***Need of Insurable Interest in insurance contract***

For the contract of insurance to be valid it is not only necessary that the parties to the contract are

Competent to contract, it is made with free consent and the consideration is lawful, beside all this it is also necessary that the insured has insurable interest on the subject matter of the insurance. If there will be no insurable interest then contract will amount to wager. Insurable interest in broad term means that the party to the insurance contract who is insured or policyholder must have a particular relationship with subject matter of the insurance, whether that is a life or property. The concept of insurable interest is of particular importance in marine and life insurance.

The definition of insurable interest has been continuously expanding. the most commonly quoted definition of insurable interest is that of Lawrence J, in Lucena v Craufurd, in which it was said that “A man is interested in a thing to whom advantage may arise or prejudice may happen, from the circumstances which may attend it…to be interested in the preservation of a thing, is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction”

Broadly it could be said that a person has an insurable interest in something when loss or damage to it will cause that person to suffer a financial loss or some other kind of losses. For example, if the car you own meets with an accident, you have to incur costs to repair the car before you can pay it again or you have to sell it in scrap and be content with getting too small a sum in return to replace your car. Here, you suffer a financial loss and, hence, have a strong reason to insure your car. If the accident happens with a car not owned by you, you do not suffer any financial loss. You do not have a reason to insure such a car. If a 'reason' exists, you are said to have an insurable interest in the subject of insurance.

The governing principle is that the interest must be an enforceable one. The mere hope of acquiring is not enough. it has been said that party has interest in an event if he will gain advantage if it happens and suffer a loss if it does not happen. But the advantage or loss must depend upon some right, whether contractual or proprietary, legal or equitable, which is enforceable in court of law. Although the insurable interest has to be enforceable by law, the enforceability is not the sole criterion, howsoever strong it might be.

A husband who is living with his wife has an insurable interest in her property, for he is by law entitled to share her enjoyment in it, and she, no doubt, has a similar insurable interest in his property as their rights and duties are largely reciprocal. On the same principle a shareholder has no insurable interest in the assets of the company. While the sole shareholder in one man company will suffer a certain detriment in the event of loss of company’s property, he has no insurable interest in it even if he is in possession of it, as his possession is not coupled with any legal right to enjoy the use of property, and in his capacity as a creditor he is merely unsecured creditor of the company.

Mere probability of detriment is not enough, and one cannot insure a thing merely because there is a chance that some collateral benefit may arise should it not be lost. A shareholder can however insure his own share, in which he has a insurable interest, against loss suffered owing to the failure of an adventure in which the company is engaged, and in Wilson v Jonesthe adventure of laying down a submarine cable was insured by shareholder in that way.

Thus a personal accident policy may be effected by the assured against the loss which he may suffer by reason of an accident to a third party. To render such an insurance valid assured must have an insurable interest in such person’s safety, and this interest must be of pecuniary nature. A son, therefore, whose father is a pauper and dependent on him, has not a sufficient insurable interest to support an insurance upon his father against personal accident.

**Wager and insurance**

In a contract of wager all the parties does not have any interest in happening of the event other than the sum or stake him will win or lose. This is what marks the difference between a wagering agreement and a contract of insurance because every contract of insurance requires for its validity the insurable interest. Insurance affected without insurable interest is no more than a wagering agreement and therefore void. "Insurable interest" means the risk of lose to which the assured is likely to be exposed by the happening of the event assured against. In a wager on the other hand neither party is running any risk of loss except that which is created by the agreement between two or more than two parties.

We all also know that wagering is illegal in India and against to the norms of society or in short wagering is against public policy and distinction between a insurance and a wager is this a insurance is properly speaking a contract to indemnify the insured in respect of some interest which he has against perils which he contemplates it will be liable to.

In case of **Alamani v. Positive Govt Security Life Insurance Co** the plaintiffs husband took a policy of insurance on the life of Mehbub Bi, the wife of a clerk working under him and about a week later got the policy assigned in the favour of the plaintiff, Mehbub Bi died a month later and the plaintiff as assignee claimed the sum assured and in this case court find that there was no insurable interest present in this case and hence this insurance contract held to be contract of wager and held to be void.

**Types of insurable interest**

There are basically two types of insurable interest (1) Contractual (2) Statutory. Insurable interest is of two types – Contractual and Statutory. Where an insurance contract requires the existence of an insurable interest for effecting the policy, such interest is known as Contractual insurable interest while an insurable interest mandated by a particular statute dealing on insurance is known as Contractual insurable interest. It is noteworthy that neither the British Life Assurance Act, 1774 nor the Insurance Act, 1938 of India defines the term insurable interest. As we have seen in some cases that interest in the subject matter of insurance is required by law itself for the validity of the policy, whether by express statutory law as in the Marine Insurance Act 1906 or as by section 30 of the Indian Contract Act which merely declares that all contracts by way of wager is void. This is the interest required by statue or the statutory shareholder. If this agent is absent, the insurance is illegal or void and no agreement between the parties dispensing with this requirement can be effective. In an action upon such a contract if the insurer does not raise the plea of want of interest nevertheless the court of its own motion may refuse to enforce the contract.

Let's take a case law in detail that will clear the picture of the difference between these two kinds of insurable interest in the case of Macaura v Northern Assurance Company one macaura insured timber in his estate against fire. He sold timber to a company of which he was the sole substantial shareholder. Thereafter most of the timber was destroyed by fire and he demanded that he should be indemnified. The insurer succeeded in refusing to comply with the demand. The insured had no statutory interest in the assets of the company though too he would suffer loss on the company losing its property, nor he had any contractual interest under the policy because he could not prove interest at the time of the loss. Though the insured had no statutory interest the policy was held to be not a wagering contract because even being the sole shareholder he had a interest or better call insurable interest in the property.

**Time or duration of insurable interest**

The time when the insurable interest must be present varies with the nature of the insurance contracts. The question is whether insurable interest should exist at the time when the contract is formed or should it also continue to exist until it is discharged but as we have seen in life insurance the presence of insurable interest is necessary at the commencement of the policy although it is not necessary afterwards, not even at the time of occurrence of risk. So it should be there in life policies at the time of taking the policy it need not exist at the time when the lose take place or even when the claim is made under the policy. Life insurance contracts are not strictly speaking contracts of indemnity.

In fire insurance it's required both at the commencement of the policy and at the time when the risk occurs. In a sense, therefore it may be said that insurable interest is doubly insisted upon in fire insurance. The insurance interest is necessary at both the times because it is treated as a personal contract and also a contract of indemnity. And even the onus that the fire was intentional is on the insure not on insured. In a marine insurance contract the presence of insurable interest is necessary only at the time of the loss. It is immaterial whether he has or does not have any insurable interest at the time when the marine insurance policy was taken.

**Insurable Interest in life**

In order to effect a life insurance contract, it is necessary that the person, who is privy to the contract, should have an insurable interest in the life of the person, for whom the policy is being taken. Although it is difficult to lay down in a precise manner as to what would constitute insurable interest in a life insurance contract, yet it is a well settled principle of law that there has to be an insurable interest attached to a life insurance contract. It is opposed to public policy to allow a person, who has no interest in the life of another person, to take an insurance policy in the name of the latter. In England, insurable interest is mandated by the Life Assurance Act, 1774 while in America and in India; it is required as a matter of public policy.

Every man is presumed to have an interest in his own life and he is not required to show at any point that he had some particular interest in the continuation of his life. In Wainwright v Bland an executor, suing on a policy affected by his testator on two years of his life was not required to show any significant reason for making insurance for such a limited time period. As regard spouses are concerned, it is generally believed and accepted that a wife has an insurable interest in the life of her husband and vice versa. Lord Kenyon CJ declared that “…it must be presumed that every wife had interest in the life of her husband…”and it is not necessary for her to prove that she had an insurable interest only because a large sum of money would go from her husband’s estate to another, upon his death.

As far as children are concerned, in England, the rule, which was recognised in the case of **Halford v Khymer,** is that a parent has no insurable interest in the life of his child as mere love and affection is not sufficient to constitute insurable interest. Similarly a child does not have an insurable interest in the life of his parent provided he is not dependent on the latter. Therefore, under English law, insurable interest is limited to statutory insurable interest.

**The Insurance Act, 1938 of India** does not contain any provision which explains the concept of insurable interest. In the absence of any statutory explanation, courts take recourse to the English and American decisions which are in conformity with the prevailing currents of social, economic and religious thought in the society. Thus in India too, apart from husband, wife or any other close relative, any person, who has a legal right to derive maintenance from a person, can take a life insurance policy on the life of the latter without any proof of insurable interest.

Another set of relations which acquire insurable interest for affecting a life insurance, are relations which originate from contractual transactions. Therefore a creditor has an insurable interest in the life of the debtor to the extent of his interest and where the debt has been guaranteed by a surety, then on the life of the surety too. In Powell v Dewy it was held that a partner of a firm has no insurable interest in the life of the other partner, except when the latter is indebted to him personally and only to the extent of such indebtedness.

**Insurable interest in Goods**

Insurable interest is not confined to legal ownership only. The legal liability of common carriers to make good the loss or damage to the goods in transit to the bailor of goods is also an insurable interest A person with a limited interest in a property may insure recover his interest only or so as to cover the interest of others as well who are interested in 'the prop­erty. For instance, a carrier or bailee may insure to cover his own loss or personal liability to the owner of the goods or up to the full value of the goods entrusted to him which includes the owner’s interest as well. What interest the assured in­tended to coyer under the policy must be determined by construction of the policy itself. Thus, where the subject-matter of the insurance is described as 'Goods his own, in trust or on commission' the intention is to insure beyond his own per­sonal interest and he will be entitled to recover the full value of the goods in case of loss.

Where it is described as 'goods held in trust for which they are responsible' by the assured wholesalers who purchased and resold parcels of tea, etc., lying in bonded warehouses and had sold and received the value of some chests of tea before a fire broke out and damaged them, it was held that the words goods for which they were responsible showed that they did not~ intend to cover the pro­prietary interest of other persons in the goods insured.

Where it is described by the commercial trustee, i.e., a bailee to whom goods are entrusted for safe keeping as an insurance ''on goods', it would not cover the interests of others in the property. It will cover his personal insurable interest in the goods including his lien and his liability to the owner of the goods arising from his responsibility for their safety as a person entrusted with the goods.

A person without any interest at all can insure as trustee for the person having interest, provided interest in such insurance is not required by statute He will then have to hold the claim amounts received as trustee for the interested person. This is under the principle that a party to a contract can constitute himself a trustee for a third party of rights under a contract and thus confer rights on the third party.

**Marine insurance contract and insurable interest**

Insurable interest is a special requirement of the marine insurance contract and any valid contract of marine insurance can be entered onto by person only if he has insurable interest in the marine adventure. A marine insurance contract is one in which the insurer promises to indemnify the insured against any loss to the insured subject matter, be it a ship or the cargo, arising out of the perils of the sea, subject to the conditions and the extent of the policy. Every person who has an interest in a marine adventure has an insurable interest and a person is said to be interested in a marine adventure if he stands in such a relationship with the thing insured that upon its destruction, he may incur liability or suffer a loss, on it.

It is important for insurable interest that (1) there should be a physical object which is exposed to the marine perils and (2) the assured must have some legally recognized relationship with that object in consequences of which he benefits by its preservation and is prejudiced by its loss or damage. Insurable interest, in a marine policy, must exist at the time of the loss though it is not necessary that it should be in existence at the time of effecting the policy. The policy will be considered valid if the insured insures the subject matter without being interested in it, at the time of effecting the policy and if he acquires an interest in it after it has been lost, he can recover under the policy.

A marine policy, just like a fire policy, is a personal contract and hence, the insurable interest of the insured in the subject matter continues till the time he is in actual possession of it. If he has transferred the title in the subject matter to another person, through an agreement to that effect, he ceases to have any interest in it and the policy will also come to an end. So long as the seller of a ship or of the goods retains any interest in the property, he can insure it to the extent of his interest.46 In Reed v Cole it was held that where the owner of a ship has sold her under a contract which requires him to pay the buyer a certain sum of money should a loss happen within a particular period of time, the owner has an insurable interest to the extent of such a sum.

**Illustrative Cases**
In case of **Graffith v Flemming**, Griffith and his wife each signed a proposal form for a joint life policy on their lives for £500 and both contributed towards the premium. After the policy was taken, the wife committed suicide and the husband claimed the sum assured. The insurer alIeged that at the time of taking the policy the husband had no insurable interest in his wife's life as required by the Life Assurance Act, 1774. Decreeing the claim vaughan Williams L.J. held that 4the husband has an interest in his wife's life which ought to be presumed and that “it is unnecessary to go into the evidence to show any pecuniary interest of the husband…”

In case of **Monarch v Water Fire and Life**, plaintiffs, merchants and ware housemen had goods of third persons deposited in their ware­house in the way of their trade as warehousemen. They had taken floating poli­cies against fire with the defendants 'on goods the property of the assured or held by them in trust or on commission'. Some goods were destroyed by fire and they claimed their full value and not limited to their lien on the goods to the extent of their charges for warehousing, landing and cartage. The insurers contended that plaintiffs had no insurable interest in the goods. It was held that the words in trust' meant goods of customers which the assured held and not merely goods of which they might be trustees in the strict legal" sense, that the insured must make good the value of the whole of the goods destroyed which the plaintiffs must apply to cover their own interest and for the balance they will be trustees for the owners of the goods.

In case of **North British and Merchantile Insurance Co. v Moffat**, the assured were wholesale tea merchants who purchased and resold parcels of tea lying in bonded warehouses where they had been deposited by the importer. They took out two insurances to cover 'merchandise (jute; petroleurn and its products excepted), the assured own, in trust or on cornrnission For which they are responsible…..’ at certain wharves described in the policies. fire occurred at one of these warehouses and certain chests of tea were damaged. The assured claimed to be paid the full Value of the chests of tea destroyed. It was found that some of the teas had been resold by the assured before the fire occurred and that the purchase money had been paid. Consequently, the assured had no longer any responsibility to the purchasers in respect of that part of the tea destroyed and they were not covered by the policy.

In case of **Tomlinson v Hepburn**, plaintiffs who were road hauliers and carriers, insured tobacco and cigarette consignments which they had contracted to carry to the~"customer's depot by a Lloyd's 'Goods in Transit\* Policy, with the defendant who was an underwriter. This they did as they were required by their contract with the tobacco owners to 'insure and keep insured with a full comprehensive cover against loss of goods in transit or other­wise. The policy insured the goods in transit..;., including loading and unloading' against all risks' of loss or damage however arising'. Before the goods could be unloaded at the owner's depot, the lorries and the tobacco were stolen without plaintiffs fault. Plaintiffs claimed the value of the goods under the policy. The insurer resisted on the ground that the policy did not cover the owner's interest but only the carriers interest in respect of their negligence. In appeal the House of Lords said that (1) this was a policy on goods and not merely in respect of the carriers negligence, and (2) the earners had an insurable interest in the goods the value of which was recoverable under the policy, but that (3) the carrier must account to the owners for their share of the loss after deducting what was due to them as carriers.

**Conclusion**
To prevent gambling insurable interest is necessary. If insurable interest is not required, the contract would be gambling contract and would be against public interest. For example you can insure the property of another and hope for an early loss. One can similarly insure the life of another person and hope for an early death. These contracts would be gambling contracts and would be against public interest and public policy and so need to be checked and stopped.

If insurable interest is not required, a dishonest person could purchase a property's insurance belonging to someone else and then deliberately cause a loss to receive the proceeds; but if the insured stands to lose financially nothing is gained by causing the loss. Thus moral hazard is reduced. In life insurance, insurable interest requirement reduces the incentive to murder the insured for the purpose of collecting policy claim or anyone can set fire his home to claim the fire insurance claim or one can kill any third person insured by him.

The concept is also important to measure the amount of the insured's loss in property insured. Most of the property insurance is contracts of indemnity and the measure of recovery is the insurable interest of the insured. In the event of loss, payment cannot exceed the amount of one's insurable interest as the principle of indemnity shall apply. Thus it can be finally concluded from whole discussion that the insurable interest is very important ingredient of the insurance and it could be said that without insurable interest in subject matter of the insurance there can be no insurance.