.0 SCOPE OF MARINE INSURANCE

6.0 INSURABLE INTEREST

7.0 TYPES OF MARINE INSURANCE POLICY

8.0 VOYAGE POLICY

8.1 TIME POLICY

8.2 VALUED OR UNVALUED POLICY

8.3 FLOATING POLICY

9.0 CONCLUSION

10.0 SUMMARY

11.0 TUTOR MARKED ASSIGNMENT

12.0 POINT OF ANSWER

13.0 SUGGESTED FURTHER READING

MODULE 4

UNIT 3: MARINE INSURANCE

1.0 INTRODUCTION

Marine insurance was the earliest well organized and developed policy and relates to coverage against loss of or damage to a ship, goods in transit and damage which occurs to such goods over waterways, land and air. Marine insurance provides coverage for transshipped goods to ensure they arrive safety. It is to protect the insured against inherent risks which occur to goods in transit.

2.0 OBJECTIVE

The objective of this unit is to expose the students to the concept of marine insurance which is a specialized form of insurance with a view to acquainting them with the various components of marine insurance.

3.0 CONCEPT OF MARINE INSURANCE

Marine insurance is a contract of indemnity and the most complex of all insurance contracts. It is the oldest form of modern insurance contract. Marine insurance has been defined as a contract whereby the insurer undertakes to indemnify the assured in manner and to the extent thereby agreed against marine losses. These are losses incidental to marine adventure. See section 3 of the marine insurance Act 1961 Cap. Mz, laws of the Federation of Nigeria 2004.

4.0 WHAT IS MARINE ADVENTURE

Marine adventure refers to where any ship, goods or other movables which are insurable are exposed to maritime perils or the earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit or the security for any advances,

loan or disbursement is endangered by the exposure of insurable property to marine perils. It extends to any liability to a third party which may be incurred by the owner of or other person interested in or responsible for, insurable property by reason of maritime perils. Maritime perils means perils consequent on or incidental to sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, detention of pirates and people, jettisons and related dangers which may be stated in the marine insurance policy. See section 5 of the Marine Insurance Act.

5.0 SCOPE OF MARINE INSURANCE

In a marine insurance policy, if the subject matter of the insurance is to provide cover for a journey from one place to another or for a definite voyage, it is known as a "voyage policy". Where it is to cover the subject matter for a definite period, it is called a "time policy".

6.0 INSURABLE INTEREST

For a marine insurance to be valid, the insured must have an insurable interest in the subject matter. Section 7 (2) of the marine insurance Act defines a person as having insurable interest in a marine adventure where he stands in any legal or equitable relation in the adventure of any insurable property at risk in consequence of which he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss or damage or by the detention or may incur liability in that respect. Persons with insurable interest include:

- (i) the ship owner
- (ii) the owner of the insurable property
- (iii) the mortgagee, consignee or other persons having an interest in respect of the subject matter insured.
- (iv) The insurer of the ship and cargo

- (v) The person to whom freight is payable

7.0 TYPES OF MARINE INSURANCE POLICY

There are different types of marine insurance. They include:

8.0 VOYAGE POLICY:

It covers the subject matter for a specific journey it is usually "at and from" or from one place to another. In *Edokpolor & Co Ltd v Bendel Ins. Co (1997) 2 NWLR (PT 486) p. 131*, the supreme court held that where a place of departure is specified by the policy and the ship instead of sailing from that place sails from any other place, the risk does not attach nor does it usually attach when the destinations is specified in the policy and the ship instead of sailing for that destination, sails for another.

8.1 TIME POLICY:

Where the insurance policy covers a definite period of time, the policy is held to be a time policy.

A marine insurance contract for voyage and time policies may be included in the same policy. See section 27 of marine insurance Act In *Jessica Trading Co Ltd v Bendel Ins. Co Ltd (1996) 10 NWLR (PT 476) p.1* The Supreme Court held that a contract for voyage policy and a contract for time policy were not mutually exclusive

Where an insured takes a time policy in a marine insurance certain precautions have to be taken including the insured ensuring that all the vessels carrying its goods do so and discharge the goods within the limited period specified in the contract. This is because on the expiration of the time stipulated, the insurer will not be liable to indemnify the insured for such a loss. The insured could also ensure that the policy contains a "continuation clause" which automatically continues the insurance after the expiration of the insured period until the ship arrives at the port of destination.

8.2 VALUED OR UNVALUED POLICY:

A policy may be either valued or unvalued. A valued policy usually specifies the agreed value of the subject matter insured. In contrast, an unvalued policy does not specify the value of the subject matter insured but leaves the insurable value of the subject matter insured to be subsequently determined.

8.3 FLOATING POLICY:

The insurance is described in a general term leaving specifics such as the name of the ships to be subsequently stated in the policy. For a contract for marine insurance to be valid, it must be embodied in a policy which must specify the name of the insured or of some person who effects the insurance on its behalf. The marine policy should also be signed by or on behalf of the insurer or if the insurer is a corporation, the corporate seal may be sufficient. See section 24, 25 and 26 of the Marine Insurance Act.

9.0 CONCLUSION

It is not possible to have a marine insurance policy that covers all risks. Each marine insurance policy is couched to cover anticipated risks. It is gratifying for the insured to be assured that his losses if any are covered in the event of misadventure.

10.0 SUMMARY

1. Marine insurance was the earliest well organized and developed policy.
2. It relates to coverage against loss of or damage to a ship, goods in transit and damage which occurs to such goods over waterways, land and air.
3. Marine insurance provides coverage for transshipped goods to ensure they arrive safely.

4. It is to protect the insured against inherent risk which occur to goods in transit – section 3 of Marine Insurance Act
5. The types of marine insurance includes Voyage policy, Time policy, Valued or Unvalued policy and Floating policy

11.0 TUTOR MARKED ASSIGNMENT

1. XYZ took out a marine insurance policy with ABC insurance company Ltd to insure steel pipes which were to be imported from Japan against all risks. The goods were to be shipped from Japan to Lagos port in Nigeria. The said goods were eventually shipped from Hamburg Germany instead of Japan. The ship could not berth in Lagos port and had to leave for koko port. The goods were never delivered to XYZ. XYZ has instituted a claim against ABC insurance to be indemnified for the loss of the goods. Assess the liability of ABC insurance company Ltd.
2. Discuss the different types of marine insurance

12.0 POINT OF ANSWER

The insurance transaction relates to a voyage policy taken out by XYZ

- In a voyage policy there is certainty of destination
- The policy covered a voyage from Lagos — Japan — Lagos but the voyage was altered to Lagos — Hamburg - Koko which was outside the scope of the insurance cover provided by ABC insurance
- Section 44 of the marine insurance Act provides that where the place of departure is specified by the policy and the ship instead of sailing from that place sails from any other place, the risk shall not attach.
- In *Edokpolor & Co Ltd v Bendel Insurance Co. Ltd* the supreme court of Nigeria held that in a voyage insurance

policy, any deviation from the stipulated route absolves the insurer from liability in the case of any consequential loss.

13.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J.O Insurance Law and principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 4 MOTOR VEHICLE INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 REGULATORY MECHANISM

3.1 INSURANCE ACT

3.2 MOTOR VEHICLE (THIRD PARTY) INSURANCE ACT

4.0 DEFINITION OF MOTOR VEHICLE

5.0 DEFINITION OF MOTOR VEHICLE INSURANCE

6.0 DEFINITION OF USER OF VEHICLE

7.0 EXEMPTIONS

8.0 FORMS OF MOTOR VEHICLE INSURANCE

8.1 THIRD PARTY POLICY

8.2 THIRD PARTY FIRE AND THEFT POLICY

8.3 COMPREHENSIVE POLICY

9.0 LIMIT OF COVERAGE

10.0 CONCLUSION

11.0 SUMMARY

12.0 TUTOR MARKED ASSIGNMENT

13.0 SUGGESTED FURTHER READING

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 4 MOTOR VEHICLE INSURANCE

1.0 INTRODUCTION

The increased vehicular and human traffic on the roads have significantly increased the nature and scope of risk to which motorists and pedestrians are exposed. Motor vehicle insurance is the most popular type of insurance in Nigeria. It comprises of the Act Policy, Third party policy, third party and theft policy and comprehensive insurance policy.

2.0. OBJECTIVE

The objective of this unit is to acquaint the students with the necessity of risk coverage by operators of motor vehicles in view of the inherent risk of road transport utilization in Nigeria it is also to expose them to the rights and obligation contained in a motor vehicle insurance.

3.0 REGULATORY MECHANISM

The following are the motor vehicle regulatory mechanism:

3.1 INSURANCE ACT

Section 68(1) of the insurance Act 2003 provides that no person should use or cause or permit any other person to use a motor vehicle on a road unless the liability he may incur in respect of damage to the property of third parties is insured with an insurer under the Act.

The person is also expected to in addition to a liability of not less than N1, 000, 000 (section 68(2)) be insured under the motor vehicle (third party) insurance Act.

Any person convicted of contravening this section is liable to a fine of N250, 000 and imprisonment of one year or both

3.2 MOTOR VEHICLE (THIRD PARTY)INSURANCE ACT

The motor vehicle (Third party Insurance) Act cap M22 laws of the Federation of Nigeria 2004. Act was enacted in 1945 and commenced in 1950. Section 3(1) of the Act provides that subject to the provisions of the Act no person should use or cause or permit any other person to use a motor vehicle where there is in force in relation to the user of he motor vehicle by such a person or such other person as the case may be such policy of insurance or such security in respect of third party risks as complies with the provision of the Act.

Section 3 (2) provides that any person who acts in contraventions of this Act shall be liable on conviction to a fine of four hundred naira or imprisonment of one year or both such fine and imprisonment and the persons shall be disqualified from holding or obtaining a driving licence

4.0 DEFINITION OF MOTOR VEHICLE

Section 2 (1) of the motor vehicle (third party insurance) Act defines a motor vehicle as a vehicle propelled by mechanical power other than a vehicle constructed to run on rails and includes motor cycles. It extends to all vehicle propelled by mechanical power including trucks, low loaders, bulldozers, caterpillars and other heavy duty vehicles designed to move on highways

5.0 DEFINITION OF MOTOR VEHICLE INSURANCE

Motor vehicle insurance is also referred to as automotive insurance. It refers to a contract by which an insurer assumes the risk of, or any loss the owner or operator of a vehicle may incur through damage to property or persons due to an accident.

6.0 DEFINITION OF USER OF VEHICLE

A person is said to use a vehicle only when he is in charge of or driving it, controlling it and managing it on a public road. The risks covered by the Act relate to any liability which may be incurred by the insured in relation to the death of or bodily injury to any person occasioned by or arising out of the use of a motor vehicle covered by the policy.

7.0 EXEMPTIONS

Certain categories of persons are exempted from liability under the Act. Such persons exempted from cover include:

- (i) injuries sustained or death arising out of and in the course of employment of the insured employee or
- (ii) persons in a passenger vehicle on hire or reward in respect of the death of or bodily injury of persons being carried
- (iii) any contractual liability

Persons who are carried in a motor vehicle gratuitously are not covered by the Act. In *Lion of Africa Insurance Co Ltd v Anuluoha (972) AIINLR 467 Lewis JSC* stated,

it is only if the person is being carried for hire or reward that an insured must be covered by a policy. In other words so far as the insurers are concerned, it is in their own interest to show that the passenger is not being carried for hire or reward and in our view the basic contention of the defendant is right...

8.0 FORMS OF MOTOR VEHICLE INSURANCE

Motor vehicle insurance are in many forms. They vary both in their underlying legal principles and the nature of the risk covered. It includes.

8.1 THIRD PARTY POLICY

The third party insurance policy of the Act provides indemnity for death and bodily injuries occasioned to third parties or their properties. This could be movable or immovable property or tangible or intangible objects. Section 15 of the Act provides that no settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability that is required to be covered by a policy issued under the provisions of the motor vehicle, (third party insurance) Act is valid unless such third party is a party to such settlement. It is similarly provided that a policy issued under the Act shall remain in force and be available to third parties notwithstanding the death of any person insured under such policy as if such insured person were still alive

8.2 THIRD PARTY FIRE AND THEFT POLICY

The policy consists of the characteristic of both the Act and the third party policy as well as loss or damage to the vehicle of the insured resulting from fire or theft. It also includes legal fees incurred in defending actions emanating from an accident for which a claim is being made as well as towing fee for conveying the damaged or stolen vehicle from the scene of accident or place of discovery to the nearest mechanic for safe place of custody

8.3 COMPREHENSIVE POLICY

This is more extensive than the earlier discussed motor vehicle insurance policy. It is designed to cover wider risk including loss or damage caused to the insured vehicle through accident, collusion, fire and theft including the fitted accessories of the said vehicle. It also includes any cost or expenses incurred with the insured's consent and medical expenses incurred in connection with any

bodily harm from the accident by the insured, his driver or any occupant of the insured vehicle

9.0 LIMIT OF COVERAGE

Motor vehicle insurance policy cover obtained in Nigeria is inapplicable to accidents, damage or loss which occurs outside the territorial boundaries of Nigeria except a wider cover is obtained to extend to extra territorial damage or loss. Since the focus of the motor vehicle insurance policy is to provide cover for tortious liability, it excludes contractual liability. Where an insured vehicle is driven by a person without license to drive, it is excluded from coverage by the policy. Liability arising from radioactive materials or nuclear or damage or loss due to acts of God e.g. thunder, volcanic eruptions, earthquake or war which result in injury or damage is not covered by the motor vehicle insurance policy.

10.0 CONCLUSION

In spite of the various motor vehicle insurance policy in existence in Nigeria and mandatory provisions of the insurance Act compliance is poor. This is due to lack of confidence in the system by insurance claimants and poor compliance monitoring. Most motor vehicle insurance policy is taken for the sole purpose of passing through police check point. This informs the proliferation of fake motor vehicle in polices.

11.0 SUMMARY

1. Motor vehicle insurance is the commonest form of insurance policy in Nigeria and it is mandated by government
2. Forms of motor vehicle insurance include Third Party Policy, third party fire and theft policy and comprehensive policy.
3. The motor vehicle is defined by section 2(1) of the motor vehicle (third party insurance) Act as a vehicle propelled by

mechanical power and vehicles constructed to run on rails and motor cycles

4. A person is designated as a user of a vehicle when he is in charge of or driving it or controlling it and managing it on public road.
5. The risk covered by the motor vehicle (third party) insurance Act relates to the death or injury of a person arising out of the use of an insured vehicle
6. Persons who hire the vehicle or are carried in the vehicle gratuitously are excluded from coverage of the policy.
7. A third party beneficiary of the third party insurance policy is entitled to the benefit of the cover irrespective of the death of the insured
8. The most extensive form of motor vehicle insurance is the comprehensive insurance policy. It is often shunned due to the exorbitant rates charged by insurers.
9. Motor vehicle insurance policies are taken mostly for the purpose of passing through police check points.

12.0 TUTOR MARKED ASSIGNMENT

- 1 Discuss the various types of motor vehicle insurance policies in Nigeria.
2. Analyse the limits of the coverage of motor vehicle insurance if any.

13.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 5 FIRE INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 TYPE OF FIRE INSURANCE

4.0 NECESSITY FOR FIRE INSURANCE POLICY

5.0 INSURER'S LIABILITY

6.0 BENEFITS OF FIRE INSURANCE POLICY

7.0 CONCLUSION

8.0 SUMMARY

9.0 TUTOR MARKED ASSIGNMENT

10.0 SUGGESTED FURTHER READING

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 5 FIRE INSURANCE

1.0 INTRODUCTION

Fire insurance policy is a contract of indemnity aimed at insuring property against the risk of fire. It is subject to the general principle of insurance and provides for specific sums to be paid to the insured in case of damage occasioned by fire, lightning and explosion. It usually covers cost of replacement, repair or reconstruction of the damaged property and other damages traceable to the fire.

2.0. OBJECTIVE

The objective of this unit is acquaint students with the basic principles governing liability under fire insurance with a view of impressing on the students that without actual ignition, the insurer cannot be liable to pay the claim.

3.0 TYPE OF FIRE INSURANCE

Fire insurance policies are classified into the following:

- (a) **Specific Policy:** The insurer is liable to pay an agreed amount to the insured on the occurrence of the fire insured against. The insurer's indemnity is not tied to the actual value of the property.
- (b) **Comprehensive Policy:** It indemnifies the insured against loss by fire and other perils including burglary, theft and other risks. The insured could also get payment for consequential loss of profit attributable to the fire incidence or other risks insured against.
- (c) **Valued Policy:** In this type of policy, the amount to be paid by the insurer to the insured on the occurrence of the incident, insured against is agreed with the insured irrespective of the scope of the loss.

- (d) **Re – Instatement Policy:** The insurer is required to pay for the cost of replacing the damaged property. Subject to the terms of the insurance policy, the insurer could exercise the option of reinstating the property instead paying out cash to the insured.

4.0 NECESSITY FOR FIRE INSURANCE POLICY

Fire incident could result in catastrophic consequences. Due to bush burning faulty electrical wiring, arson, lightning and domestic fire incidents there is need for insurance coverage as it contributes to deaths, injuries and destruction of property. A person can avail himself of the benefit of ensuring that he is protected in the event of such risk.

5.0 INSURER'S LIABILITY

For the insurers to be liable on a fire insurance policy, there must be actual ignition.

In *Austin v Drewe (1816) 6 Taunt 436* a great heat spoilt a quantity of sugar as a result of the closure of a register in the chimney. The insurer was held not liable under the insurance policy because there was no ignition.

In *Everett v London Assurance (1865) CBNS 126*, a house insured against fire was damaged as a result of the fire in a factory about half a mile away. It was held that the damage was not caused by the insured risk and the insurers were not liable.

In *Harris v Poland (1941) 1KB 462* The Plaintiff hid and forgot her jewellery in her grate under the coal. She lit the fire and the jewellery was damaged. It was held that she could recover under a fire policy

For the insurer to be liable under a fire insurance policy, there must be a causal connection between the fire and the damage suffered by the insured. Ordinarily the insurer is not liable to damage attributable to natural disasters but the insured can extend the policy to cover risks arising from specific natural occurrences.

6.0 BENEFITS OF FIRE INSURANCE POLICY

The benefit of a fire insurance policy is restoration of the insured as much as possible to the same position as he was before the occurrence of the risk insured against. It involves either of the following.

- (i) In case of a partial loss, the insured is entitled to payment for repairing or replacing the property damaged by fire.
- (ii) The insurer could undertake to fix the damaged property on its own instead paying the insured the cost of restoration.
- (iii) The cover could be extended to cover other perils subject to the payment of an agreed premium.

7.0 CONCLUSION

Fire insurance policies are a necessity due to the ever present danger of fire outbreak. It is necessary to call the insurance companies as soon as the risk insured occurs in addition to complying with all the procedural requirements.

8.0 SUMMARY

1. Fire insurance is a contract of indemnity aimed at insuring property against fire outbreak
2. For the insurer to be liable on the policy there has to be actual ignition

3. The insurer liability only arises in a fire insurance contract when there is a causal connection between the fire and damage complained about
4. The insurer is not ordinarily liable for damages arising from natural disaster induced fire but an insured can extend his cover to extend to cover specific natural disaster related damage.
5. The insurer is only liable to the insured for the actual risk covered.

9.0 TUTOR MARKED ASSIGNMENT

State and explain the classes of fire insurance policy.

10.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 6 LIABILITY INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 WHAT IS LIABILITY INSURANCE

4.0 TYPES OF LIABILITY INSURANCE

5.0 ROLE OF LIABILITY INSURERS

6.0 BENEFITS OF LIABILITY INSURANCE

7.0 CONCLUSION

8.0 SUMMARY

9.0 TUTOR MARKED ASSIGNMENT

10.0 SUGGESTED FURTHER READING

MODULE 4 CLASSIFICATION OF INSURANCE

UNIT 6 LIABILITY INSURANCE

1.0 INTRODUCTION

Liability insurance entails the insured obtaining an insurance cover to indemnify him against legal liabilities arising from third party claims. The amount payable by the insurer is restricted to the insured sum irrespective of the extent of the insured's liability. Liability insurance policy includes product liability, employers' liability and professional liability. It is utilized in developed countries to afford the insured financial security or protection against financially crippling legal suits that could arise in the course of practicing a persons' trade or occupation.

2.0. OBJECTIVE

This unit is to educate students on the financial security provided by liability insurance and necessity of liability insurance coverage against legal suits.

3.0 WHAT IS LIABILITY INSURANCE

Liability insurance is insurance cover which protects the insured against risk imposed by law suits and ancillary claims. It covers legal costs and payments for which the insured is liable.

4.0 TYPES OF LIABILITY INSURANCE

Liability insurance is classified into

- (a) **Public Liability:** it is utilized by large organizations to protect themselves against law suit or claims arising from their activities e.g a company may purchase pollution insurance cover to protect itself from suits and claims arising from environmental pollution claims. This is due to the adverse effect on third parties who may be injured or

their property damaged. Public liability insurance is mandated by some countries for certain classes of business

- (b) **Product Liability:** it is required to be utilized by manufacturers of products and suppliers of goods to provide them additional protection in the event of risk exposure e.g. car manufacturers, pharmaceutical companies, tobacco companies and manufacturers of recreational equipments etc.
- (c) **Employers Liability:** Employers are obligated to provide insurance coverage for their employees to protect them against workplace injuries and risks exposure.
- (d) **Professional Liability:** The coverage is to protect professionals like medical doctors, lawyers, accountants who are susceptible to legal actions in the course of rendering their professional service. Medical doctors are often prone to medical malpractice litigation and claims.
- (e) **General Liability:** General liability is an embracing coverage which includes protection for both public and product liability.

5.0 ROLE OF LIABILITY INSURERS

The role of liability insurers is essentially about risk improvement and loss prevention. The policy protects the insured against legal liabilities from death, bodily injury or property damage.

The insurer has a role to defend the insured by paying the sums for which the insured is adjudged liable and settle claims against the insured.

Where the insurer fails to provide the requisite coverage, the insured can institute proceedings against the insurer for breach of contract.

6.0 BENEFITS OF LIABILITY INSURANCE

Risk financing which liability insurance provides is an essential protective mechanism for any successful business and professional enterprise. In the event of litigation due allegation of professional negligence, failure to perform professional service, product malfunction, environmental pollution from corporate operations without the requisite coverage, the consequences of litigation claims may cripple the business or enterprise.

7.0 CONCLUSION

Liability insurance is a necessity in the light of the expense of litigation and the crippling consequences of damages the could be awarded against the insured in the event of a successful claim against him. It ensures the continuity of corporations and professional practice by insulating them from the cost of claims and legal proceedings by or against them.

8.0 SUMMARY

- (a) Liability insurance entails the provision of insurance cover to indemnify the insured against legal liabilities.
- (b) The amount paid to the insured is restricted to the agreed sum in spite of his risk exposure.
- (c) Liability insurance is mainly classified into public liability, product liability, employers' liability, professional liability and General liability
- (d) The major role of liability insurance is risk improvement and loss coverage.
- (e) Where on the occurrence of the risk the insurer fails to provide the requisite coverage, the insured in entitled to institute proceedings against the insurer for breach of contract

and enforcement of specific performance of insurance contract.

9.0 TUTOR MARKED ASSIGNMENT

- 1 a. Discuss the types of liability insurance
- b. Analyse the necessity for a liability insurance coverage

10.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 5 PRINCIPLES OF INSURANCE

UNIT 1 PRINCIPLE OF INSURABLE INTEREST

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 INSURABLE INTEREST

4.0 DEFINITION OF INSURABLE INTEREST

5.0 ROLE OF LIABILITY INSURERS

6.0 NATURE OF INSURABLE INTEREST

7.0 CONSEQUENCE OF LACK OF INSURABLE INTEREST

8.0 CONCLUSION

9.0 SUMMARY

10.0 TUTOR MARKED ASSIGNMENT

11.0 SUGGESTED FURTHER READING

MODULE 5

UNIT 1 PRINCIPLE OF INSURABLE INTEREST

1.0 INTRODUCTION

The purpose of every insurance contract is risk coverage and the assurance of financial security and protection to the insured on the occurrence of the risk. The rights of the insured and obligations of the insurer is regulated by the basic principle of insurable interest, *uberrimae fidei* (Utmost Good Faith), principle of indemnity, principle of contribution, principle of subrogation, principle of loss minimization and principle of cause proximal.

2.0. OBJECTIVE

This objective of this unit is to educate the students to appreciate that rights and obligations in insurance contracts are regulated by principles which are deemed to be fundamental in the enforcement of an insurance transaction. One of these fundamental principle is the principle of insurable interest which in this unit will be examined to impress on the students that only stakeholders are entitled to take out an insurance policy to cover a specified risk.

3.0 INSURABLE INTEREST

The cardinal principle of insurance law is that every contract of insurance must establish that the insured has an insurable interest in the subject matter of the insurance to create a valid insurance.

Section 56 of the insurance Act 2003 provides that,

(1) A policy of insurance made by a person on the life of any other person or any other event whatsoever shall be null and void where the person for whose benefit or on whose account the policy of insurance is made has no insurable interest in the policy of insurance or where it is made by gaming or wagering.

In *Cooperative & Commercial Bank Limited v Raphael C. Nwokocho* (1998) 9 NWLR (PT 564) p.98, the court held that in the law of insurance the insured must have an insurable interest in the subject matter of the insurance

4.0 DEFINITION OF INSURABLE INTEREST

There is no universally accepted definition of insurable interest. It is however defined in section 56 (2) of the insurance Act as:

A person shall be deemed to have an insurable interest in the life of any other person or in any other event where he stands in any legal relationship to that person or other event in consequence of which he may benefit by the safety of that person or event or be prejudiced by the death of that person or the loss from the occurrence of the event.

Legal relationship in the above section is held to include the relationship which exists between persons under customary law or Islamic law whereby one person assumes responsibility for the maintenance and care of the other.

In *Lucena v Craufurd* (1806) 2 B & P.N.R 269, the House of Lords defined insurable interest as

a right in the property or right derivable out of some contract about the property which in either case may be lost upon some contingency affecting the possession or enjoyment of the property.

5.0 MEANING OF INSURABLE INTEREST

In *Law Union and Rock Insurance of Nig. Ltd v Onuoha* (1998) 6 NWLR (PT 555) p.576 Oguntade J.C.A explained insurable interest as very elastic and not always coterminous with the ownership, wholly or partially of the particular goods insured. He held that a court called upon to determine whether or not a particular claimant has an insurable interest in the property concerned will need to

consider the issue whether the destruction or diminution in value of the property will result in a loss to the claimant

A person who would foreseeably suffer financial loss from the occurrence of an event has an insurable interest in the subject matter which is sought to be insured against the event. The event must either cast upon the assured a legally binding liability or it must affect a right of the assured which is recognized and protected by the courts.

Insurable interest can be distilled as a relationship in which the insured may either benefit financially or suffer loss on the occurrence of the event sought to be insured against. It is impossible to give a general formula to cover all the recognized types of insurable interest. However, with regards to life insurance an individual has an insurable interest in his own life for an unlimited amount. A husband has an insurable interest in the life of his wife and vice versa.

Only a person who has direct legal or equitable interest in the subject matter of the insurance policy can be said to have an insurable interest.

6.0 NATURE OF INSURABLE INTEREST

The concept of insurable interest permeates every aspect of insurance contract irrespective of the type. The nature of insurable interest required however varies from policy to policy

- (i) **Life Insurance:** The nature of insurable interest required in life insurance policies is that the insurable interest must be present at the time the insured is entering the transaction and not necessarily when a claim occurs.
- (ii) **Marine Insurance:** An insurable interest must be present when the risk insured against occurs and a claim is made. It is

irrelevant that at the time of taking out the policy, there was no insurable interest.

- (iii) **Fire Insurance:** An insurable interest must be present both at the time of entering the insurance transaction and at the time of the claim.
- (iv) **Motor Vehicle Insurance:** Insurable interest must be present both at the inception of the insurance and at the time of the claim.

In ascertaining the existence of insurable interest, time is of the essence. In contracts of fire accident insurance, the insured must establish the existence of an insurable interest on the object sought to be insured at the time of executing the contract of insurance and at the time of the loss insured against. In the case of marine insurance, the insurer must have an insurable interest in the subject matter at the time of the loss covered occurred.

7.0 CONSEQUENCE OF LACK OF INSURABLE INTEREST

Lack of insurable interest in the subject matter of the insurance renders the transaction invalid and baseless.

It also renders the insurance policy incapable of enforcement. Lack of insurance interest renders the transaction speculative and synonymous with gambling.

Only the insurer has the capacity to raise absence of insurable interest as defence to a claim

8.0 CONCLUSION

Insurable interest is the foundation of an insurance contract and without it, there can be no basis for issuing a legal insurance cover to an insured.

9.0 SUMMARY

1. The cardinal principle of insurance law, is that the insured has to establish that he has an insurable interest in the subject matter sought to be insured
2. Section 56 of the insurance Act invalidates an insurance policy made by gaming or wagering.
3. Insurable interest means the interest of a person who would suffer on the occurrence of the risk sought to be covered or whose right would be affected.
4. Insurable interest is not always coterminous with ownership.
5. Insurable interest may either be present at the time of the claim e.g in marine insurance or at the time of entering the transaction e.g life insurance or both at the time of entering the transaction and making the claim e.g motor vehicle insurance and fire insurance.
6. A person who would foreseeably suffer financial loss from the occurrence of an event is said to have an insurable interest in the subject matter sought to be insured against the risk.

10.0 TUTOR MARKED ASSIGNMENT

1. "The existence of an insurable interest is the foundation of any insurance contract" Do you agree?
2. Explain the meaning of insurable interest

11.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 5

UNIT 2 PRINCIPLE OF INDEMNITY

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 MEANING OF INDEMNITY

4.0 EXCEPTION TO THE NO PROFIT RULE

5.0 MODE OF INDEMNITY

6.0 CONCLUSION

7.0 SUMMARY

8.0 TUTOR MARKED ASSIGNMENT

9.0 SUGGESTED FURTHER READING

MODULE 5

UNIT 2 INDEMNITY

1.0 INTRODUCTION

The Principle of indemnity stipulates that where a loss occurs, the insured should be placed by the insurer in the financial position he would have been but for the occurrence of the risk insured against. It is premised on the notion that on grounds of public policy, a person is not expected to benefit from his misfortunes.

2.0. OBJECTIVE

Insurance contract is technical and has several principles. The objective of this unit is to explain the concept of indemnity to the students with a view to enhancing their understanding of the fact that the purpose of insurance is not for profiteering but solely for the purpose of restoring the insured to the same position he was before the loss.

3.0 MEANING OF INDEMNITY

The principle of indemnity is about restoration of the insured to his former position and not to confer him with profit from his loss. Where the damage to the subject matter of the insurance policy is partial he is entitled to only the cost of repairs or restoration to its former state. Where the damage is total, the insurer's liability is restricted to the sum insured which is the estimated value of the subject matter at the time of the insurance contract.

In *Esewe v Asiemo (1975) NCLR 433* it was held that a contract of insurance was meant to indemnify the assured and not to enrich him over and above that which was necessary to enable him recoup his loss.

4.0 EXCEPTION TO THE NO PROFIT RULE

In spite of the fact that the principles are designed for the preservation of equity in insurance contracts by ensuring parties do not profit from their loss, there are some exceptions to this principles. It includes.

- (i) Life insurance, where the cost of “replacing” a life is not capable of arithmetic calculation or valuation and is therefore incapable of quantifying.
- (ii) Replacement cost insurance where the claim does not take cognizance of depreciation of the item.
- (iii) Valued policy where cognizance is not taken of the actual value of the sum insured.

5.0 MODE OF INDEMNITY

1. Cash payment
2. Repair
3. Replacement
4. Reinstatement

6.0 CONCLUSION

The fundamental principle of indemnity is to ensure that the insured does not benefit from his loss and to ensure that integrity is maintained by covering only genuine risks

7.0 SUMMARY

1. Where a loss occurs, the principle of indemnity stipulates that the insured is only entitled to the value of the loss suffered.
2. Profit generation is outside the ambit of an insurance contract, it is to restore the insured as much as possible to the *status quo*

3. Life insurance, replacement cost and valued policy are exceptions to the rule
4. Mode of indemnity on the occurrence of the risk insured include cash payment repair, replacement and reinstatement
5. The indemnity principle is to ensure that only genuine risk is covered and the integrity of insurance transaction is maintained

8.0 TUTOR MARKED ASSIGNMENT

1. What do you understand by the principle of indemnity?

9.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 5

UNIT 3 PRINCIPLE OF UTMOST GOOD FAITH

(UBERRIMAE FIDEI)

1.0 INTRODUCTION

2.0 OBJECTIVE

**3.0 DISTINCTION BETWEEN VOID AND VOIDABLE
INSURANCE CONTRACT**

4.0 EVIDENCE OF LACK OF UTMOST GOOD FAITH

**5.0 LIMITATION OF THE IMPLEMENTATION OF PRINCIPLE
OF UTMOST GOOD FAITH**

6.0 CONCLUSION

7.0 SUMMARY

8.0 TUTOR MARKED ASSIGNMENT

9.0 SUGGESTED FURTHER READING

MODULE 5

UNIT 3 PRINCIPLE OF UTMOST GOOD FAITH (UBERRIMAE FIDEI)

1.0 INTRODUCTION

The hallmark of the contract of insurance is the principle of Uberrimae fidei or utmost good faith. This means the insured must disclose all material facts of the contract which he knows or ought to know would influence the judgment of the insurer in determining whether or not to insure the risk or to insist on a higher premium for accepting to bear the risk. The insurer also has a duty not to conceal material facts relating to the insurance policy. Failure of either side to disclose such material facts renders the insurance voidable.

2.0. OBJECTIVE

The objective of this unit is to sensitize students to the importance of the principle of utmost good faith (Uberrimae fidei) in insurance contract with a view to impressing on them the consequences of its non observance.

3.0 DISTINCTION BETWEEN VOID AND VOIDABLE INSURANCE CONTRACT

The distinction between voidable contract and "void" contract is that in a voidable contract, the aggrieved party may either continue with the transaction or he may elect to repudiate the contract. In a void contract, the transaction is illegal and unenforceable.

In *U.N.LC v U.C. LC Ltd (1999) 3 NWLR (PT 593) p. 17* it was held that it is the duty of the assured not only to be honest and straight forward but at all times to make a full disclosure of all material facts. In the same vein, it is the duty of the insurer and their agent to disclose all material facts within their knowledge.

4.0 EVIDENCE OF LACK OF UTMOST GOOD FAITH

The following circumstances are indications of lack of Utmost good faith.

Fraud: Where a proposer for an insurance policy makes a statement which he knows to be false, without belief in its truth or is reckless as to whether it is true or false, he is guilty of fraudulent misrepresentation. Where he conceals essential facts from the insurer which he knows would influence his decision whether or not to enter into the contract, he is guilty of fraudulent non disclosure. In addition to voiding the insurance contract for fraud, the insurer is entitled to obtain damages from the insured for fraud.

In *Akpata & anor. v African Alliance Insurance Co Ltd* Unreported suit No LD/340/67. the deceased insured, failed to disclose to the insurer that he was previously insured with another insurer. The court held that it was fatal to the claim. The contract of insurance and null and void and his estate was not entitled to any money from the defendant insurers. This was premised on the fact that having warranted that the statement in the proposal form was true and having agreed that they form the basis of the contract and that all sums should be forfeited and the contract declared null and void if any of the statement are untrue, no sum can accrue to his beneficiaries from the policy.

see also *United Nigeria Insurance Co Ltd v Universal Commercial and industrial Co. Ltd* (1999) 3 NWLR (PT 593)

5.0 LIMITATION OF THE IMPLEMENTATION OF PRINCIPLE OF UTMOST GOOD FAITH

To minimize the risk of insurers taking advantage of the insured and rescind out of their obligations to the insured on the basis of non

disclosure of facts which they deem material subject to their whims and caprice section 54 (1) of insurance Act 2003 provides that where an insurer requires an insured to complete a proposal form or other application form for insurance, the form should be drawn up in such a manner as to elicit such information as the insurer considers material in accepting the application for insurance of the risk and any information not specifically requested should be deemed not to be material.

Section 55 (1) further provides that in a contract of insurance, a breach of term whether called a warranty or a condition should not give rise to any right by or afford a defence to the insured unless the term is material and relevant to the risk or loss insured against.

6.0 CONCLUSION

The principle of utmost good faith is a necessity in insurance transactions as it ensures that before parties agree to be bound by the terms of a policy, they are entitled to know all the facts that are relevant to his arriving at a decision.

7.0 SUMMARY

- (a) The principle of utmost good faith is the hallmark of the principle of insurance.
- (b) Parties to an insurance contract are mandated to disclose all material facts to each other.
- (c) The insured owes a duty to the insurer to disclose all material facts to the insurer which would influence the judgment of the insurer in determining whether or not to insure the risk and the premium that ought to be charged.
- (d) Section 54(1) of the insurance Act 2003 however provides that any information not specifically requested on the insurance policy form should be deemed to be immaterial

8.0 TUTOR MARKED ASSIGNMENT

Discuss the relevance of the principle of utmost good faith in insurance contracts

9.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 5

UNIT 4 PRINCIPLE OF SUBROGATION

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 MEANING OF SUBROGATION

4.0 SCOPE OF SUBROGATION

5.0 APPLICATION OF SUBROGATION

6.0 GIFTS

7.0 SALVAGE RULE

8.0 CONCLUSION

9.0 SUMMARY

10.0 TUTOR MARKED ASSIGNMENT

11.0 SUGGESTED FURTHER READING

MODULE 5

UNIT 4 PRINCIPLE OF SUBROGATION

1.0 INTRODUCTION

Subrogation in insurance parlance refers to the circumstances in which an insurance company tries to recoup expenses for a claim it paid out when another party should have been responsible for paying at least a portion of that claim. Subrogation entitles an insurer who has paid an insured in accordance with an insurance contract to stand in the place of the insured and exercise the insured's right and remedies in respect of the subject matter of the insurance.

2.0. OBJECTIVE

The objective of this unit is to acquaint students with the rights of the insurer and some of the remedies available to it to mitigate sums paid out under an insurance policy which includes the right of subrogation.

3.0 MEANING OF SUBROGATION

In *Castellain v Preston (1883) 11QBD 380* Brett L. J the principle of subrogation was analysed as:

*...to be applied merely for the purpose of preventing the assured from obtaining more than a full indemnity, the question is whether that doctrine as applied to insurance can in any way be limited... In order to apply the doctrine of subrogation, it seems to me that the full and absolute meaning of the word must be used. That is to say the insurer must be placed in the position of the Assured
...as between the underwriter and the Assured, the underwriter is entitled to every right of the Assured whether such right consists in contract fulfilled or unfulfilled or in remedy for tort capable of being insisted on or already insisted*

on or in any other right whether by way of condition or otherwise legal or equitable...

4.0 SCOPE OF SUBROGATION

The principle of subrogation is analogous to the principle of indemnity. It is to ensure that the insured does not receive more than the value of his loss. It is inapplicable to non indemnity insurance. It confers on the insurer who has indemnified the insured the right to step into the shoes of the insured which is the literal meaning of subrogation and in his name pursue any right of action available to the insured to diminish the loss insured against.

The right to subrogation arises only after the insurer has indemnified the insured against his loss. In *British India General Insurance Co. Ltd v Aihaji KaIla 1965 All NLR p 251*, the supreme court held that the right of subrogation does not arise until the insurance has admitted its liability to the assured and has paid him the amount of loss.

Where the insured has already recovered payment from the third party and is also indemnified by the insurer for the same loss, the insurer is entitled to recover from the insured what he received from the third party. In *Oloruntunde v Dandodo (1996) NWLR 117*, it was held that an insured who recovers money in an action for a loss for which he has already been indemnified by the insurers holds the money in trust for the insurers.

The insurers' subrogation right is however restricted to the amount actually paid to the insured, where for instance there happens to be a surplus after the insurers have recovered their money, the insured is entitled to keep it.

see Yorkshire Insurance Co v Nisbet Shipping Co (1962) 2QB 330

5.0 APPLICATION OF SUBROGATION

The insurer's right of subrogation accrues only when the insured has a right of action.

In *Simpson v Thomson* (1877) 3 App. Cas at 294 the insured owned two ships that collided due to the negligence of one the master. In order to compensate the parties involved, the insured was mandated to pay money into court in respect of the ship that was negligently sailed as compensation to the various parties involved. The insurers paid for the other ship and then claimed the right to use the insured's name as owner of the ship to claim against the fund. It was held that the insurers had no such right as it would be tantamount to the insured suing himself as both ship belonged to and were controlled by the same person.

6.0 GIFTS

Where the insurer has fully indemnified the insured and he receives money from other sources to mitigate the effect of the loss, he is accountable to his insurers for the amount received as gift.

In *Steam v Village Main Reef Gold Mining Co* (1905) 10 Corn. Cas 89. the South African Government commandeered the Defendant's uninsured Gold. The insurer paid the Defendant for a total loss. The Government then returned a sum of money to the insured in the return for his agreeing to keep the mine open. It was held that the insurers were entitled to recover the equivalent of that money because it has been given in order to diminish the insured's loss.

In contrast in *Bernard v Rodocanachi* (1882) 7 App. Cas 333 during the American Civil War, the insured ship was destroyed by a confederate cruiser. The insurers paid the agreed value. The insured

paid the agreed value. The insured subsequently received a gift from the United States Government.

The House of Lords held that as according to the constitution of the relevant statute authorizing the payment, the money was paid purely as a gift and intended to benefit the assured over and above any insurance money. The insurers were not entitled to claim it.

It is apparent from the above that the insurer will only be entitled to retain the money given to the insured as a gift only when it was intended as extra compensation for him

7.0 SALVAGE RULE

To ensure that an insured is not placed in a position better than he was before the occurrence of the risk insured against, the salvage rule evolved as an aspect of subrogation. Where an insured has been indemnified by the insurer, whatever salvage is left of the insured's property belongs to the insurer as an insured who has been indemnified cannot be allowed to benefit from the risk suffered by authorizing him to retain the salvage of his damaged property.

Subrogation essentially affords the insurer the privilege of suing in the name of the insured.

8.0 CONCLUSION

Subrogation is technical and as an equitable remedy, is subject to limitations applicable to such remedies. It is however a useful tool for ensuring that insurer is mitigated for the claim settled with the insured.

9.0 SUMMARY

- (a) Subrogation principally involves the insurer, insured and the third party responsible for the damage.

- (b) The principle of subrogation assist an insurer who has paid an insured in accordance with the insurance contract to place itself in the insured's position and exercise the insured's right and remedies to recoup its remedies. The insurer is only entitled to the sum actually paid to the insured.
- (c) Gift given to the insured to mitigate effect of the loss suffered are required to be disclosed to the insurer.
- (d) Under the salvage rule, whatever is left of the damaged property after the insurer has indemnified the insured against the loss belongs to the insurer

10.0 TUTOR MARKED ASSIGNMENT

Discuss the significance of the principle of subrogation in insurance contract

11.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 5

UNIT 5 PRINCIPLE OF CONTRIBUTION AND DOUBLE INSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 RIGHT OF THE INSURED TO DOUBLE INSURE

4.0 WHAT IS CONTRIBUTION

5.0 DOUBLE INSURANCE

6.0 LIMITATIONS

7.0 EXCEPTIONS

8.0 CONCLUSION

9.0 SUMMARY

10.0 TUTOR MARKED ASSIGNMENT

11.0 SUGGESTED FURTHER READING

MODULE 5

UNIT 5 PRINCIPLE OF CONTRIBUTION AND DOUBLE INSURANCE

1.0 INTRODUCTION

The principle of contribution and double insurance is only applicable to contracts of indemnity and operational between insurers. It regulates the benefits accruing to an insured who has taken out more than one insurance policy in respect of the same subject matter.

2.0. OBJECTIVE

The objective of this unit is to strike a balance between the insured's right to double insure and his obligation not to profit from the double insurance since an insurance contract is an indemnity transaction.

3.0 RIGHT OF THE INSURED TO DOUBLE INSURE

An insured is entitled to take out as many insurance policies as he deems fit in respect of the same risk. This is subject to the proviso that the insurer is estopped from obtaining double compensation from his insurers in respect of the same risk. Each insurer is expected to make a contribution to the payment of the compensation of the risk.

4.0 WHAT IS CONTRIBUTION?

Contribution is the right of the insurer to invite other insurers with which the insured had taken out a policy, to share or contribute to indemnify an insured for the occurrence of a risk that was insured against.

The condition precedent for a right of contribution to occur include:

- (a) The insurer must have taken out two or more policies from different insurers
- (b) The policy must be in respect of the same risk, the same subject matter and the same interest
- (c) The policies must be enforceable

5.0 DOUBLE INSURANCE:

A person who has double insured a risk has the prerogative to recover the total value of the loss from any of two insurers up to the amount of the policy. The insurer, who pays for the claim, can however claim contribution from the other insurers in proportion to the amount insured with each insurer provided the loss arose from a risk that is common to both policies and both were enforceable at the time the risk occurred.

6.0 LIMITATIONS

Where however an insurer inserts a limiting clause under its own policy the insured's right to claim from the insurer will be regulated by it. Where the policy is expressed to be "subject to average" and it does not cover the entire loss, the insured cannot recover the entire loss from the insurer.

Similarly, where it is stipulated in the policy that the insurer is not liable for more than a rateable proportion of the loss should there be any other insurance policy covering the risk, it will impede the ability of the insured to claim from one insurer in the event of suffering a loss.

In *North British and Mercantile Insurance Co v London, Liverpool and Globe Insurance Co (1877)* 5 ChD 569, limiting clause in insurance policy were explained as:

...where there are several policies and where there, in point of fact, is a double insurance, then in order to do away with the old practice

of the insured recovering the whole from one of the insurance offices, and then the one from whom it was recovered being put to obtain contribution from the others, this clause was put to say that the insurer should in the first instance proceed against the several insurance companies for the aliquot parts for which they are liable in consequence of that condition.

7.0 EXCEPTIONS

Where there are multiple beneficiaries and each insures the same risk with different insurers. In the event of the loss insured against occurring, they will all be able to claim in full the value of their respective policies. It is irrelevant that cumulatively, all their claims exceed the value of the subject matter insured. This is the exception to the rule of an insured making profit from double insurance.

8.0 CONCLUSION

The principles of insurance were established to ensure that both the insurer and the insured do not take advantage of each other to obtain a lopsided advantage. The designation of the breaches of some principles as void and others as voidable provide sufficient latitude for parties to an insurance contract to decide whether or not to honour their obligations under the transaction in the event of a breach of any of the terms of the contract

9.0 SUMMARY

1. The principle of contribution and double insurance is only applicable to contracts of indemnity.
2. It is to regulate the benefit accruable to individuals who have taken out more than one insurance policy to cover the same risk.
3. Where an insured has taken out more than one insurance policy to cover the same risk. Each insurer is expected to

make a contribution to indemnify the insured on the occurrence of the risk insured against.

4. A person has a prerogative as to whether or not to double insure a risk provided on the occurrence of the risk, he proceeds against one of the insurers for the entire sum or all the insurers provided cumulatively, he does not obtain more compensation than the total value of the loss suffered
5. contribution entitles an insurer to invite other insurers to contribute to the payment of the sum insured on the occurrence of the risk insured against. This is provided that the risks are similar and the policies are multiple and enforceable.

10.0 TUTOR MARKED ASSIGNMENT

Contribution and double insurance are designed to ensure that an insured does not profit from his loss. Analyse the veracity of this statement.

11.0 SUGGESTED FURTHER READING

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

MODULE 6 CLAIMS UNDER INSURANCE POLICY

UNIT 1 CLAIMS

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 WHAT IS AN INSURANCE CLAIM

4.0 ESTABLISHMENT OF CLAIM

5.0 FIRST PARTY INSURANCE CLAIMS

6.0 THIRD PARTY INSURANCE CLAIMS

7.0 OBLIGATIONS OF THE INSURER

8.0 OBLIGATIONS OF THE INSURED

9.0 CONCLUSION

10.0 SUMMARY

11.0 TUTOR MARKED ASSIGNMENT

12.0 SUGGESTED FURTHER READING

MODULE 6 CLAIMS UNDER INSURANCE POLICY

UNIT 1 CLAIMS

1.0 INTRODUCTION

In an insurance contract both the insurer and the insured have obligations. The primary obligation of the insured is to pay the agreed premium while the insurer is obligated to pay compensation to the insured on the occurrence of the risk insured against.

2.0. OBJECTIVE

The objective of this unit is to acquaint the students with the mode of establishing claims for the purpose of benefiting from an insurance coverage.

3.0 WHAT IS AN INSURANCE CLAIM

An insurance claim refers to a formal request to an insurance company demanding for payment to be made to the insured or beneficiary under an insurance policy.

4.0 ESTABLISHMENT OF CLAIM

Claiming for loss under an insurance policy is subject to the insured establishing the following:

- (a) The assured must prove that the loss or damage was caused by the operation of general risk insured against
- (b) If the general risk is qualified by the exception of specific risks, which but for the exception would fall within the general risk and some part risk is left unqualified, the burden is on the insurer to prove facts which bring the case within exception relied on.
- (c) If there is a qualification of the general risk which covers its whole scope so that there is no unqualified risk left, the burden is on the insured to prove facts which bring the case within the general risk as qualified.

- (d) Whether a qualification of the general risk is in the nature of an exception or a qualification of the whole risk, is in every case a question of construction of the policy as a whole;
- (e) In construing a policy, it must be borne in mind that a general risk with exception can generally be turned by an alteration of phraseology into a general risk with a qualification covering its whole scope.

See Yadis (Nig) Ltd v Great Nig Ins. Co. Ltd (2001) 11 NWLR (PT 725) p.529

5.0 FIRST PARTY INSURANCE CLAIMS

Where an insured is claiming for loss suffered by him solely, he cannot recover on the policy if the loss was caused by his deliberate act or omission.

In Geismar v Sun Alliance and London Insurance (1977) 2 Lloyd's Rep. 62 the insured smuggled certain items of jewellery into Britain without declaring them and avoiding the excise duty on them. They were held liable to forfeiture. They were among items subsequently insured with the Defendant. When the jewellery was stolen, it was held that the insured could not claim on the insurance as it would amount to aiding the insured to benefit from a criminal act

Where a person murders an insured life to claim benefits from an insurance policy, he will be estopped from benefiting from the policy.

In Beresford v Royal Insurance Co (1938) AC 586. An insured deliberately took his own life, which constitutes a crime. The House of Lords held that the representative of the insured could not claim

on the policy because it would be tantamount to his benefiting from the criminal Act of the insured.

6.0 THIRD PARTY INSURANCE CLAIMS

Where the insurance policy involves third parties as applicable to first party insurance, any intentional commission of a crime against the third party for which the insured is liable in tort will not be covered by the insurer. This would amount to aiding the insured to benefit from his wrong.

In *Haseldine v Hosken* (1933) 1 K.B 822 Scrutton L.J observed that:

It is clearly contrary to public policy to insure against the commission of an act, knowing that act is being committed, which is a crime, although the person committing it may not at the time know it to be so.

7.0 OBLIGATIONS OF THE INSURER

In the absence of any illegality or criminal conduct, insurers are encouraged and often mandated to settle claims from the insured promptly.

Section 8 (e) of the Insurance Act 2003 provides that where a judgment obtained from a court of competent jurisdiction in Nigeria against the insurer remains unsatisfied for 90 days and there is no appeal pending against the judgement, the insurer's registration is susceptible to being cancelled

Section 69 (1) provides that where -

- (a) Civil proceedings are taken in court in respect of any claim relating to any risk required to be insured against under this or any other law and
- (b) a judgment is obtained against the person insured, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy.

the insurer shall, subject to this section pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest sum) not later than 30 days from the date of delivery of the judgment.

8.0 OBLIGATIONS OF THE INSURED

To successfully sustain a claim under an insurance policy, the insured must comply with the stipulated conditions in the policy. The insurer does not become liable until the conditions are complied with.

In *Royal Exchange Assurance Nigeria Ltd v Chukwura (1976) 10 NSCC 513*, The Respondent took out a comprehensive insurance policy with the Appellant. It was a condition of the policy that the insured car would not be driven by a person licensed for less than a year full licence to drive. At the time of the accident, the Respondent's driver's licence was a month and two days old. The court held that the condition was a basic and fundamental term and the breach of it entitled the Appellant to repudiate liability.

9.0 CONCLUSION

Successfully claiming under an insurance policy is the essence of risk coverage. To avoid eroding the basis of insurance both the duties and obligations of the insurer and insured must be expressly defined and on the occurrence of the risk, they must ensure that obligations are discharged within a reasonable time and claimants are not frustrated in the process.

10.0 SUMMARY

1. A claim is a formal request to an insurance company asking for payment premised on the terms of an insurance policy.
2. In a claim under an insurance policy, both the insurer and the insured. The duty of the insured is to pay the agreed premium

while the insurer is obligated to restore the insured as much as possible to his status *quo* before the occurrence of the risk suffered.

3. where the insured suffers a loss solely attributable to his deliberate act or omission he will not be eligible to claim under the policy see Any intentional commission of crime against a third party for which the insured is liable with exempt the insurer from liability as this would be aiding the insured to benefit from his wrong.
4. Insurers are mandated to settle claims promptly.
5. The insurer does not become liable under a claim until the conditions stipulated in the policy are complied with.

11.0 TUTOR MARKED ASSIGNMENT

- (1) How are claims established under an insurance policy?
- (2) Distinguish the obligations of an insurer from those of an insured under an insurance policy.

12.0 SUGGESTED FURTHER READING

Yerokun O. Insurance Law in Nigeria (Lagos: NRPP, 1992)

Irukwu J. O. Insurance Law and Principles in Nigeria (Ibadan: Heinemann, 1991)

Ekpu A. O and Tonwe S.O The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)

MODULE 6 CLAIMS UNDER INSURANCE POLICY

UNIT 2 INSURANCE CLAIMS PROCEDURE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 NECESSITY FOR PROCEDURAL COMPLIANCE

4.0 THIRD PARTY CLAIMS PROCEDURE

5.0 TIME LIMIT TO SETTLEMENT OF CLAIMS

6.0 ARBITRATION

7.0 CONCLUSION

8.0 SUMMARY

9.0 TUTOR MARKED ASSIGNMENT

10.0 POINTS OF ANSWER

11.0 SUGGESTED FURTHER READING

MODULE 6 CLAIMS UNDER INSURANCE POLICY

UNIT 2 INSURANCE CLAIMS PROCEDURE

1.0 INTRODUCTION

Where procedures are stipulated for making claims under an insurance policy, non compliance is fatal to the insured's claim. The procedure for instituting a claim on an insurer in respect of a policy is usually commenced by notification of the loss or damage. Where the policy is a third party policy, notice is required to be given to the insurer of any event that is likely to give rise to a claim against the insured in addition to an actual claim.

2.0. OBJECTIVE

The objective of this unit is to impress on the students that procedural regulations have to be complied with as they are the bedrock or foundation of any claim in insurance contracts.

3.0 NECESSITY FOR PROCEDURAL COMPLIANCE

Section 69 (2) of the Insurance Act 2003 provides that no sum shall be payable by an insurer under the Act in respect of any judgement unless before or within seven days after the commencement of the proceeding in which the judgment was given, the insurer has notice of the bringing of the proceedings.

In *Tabs Ass. Co Ltd v Oyebola* (2001) 3 NWLR (PT 701) 428 the requirement of notice under the insurance Act is a condition precedent which must be complied with to confer validity on the claim of the insured.

Where a condition precedent is clear and unambiguous, non compliance due to inadvertence is inexcusable and renders the insurance contract voidable.

In *Case! v Lancashire and Yorkshire Accident Insurance Company (1953) 2 Lloyd's Rep. 355*, where an accident policy stipulated that notice be given within 14 days a notice given by the insured eight months after the accident was held to be invalid and it extinguished the insurer's liability.

4.0 THIRD PARTY CLAIMS PROCEDURE

A third party who is entitled to claim against an insured in respect of a risk insured against is expected to join the insurer of the risk provided before bringing the application for joinder. The third party gives the insurer at least 30 days notice of the pending suit and his intention to bring an application for joinder. This is the only way the court can be conferred with jurisdiction to entertain the claim.

See the cases of *Liberty Ins. Co Ltd v John (1996) 1 NWLR (PT 43) 192* and *Aliyu v Aturu (1999) 7 NWLR (PT 612) 536* where the court held that non compliance with the third party 30 day notice required to be given to the insurer was fatal to the application to join the insurer as a party in a suit against the insured.

Where notice is mandated to be given, such notice unless a contrary intention is expressed in the policy the notice is usually served at the head office of the insurance company.

5.0 TIME LIMIT TO SETTLEMENT OF CLAIMS

To ensure there is no unreasonable delay in the settlement of claims, section 70 (1) of the insurance Act provides that where a claim is made in writing by the insured or any other party or beneficiary under an insurance policy the insurer is mandated where he accepts liability, to settle the claim not later than 90 days after the insurance of discharge voucher. Where any claim remains unpaid, the insured may request the commission to effect the payment from the statutory deposit or the insurer and commission

is empowered to effect such payment. Where however the insurer does not accept liability, it is mandated to deliver a statement in writing stating the reason for disclaiming such liability to the person making the claim or his authorized representative not later than 90 days from the date on which the person delivered the claim to the insurer.

Any insurer who contravenes the provision of section 70(2) commits an offence and on conviction is liable to a fine of N500,000.00 (five hundred thousand naira)

6.0 ARBITRATION

Some insurance policies provide for arbitration clauses which require the insurer and insured to refer disputes relating to claims under the policy to arbitration before instituting proceedings in court. This is to save the time, expense and negative exposure of litigation.

In *Scott v Avery (1857) 5 H.L.C 810* the court held that arbitration clauses are enforceable so long as they address issues of liability of parties and do not purport to oust the jurisdiction of the court.

In *African Insurance Development Corporation v Nigerian Liquefied Natural Gas Ltd (2000) 4 NWLR (PT 653) 494* the Supreme court held that an arbitration clause in an agreement constitutes a defence to any proceeding brought before the making of an award.

7.0 CONCLUSION

For the purpose of avoiding controversy, most insurance policies stipulate the procedure for making claims on the occurrence of the risk insured against. Compliance with procedural regulations is therefore mandatory for settlement of claims against the insured.

8.0 SUMMARY

(a) Under the insurance claims procedure, claims in respect of a policy are expected to be communicated to the insurer. Section 69(2)

of the insurance Act 2003 provides for seven days notice within the institution of the claim in respect of which the judgment was given.

(b) A third party wishing to institute a claim against an insured in respect of a risk insured against is mandated to join the insurance company to enable the court exercise jurisdiction over the matter

(c) The time limit within which an insurer is to settle a claim arising from an insurance policy is 90 days and section 70(1) of the insurance Act provides that where the insurer does not accept to settle a claim, it is expected to communicate its constraints to the claimant within 90 days.

(d) Where an insurance policy provides for an arbitration clause, parties to an insurance contract are mandated to submit to arbitration before instituting legal proceedings to enforce their claim under the policy

(e) Most insurance policies have arbitration clauses inserted due to the time and expense of litigation and the adverse publicity often generated.

9.0 TUTOR MARKED ASSIGNMENT

Laide's Motor vehicle insurance policy stipulated that, notification of accident was to be given not later than 7 days after the accident. Laide's car was involved in an accident and due to the injury sustained in the accident; the insurance company could not be notified of the accident until 8 months after the accident. Assess the liability of the insurance company.

10.0 POINTS OF ANSWER

- * Student are expected to comment on the procedure for settling insurance claims

- * Where procedures are stipulated for making claims under an insurance contract, non compliance renders the transaction voidable

- * The 7 days notice stipulated for notification of accident is a condition precedent to the validity of the insurance claims
 - Tabs Ass Co Ltd v Oyebola
 - Casel v Lancashire
- * Laide's claim is voidable for non compliance with the 7 days notification stipulated in the insurance policy

11.0 SUGGESTED FURTHER READING.

Agomo C.K. Modern Nigerian Law of Insurance (Lagos: University of Lagos Press, 2003)

Yerokun . 0 Insurance Law in Nigeria (Lagos: NRPP, 1992)

Birds J Birds Modern Insurance Law (London : Sweet & Maxwell, 2007)

MODULE 6 CLAIMS UNDER INSURANCE POLICY

UNIT 3 FRAUDULENT CLAIMS

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 WHAT IS INSURANCE FRAUD

4.0 CLASSIFICATION OF INSURANCE FRAUD

4.1 SOFT FRAUD

4.2 HARD FRAUD

5.0 CONCLUSION

6.0 SUMMARY

7.0 TUTOR MARKED ASSIGNMENT

8.0 SUGGESTED FURTHER READING

MODULE 6 CLAIMS UNDER INSURANCE POLICY

UNIT 3 FRAUDULENT CLAIMS

1.0 INTRODUCTION

Insurers are mandated to observe fair settlement practices and shun deceptive or unfair practices. When handling claims from the insured, insurance companies cannot deliberately misrepresent policy provisions when a beneficiary is making a claim nor alter the provisions of an insurance policy without notifying the insured. Insurance companies are obligated to acknowledge and treat claims promptly.

2.0. OBJECTIVE

The objective of this unit is to impress on the students the need to shun fraud and fraudulent misstatements in insurance contracts as it is one of utmost good faith both the insurer and insured are mandated to act bonafide as any taint of fraud renders the insurance transaction susceptible to be voided.

3.0 WHAT IS INSURANCE FRAUD

Insurance fraud embraces any act committed by the insured with the intent of fraudulently obtaining financial profit from an insurer. The most common form of insurance fraud is over insurance which inflates the actual value of the property and increases the chance of the insured to willfully damage his property to obtain insurance benefit and making false claims to look like ordinary claims. This enables fraudsters file claims for damages that never occurred. Inflation of losses is also a common insurance fraud.

4.0 CLASSIFICATION OF INSURANCE FRAUD

There are two classes of fraud. It is either hard fraud or soft fraud.

4.1 SOFT FRAUD

Soft fraud is far more common than hard fraud and consists of an insured exaggerating the extent of the risk or damage suffered or concealing or misrepresenting some pre-existing conditions relating to the subject matter to obtain a good bargain in respect of the premium payable on the insurance policy. It is also referred to as opportunistic fraud.

4.2 HARD FRAUD

Hard fraud refers to the staging or planning of a risk or loss to obtain payment from the insurers e.g. deliberately setting fire to an insured property or crashing a car covered by an insurance policy to claim from the insurer.

In *Central Bank of India v Guardian Assurance Company (1936) 54 LLLR 247* where a claim figure was inflated almost hundred times the actual value of the goods destroyed, the court held that the claim was unsustainable because it was fraudulent.

Commenting on the proliferation of fraudulent claims in *Galloway v Guardian Royal Assurance (UK) Ltd (2000) Lloyd's Rep. I.R 209* Miller L.J stated:

The making of dishonest claims has become all too common. There seems to be a widespread belief that insurance companies are fair game and that defrauding them is not morally reprehensive.

However, a simple promise by the insurer to pay is not binding unless the insurer is legally liable where a payment has been erroneously made by an insurance company. It is recoverable where the payment was based on a fraudulent claim or mistake.

In *Kelly v Solar! (1841) 9 M & W 54* where a life policy provided for the quarterly payment of premiums and that in default the policy would lapse on the death of the life insured, one premium had not been paid and the insurer paid the widow the sum insured in ignorance or forgetfulness of the term, the court held the insurers were entitled to recover in spite of its carelessness

In the course of the settlement of claim, the insurer and the insured may enter into a contract of compromise

In *Holmes v Payne (1950) 2 K B 301*. jewellery was lost and replaced by an underwriter with jewelry of a similar value.

5.0 CONCLUSION

To ensure that fraudsters do not perpetrate fraud through the purchase of insurance policies, procedures are laid down for making such claims. It ensures that the insured does not contrive a risk to enable him cash in on his insurance cover or obtain insurance cover and benefit from an illegal transaction.

6.0 SUMMARY

- (a) An insured cannot sustain a claim where the loss is deliberate or contrived to obtain a benefit under the insurance policy
- (b) Where the insurance policy involves third parties, any intentional commission of a crime against the third party will void the insurance contract.
- (c) Fraudulent claims are incapable of been sustained under an insurance contract as they are void and unenforceable. Money paid out under a fraudulent claim is liable to be reclaimed by the insurer.
- (d) There are two classes of insurance fraud, they are soft fraud and hard fraud
- (e) In the course of the settlement of claim the insurer and the insured may enter a contract of compromise

- (f) Fraudulent insurance claims is a common occurrence
- (g) To ensure fraudsters do not perpetrate fraud through the purchase of insurance policies, procedures are laid down for making such claims

7.0 TUTOR MARKED ASSIGNMENT

Analyse the implication of fraud on insurance transactions.

8.0 SUGGESTED FURTHER READING.

Agomo C.K. Modern Nigerian Law of Insurance (Lagos: University of Lagos Press, 2003)

Yerokun . O Insurance Law in Nigeria (Lagos: NRPP, 1992)

Birds J Birds Modern Insurance Law (London : Sweet & Maxwell, 2007)

MODULE 7

REINSURANCE

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 NATURE OF REINSURANCE

3.1 FACULTATIVE REINSURANCE

3.2 TREATY REINSURANCE

4.0 REINSURANCE CONTRACT

5.0 CONCLUSION

6.0 SUMMARY

7.0 TUTOR MARKED ASSIGNMENT

8.0 SUGGESTED FURTHER READING

MODULE 7

REINSURANCE

1.0 INTRODUCTION

The term re-insurance is used to designate insurance that is purchased by an insurance company (insurer) from another insurance company (re-insurer) as a means of risk management to transfer risk from the insurer to the re-insurer. The re-insurer and the insurer enter into a reinsurance agreement which stipulates the conditions upon which the reinsurer would pay the insurer's losses. A reinsurance premium is paid by the insurer to the reinsurer.

2.0. OBJECTIVE

The objective of this module is to expose students to the concept of re-insurance and its necessity in insurance transaction.

3.0 NATURE OF REINSURANCE

There are two basic method of re-insurance and they are discussed below.

3.1(A) FACULTATIVE REINSURANCE:

The reinsuring company and the reinsurer assume all or part of the risk assumed by a specific policy. In facultative re-insurance, each insurance contract is negotiated separately and reinsured. Facultative reinsurance is normally purchased by insuring companies for individual risks not covered by their reinsurance treaties for amounts in excess of the monetary limits of their reinsurance treaties and for unusual risks.

3.2 (B)TREATY REINSURANCE:

The insurer and the re-insurer formulate and execute a reinsurance contract. The reinsurer then provides the requisite insurance cover for all the policies under the contract.

The primary function of reinsurance is to reduce the exposure to loss of insurance by passing their exposure to loss to a reinsurer or a group of reinsurers. It diversifies the risk factor in insurance business.

Reinsurance companies also engage in reinsuring the risk they cover by purchasing reinsurance policies. The practice is known as "retrocession" "The reinsurance company that provides reinsurance cover is a "retrocessionaire" while the purchaser of the reinsurance is referred to as "retrocedent"

4.0 REINSURANCE CONTRACT

Reinsurance and insurance contracts are identical with very slight variations

Reinsurance contracts are contracts of indemnity. It is irrelevant if the original contract is not a contract of indemnity. The general principles regulating contracts of indemnity are applicable to reinsurance policies

The reinsurer is obligated to discuss all material facts to the insurer. The scope of disclosure required depends on what would influence a prudent insurer in determining the premium chargeable to provide cover for a particular risk.

Reinsurance policy is deemed to incorporate the terms stipulated in the original policy.

Where terms contained in the original contract are impracticable in the reinsurance policy, they will not be applicable to the reinsurance agreement.

In *Home Insurance Company of New York v Victoria Montreal Fire Insurance Company* (1907) AC 59 A fire insurance policy provided

that no suit should be commenced after 12 months of the occurrence of the fire. The court held that the limitation on time was inapplicable to the reinsurance contract. This was premised on the fact that a reinsurer cannot claim under a reinsurance policy until the extent of the loss is ascertained. This can only be determined from the outcome of the claim between the insurer and insured.

The insurer is obligated to and bound by reasonable clause which is made in good faith in respect of legal liability arising from the insurance policy.

In *Western Assurance Company of Toronto v Poole* (1903) 1 K.B 376 a ship was insured with the plaintiff against actual total or constructive total loss only. When the ship suffered a partial loss, the Plaintiff paid the original insured as if it was total loss. The reinsurers denied liability. The court held that the re-insurer was not liable

5.0 CONCLUSION

The terms that dictate the extent to which the reinsurance contract incorporates the terms of the underlying contract depends on whether or not the insurer was strictly liable under the original insurance contract

6.0 SUMMARY

- (a) Reinsurance is the purchase of an insured risk from an insurance company by another insurance company (reinsurer)
- (b) The primary function of reinsurance is to reduce the risk exposure of an insurance company
- (c) Reinsurance diversifies the risk factor in insurance business.
- (d) There are two types of reinsurance they are treaty reinsurance or facultative reinsurance.
- (e) Reinsurance contracts are contracts of indemnity and bound by the terms and conditions that bind contracts of indemnity.

7.0 TUTOR MARKED ASSIGNMENT

State the functions of reinsurance contracts.

8.0 SUGGESTED FURTHER READING

Bird's Modern Insurance Law (London: Sweet & Maxwell, 2007)

A. O. Ekpu and S.O Tonwe The Law and Practice of Insurance in Nigeria (Lagos: Amfitop 1999)