



# LPC BUDDY

Insurance Law  
2024



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## Insurance Law

<b>1. Introduction to Insurance Law and Specialist Cases</b>	
1. Insurance Law – Basics	1-5
2. Insurable Interest	6-10
3. Employer’s Liability Insurance	11-14
4. Motor Insurance	15-18
5. Professional Indemnity Insurance	19-28
6. Common Clauses in Insurance Policies	29-34
<b>2. Pre-contractual Utmost Good Faith</b>	
1. The Pre-Contractual Duty of Utmost Good Faith	35-41
2. Summary of <a href="#">Dalecroft Properties Ltd v Underwriters</a>	42-43
3. Duty of Fair Presentation under the <a href="#">Insurance Act 2015</a>	44-52
4. Duty of Fair Presentation and Consumer Contracts	53-56
5. Business Interruption Insurance	57-64
<b>3. Insurers, Lloyd’s of London and Terms of the Insurance Contract</b>	
1. The Regulation of Insurance	65-71
2. Formation of the Contract of Insurance	72-76
3. Statutory Disclosure Requirements	77-79
4. Cancellation and Renewal of Insurance Policies	80-81
5. Temporary Cover and Cover Notes	82-83
6. Insurance Intermediaries	84-91
7. Warranties and Conditions in Insurance Contracts	92-99
8. Insurance Conditions	100-109
9. Lloyd's of London	110-112
<b>4. Coverage I</b>	
1. Statutory Protection in the event of the Insolvency of the Insured	113-118
2. Liability Insurance	119-125
3. Notification of Claims Under Liability Policies	126-132
4. Defending Claims Against an Insured	133-135
5. Product Liability Insurance	136-139
6. Summary of Key Cases for Workshop 4	140-147
7. Summary Table for Workshop 4	148-151
<b>5. Coverage II</b>	
1. Statutory Right to Damages for Late Payment	152-153
2. Reservation of Rights Letter	154-155
3. Property Insurance – Coverage	156-161
4. Property Insurance – Conditions and Exclusions	162-165
5. Steps to Investigate Coverage – Summary	166-173
<b>6. Claims Handling, Receiving New Instructions and Subrogation</b>	
1. Subrogation	174-181
2. Notification of Claims	182-186
3. Letter Acknowledging Instructions	187-188

4. Schedule of Action	189
<b>7. Subrogation, Third Party Claims and Acting for the Insurer and the Insured</b>	
1. Defending a Professional Negligence Claim	190-196
2. Hold Harmless Agreements	197
3. Additional Claims	198-202
<b>8. Reinsurance Policies and the Law</b>	
1. Reinsurance	203-211
2. Liability of a Reinsurer	212-216
3. Reinsurance Claims - Checklist	217-219

<b>Colour Coding Guide</b>	<ul style="list-style-type: none"> <li>❖ <b>Blue Text</b> – Reference to statutes and case law.</li> <li>❖ <b>Green Text</b> – Reference to textbook<sup>1</sup> paragraphs, workshop tasks<sup>2</sup> and other notes in this guide.</li> <li>❖ <b>Orange Text</b> – CPR and pre-action protocol references.</li> <li>❖ <b>Purple Text</b> – Reference to Professional Conduct Rules or Principles.</li> </ul>
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<sup>1</sup> Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

<sup>2</sup> References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

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# 1. Introduction to Insurance Law and Specialist Cases

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4. Motor Insurance	15-18
5. Professional Indemnity Insurance	19-28
6. Common Clauses in Insurance Policies	29-34

**Insurance Law - Basics**

❖ Birds' Modern Insurance Law; Chapter 3

<p><b>Nature of Insurance Law</b></p>	<ul style="list-style-type: none"> <li>❖ In simple terms, an insurance policy is a <b>contract between an insured</b> (the person who purchases the insurance) and an insurer.</li> <li>❖ However, contracts of insurance have a number of distinct legal principles which may arise through statute (such as the <a href="#">Insurance Act 2015</a>), and case law. Whilst every insurance contract is individual, the insurance industry has a tendency to use <b>fairly uniform documents</b>, meaning many of the principles in the case law can be of a general application.</li> </ul>	
<p><b>Types of Insurance</b></p>	<p><b>First and third-party insurance</b></p>	<ul style="list-style-type: none"> <li>❖ Insurance policies may be described as “first party”, or “third party”.</li> <li>❖ <b>First party insurance</b> is when someone protects <i>themselves</i>, or something <i>they own</i> (for example, they insure their own life, house, factory, or car, etc).</li> <li>❖ Third-party insurance is where someone insures against their <b>potential liability in law to pay compensation to another</b>.</li> <li>❖ Some third-party insurances are compulsory (e.g., motorists must carry at least third-party motor insurance).</li> </ul>
	<p><b>Life Insurance, and other insurances.</b></p>	<ul style="list-style-type: none"> <li>❖ Life insurance is different to other insurances because the fundamental subject matter (death) is certain, whereas other insurances are concerned with <b>uncertain</b> risk.</li> <li>❖ Life insurance is concerned with the uncertainty as to <b>when death will occur</b>, and are contracts for contingency insurance, meaning they <b>pay an agreed sum of money when the event insured against occurs</b>.</li> <li>❖ Non-life insurance contracts are generally <b>indemnity contracts</b>, meaning they <b>pay a sum of money equivalent to the loss</b> suffered if it is <b>actually suffered by the insured</b>.</li> <li>❖ Note: life insurance is <b>not covered in detail on the LPC</b>.</li> </ul>
<p><b>Terminology</b></p>	<p><b>Insurance / assurance / insured / assured</b></p>	<ul style="list-style-type: none"> <li>❖ “Insurance” and “assurance” mean the same thing, as do “insurance” and “insured”.</li> <li>❖ We may also refer to the “insured” as a “policyholder”.</li> </ul>
	<p><b>Insurers</b></p>	<ul style="list-style-type: none"> <li>❖ The insurer is the party that underwrites the insurance risk, and undertakes, contractually, to pay a sum in respect of a claim that falls within the policy’s terms.</li> <li>❖ Insurers must be: <ul style="list-style-type: none"> <li>➤ A <b>company</b>;</li> <li>➤ An <b>industrial and provident society</b>; or</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>➤ A <b>body corporate established by charter or Act of Parliament.</b></li> </ul>
<b>Underwriters</b>	<ul style="list-style-type: none"> <li>❖ An underwriter is a party, usually an employee (or department of employees) within an insurer, that <b>evaluates and assumes another party's risk</b>; i.e., they decide whether the insurer should write the risk, and the premium that is charged.</li> </ul>
<b>Insurance brokers.</b>	<ul style="list-style-type: none"> <li>❖ Insurance brokers are professional intermediaries. They act (generally) as the <b>agent of the insured</b> in finding them the right policy and assist them in managing and making a claim.</li> <li>❖ Insurance brokers are regulated by the FCA.</li> </ul>
<b>Insurance intermediaries.</b>	<ul style="list-style-type: none"> <li>❖ The insurance industry makes considerable use of agents who act as “go-betweens” between an insurer and an insured.</li> <li>❖ An insurance broker is an example of a type of insurance intermediary.</li> </ul>
<b>Premium</b>	<ul style="list-style-type: none"> <li>❖ An insurance premium is the <b>sum of money that an insured pays to the insurer</b>, in return for which the insurer assumes the risk of covering the insured for risks under the policy.</li> </ul>
<b>Lloyd's of London</b>	<ul style="list-style-type: none"> <li>❖ Lloyd's of London is an insurance and reinsurance marketplace. It is <b>not an insurer itself.</b></li> <li>❖ It is a <b>society of members</b>; that is, it is the <b>members who actually write the insurance.</b></li> <li>❖ The Corporation of Lloyd's is responsible for managing the Lloyd's marketplace, providing facilities for the conduct of its member's business, and regulating the market.</li> <li>❖ It operates its own distinct practices largely due to historical reasons. For instance:             <ul style="list-style-type: none"> <li>➤ Insurance can only be placed on the Lloyd's market by Lloyd's approved brokers, and written by Lloyd's underwriters.</li> <li>➤ Underwriters write risks as syndicates, i.e., in groups.</li> <li>➤ Risks are presented to underwriters by the brokers on a document known as a “slip”, on which the underwriters will signify the percentage of risk that they are willing to take, and on what terms.</li> </ul> </li> </ul>
<b>Reinsurance</b>	<ul style="list-style-type: none"> <li>❖ Reinsurance is the <b>practice of “insuring again”</b>; i.e., it is where an insurer (the reinsured) agrees with another insurer (the reinsurer) that the reinsurer will cover a particular risk(s) (in whole or in part) that the reinsured has written, in the event of a claim. In other words, it is when an insurer gets insured themselves.</li> </ul>

		<ul style="list-style-type: none"> <li>❖ In doing so, the reinsured transfers all or part of the risk to the reinsurer, and protects itself against the risk of the primary insurance.</li> </ul>								
<p><b>Definition of Insurance</b></p>		<ul style="list-style-type: none"> <li>❖ It is important to define what is meant by “insurance” for the following reasons:                             <ul style="list-style-type: none"> <li>➤ The business of <b>“insurance” is closely regulated.</b></li> <li>➤ Contracts of insurance are <b>subject to particular rules and doctrines</b>, such as the doctrine of utmost good faith.</li> <li>➤ Certain <b>statutory provisions</b> (such as the <a href="#">Unfair Contract Terms Act 1977</a>, and the <a href="#">Consumer Insurance (Disclosure and Representations) Act 2012</a>) have provisions which apply to “contracts of insurance”.</li> </ul> </li> <li>❖ An insurance contract is any contract:                             <ul style="list-style-type: none"> <li>➤ Which has as its principal object:                                     <ul style="list-style-type: none"> <li>▪ One party (the insurer) <b>assuming the risk of an uncertain event;</b></li> <li>▪ Which is <b>not within its control;</b></li> <li>▪ <b>Happening at a future time;</b></li> </ul> </li> <li>➤ In which event the other party (the insured) <b>has an interest;</b></li> <li>➤ And under which contract, the insurer is <b>bound to pay money or provide its equivalent if the uncertain event occurs.</b></li> </ul> </li> <li>❖ Therefore, there must be:                             <table border="1" data-bbox="320 1205 1484 2047"> <tr> <td data-bbox="320 1205 555 1406"> <p><b><u>A binding contract.</u></b></p> </td> <td data-bbox="555 1205 1484 1406"> <ul style="list-style-type: none"> <li>❖ The insurer must be <b>legally bound to compensate</b> the other party.</li> <li>❖ A discretionary contract is not enough (<a href="#">Medical Defence Union v Department of Trade [1979] 2 All E.R 421</a>).</li> </ul> </td> </tr> <tr> <td data-bbox="320 1406 555 1485"> <p><b><u>Uncertainty.</u></b></p> </td> <td data-bbox="555 1406 1484 1485"> <ul style="list-style-type: none"> <li>❖ In most instances, there must be <b>a possibility</b> (and not a guarantee) that a future event may or may not occur.</li> </ul> </td> </tr> <tr> <td data-bbox="320 1485 555 1809"> <p><b><u>An insurable interest.</u></b></p> </td> <td data-bbox="555 1485 1484 1809"> <ul style="list-style-type: none"> <li>❖ The insured must have <b>some sort of interest in the subject matter</b> of the insurance.</li> <li>❖ In broad terms, the insured must have an interest which means they <b>gain a benefit from the preservation of the subject matter</b> of the insurance, or <b>suffer a disadvantage should it be lost.</b></li> <li>❖ See notes on <a href="#">Insurable Interest</a>.</li> </ul> </td> </tr> <tr> <td data-bbox="320 1809 555 2047"> <p><b><u>An event insured against which is outside the control of the party</u></b></p> </td> <td data-bbox="555 1809 1484 2047"> <ul style="list-style-type: none"> <li>❖ The insured event must be <b>outside of the control</b> of the insured.</li> <li>❖ This distinguishes an insurance contract from a guarantee of performance.</li> </ul> </td> </tr> </table> </li> </ul>	<p><b><u>A binding contract.</u></b></p>	<ul style="list-style-type: none"> <li>❖ The insurer must be <b>legally bound to compensate</b> the other party.</li> <li>❖ A discretionary contract is not enough (<a href="#">Medical Defence Union v Department of Trade [1979] 2 All E.R 421</a>).</li> </ul>	<p><b><u>Uncertainty.</u></b></p>	<ul style="list-style-type: none"> <li>❖ In most instances, there must be <b>a possibility</b> (and not a guarantee) that a future event may or may not occur.</li> </ul>	<p><b><u>An insurable interest.</u></b></p>	<ul style="list-style-type: none"> <li>❖ The insured must have <b>some sort of interest in the subject matter</b> of the insurance.</li> <li>❖ In broad terms, the insured must have an interest which means they <b>gain a benefit from the preservation of the subject matter</b> of the insurance, or <b>suffer a disadvantage should it be lost.</b></li> <li>❖ See notes on <a href="#">Insurable Interest</a>.</li> </ul>	<p><b><u>An event insured against which is outside the control of the party</u></b></p>	<ul style="list-style-type: none"> <li>❖ The insured event must be <b>outside of the control</b> of the insured.</li> <li>❖ This distinguishes an insurance contract from a guarantee of performance.</li> </ul>
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	<p><u><b>assuming the risk.</b></u></p> <p><u><b>Provision of money, or something of money's worth.</b></u></p> <p><u><b>There must be a premium, and a policy.</b></u></p>	<ul style="list-style-type: none"> <li>❖ An insurance contract <b>can involve a promise of money's worth.</b></li> <li>❖ It is <b>not necessary</b> for the insurer to undertake to pay <i>money</i> specifically, if something other than money is enough (<a href="#">Department of Trade and Industry v St Christopher's Motorists' Association Ltd [1974] 1 All E.R. 395</a>).</li> <li>❖ It <i>may</i> also arguably be necessary for <b>there must be a clearly stipulated premium and policy</b> (<a href="#">Hampton v Toxteth Co-operative Society [1915] 1 Ch. 721</a>).</li> <li>❖ However, this requirement is thought to be less necessary in modern times (as this suggests that a contract with less formality (i.e., no premium, and no policy, would ensure the contract escapes regulatory oversight).</li> </ul>
<p><u><b>Consumer vs Non-Consumer Insurance</b></u></p>		<ul style="list-style-type: none"> <li>❖ Consumer insurance is generally subject to stricter regulation than non-consumer insurance, by virtue of, in particular: <ul style="list-style-type: none"> <li>➤ <a href="#">The Insurance Conduct of Business Sourcebook (ICOBS)</a>: this sets down statutory duties on insurers and insurance intermediaries, and generally sets stricter conditions for consumer contracts (for instance, an insurer who enters into a contract with a consumer must ensure that any written term of contract is <b>transparent, expressed in plain and intelligible language, and legible</b>).</li> <li>➤ <a href="#">The Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015</a>.</li> </ul> </li> </ul>
<p><u><b>The Financial Ombudsman Service</b></u></p>		<ul style="list-style-type: none"> <li>❖ The Financial Ombudsman Service (FOS) provides a <b>free complaints settlement process</b>, settling disputes between consumers and financial institutions within its jurisdiction.</li> <li>❖ The FOS has “compulsory jurisdiction” for complaints relating to insurance contracts, meaning <b>a complaint must be dealt with under the FOS scheme</b>, providing certain conditions apply.</li> <li>❖ Eligible complainants include: <ul style="list-style-type: none"> <li>➤ Individuals;</li> <li>➤ Small businesses;</li> <li>➤ Charities;</li> <li>➤ Some trusts;</li> <li>➤ Persons for whose benefit an insurance contract was taken out;</li> <li>➤ A person on <b>whom the legal right to benefit from a claim has been devolved</b> (which potentially includes persons who obtain an insured's rights as against their insurer when the insured becomes insolvent under the <a href="#">Third Parties (Rights Against Insurers) Acts 1930, or 2010</a>).</li> </ul> </li> <li>❖ The FOS investigates complaints based on what is “<i>fair and reasonable in all the circumstances of the case</i>”, considering <b>relevant law, regulations, codes, guidance, and industry practice</b>.</li> </ul>

- ❖ Where the FOS determines a complaint, the FOS can make a compensatory award up to an upper limit of £390,000, though the FOS can “recommend” that the respondent pay more if they consider that fair compensation requires this.
- ❖ Complainants have the **choice to accept the award, or reject it**, in which case the complainant will have to **bring a civil claim** for damages should they wish to recover.
- ❖ The FOS can also award **costs** that are reasonably incurred by the complainant.



**Insurable Interest**

❖ [Birds' Modern Insurance Law; Chapter 3](#)

<p><b>What is an insurable interest?</b></p> <p><a href="#">Birds' Modern Insurance Law; 3-01</a></p>	<ul style="list-style-type: none"> <li>❖ For a contract of insurance to be valid, the insured must have an “insurable interest”.</li> <li>❖ In other words, the insured must have <b>some sort of interest</b> (such as a legal interest, beneficial interest, or right to use and enjoyment) <b>in the subject matter</b> of the insurance policy.</li> <li>❖ In general, an insured will have an insurable interest if they either:             <ul style="list-style-type: none"> <li>➤ <b>Gain a benefit from the preservation of the subject matter</b> of the insurance; or</li> <li>➤ <b>Suffer a disadvantage should it be lost.</b></li> </ul> </li> </ul>
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<p><b>What happens if the insured does not have an insurable interest?</b></p> <p><a href="#">Birds' Modern Insurance Law; 3-02</a></p>	<ul style="list-style-type: none"> <li>❖ If the insured <b>does not have an insurable interest</b>, the contract may be:             <ul style="list-style-type: none"> <li>➤ <b>Illegal</b> (this is the position with regards to life policies and policies providing for the payment of fixed sums in the event of personal injury (<a href="#">Life Assurance Act 1774</a>)).</li> <li>➤ <b>Void</b> (this is the position with regards to marine policies (<a href="#">s4, Marine Insurance Act 1906</a>)); or</li> <li>➤ <b>Unenforceable</b>;</li> </ul> </li> <li>❖ Which of these options applies depends on the type of insurance, however the practical effect is the same: insured <b>will not be able to claim</b> under the policy.</li> <li>❖ <b>For policies on goods</b>, there is <b>no statutory requirement of insurable interest</b> (<a href="#">s4 Life Assurance Act 1774</a> explicitly excludes these). However, an insurable interest is still normally <b>implied into all contracts of indemnity</b>.</li> </ul>
<p><b>Implied term.</b></p>	<ul style="list-style-type: none"> <li>❖ A requirement for an insurable interest <b>will normally be implied</b> as a term of all indemnity insurance contracts as a result of the “principle of indemnity”.</li> <li>❖ This provides that the insurance contract will only compensate the insured for any damage, loss or injury caused up <b>to the extent of the loss incurred</b>.</li> <li>❖ This means that the insured cannot profit from the policy, and <b>cannot claim a loss in which they have no interest</b>. The effect of this is that all indemnity policies, arguably, have an implied <b>contractual term</b> that the insurer will only be liable <b>to the extent of any insurable interest</b> that the insured has.</li> </ul>

**Insurable Interests and Specific Types of Insurance**

<b>Overview</b>	❖ When an insured <b>will have an insurable interest</b> varies depending on the type of insurance policy in question.
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<p><b>Life insurance policies in business relationships.</b></p> <p><a href="#">Birds' Modern Insurance Law; 3-08</a></p>	<ul style="list-style-type: none"> <li>❖ Life insurance policies may be taken out in the context of a business relationship. This may occur, for instance:             <ul style="list-style-type: none"> <li>➢ Where <b>creditors</b> insure the lives of their <b>debtors</b>;</li> <li>➢ Where <b>employers</b> insure the lives of their <b>employees</b>; or</li> <li>➢ Where <b>partners</b> insure the lives of <b>other partners</b>.</li> </ul> </li>   <li>❖ In such circumstances, the <b>amount of the insurable interest</b> is limited to the <b>pecuniary interest of the insured</b> at the time the policy is taken out.</li>   <li>❖ In other words, it is limited to the extent of the insured's <b>financial interest at the time the policy is entered into</b>. It will <b>not</b> cover the loss of, for instance, <b>purely gratuitous promises</b> or payments.</li> </ul>
<p><a href="#">Hebdon v West (1863) 3 B. &amp; S. 579</a></p>	<ul style="list-style-type: none"> <li>❖ Hebdon was a bank clerk. He had an employment contract, for seven years, which paid a salary of £600 per annum. The bank also lent him £4,700. The managing partner, Pedder, promised Hebdon <b>that that debt need not be repaid during Pedder's lifetime</b>.</li>   <li>❖ Hebdon insured Pedder's life through two insurance companies (the idea being that, in the event that Pedder died, Hebdon <b>would receive a payment to cover his salary for the remainder of the contract</b>, as well as a <b>payment to cover the debt that would become due</b>).</li>   <li>❖ When Pedder died, Hebdon received £5,000 from the first policy, but the <b>second insurer refused the claim</b> on the basis that Hebdon's pecuniary interest in Pedder's life had already been met. Hebdon sued the second insurer.</li>   <li>❖ The second insurer argued that Hebdon's insurable interest in the life of his employer was <b>limited £4,200</b>, because Hebdon <b>stood to lose this amount (£600 x 7 years) when the employer died</b>. The agreement not to enforce the loan during Pedder's lifetime was, the second insurer argued, <b>not a binding contract and could not create an insurable interest</b>.</li>   <li>❖ The Court agreed. The court held that <b>Pedder's promise not to call in the debt was gratuitous and non-enforceable</b>. Hebdon's insurable interest was <b>limited to the pecuniary interest in the life of Pedder at the time he effected the policy</b>, which had <b>already been satisfied by the pay-out under first policy</b>. Hebdon therefore lacked the required insurable interest to enforce the second policy.</li> </ul>

	<ul style="list-style-type: none"> <li>❖ The court’s interpretation of <a href="#">s3 Life Assurance Act 1774</a> treated a life insurance policy as a <b>contract of indemnity</b>, but with the extent of the insurable interest being calculated <b>at the time the policy was created, rather than at the time of the loss.</b></li> <li>❖ In modern times, a strict valuation of the insured interest based on the terms of the employment contract, particularly when considering consequential losses related to the death of an employee, is unlikely. However, the requirement remains that the insured <b>must have an interest in the life insured</b>, and the extent of their recovery will be <b>limited to the value of that interest.</b></li> </ul>				
<p><b>Property Insurance</b></p> <p><i>Birds’ Modern Insurance Law; 3-13</i></p>	<ul style="list-style-type: none"> <li>❖ The insured must normally have an insurable interest in property at <b>both</b>: <ul style="list-style-type: none"> <li>➢ <b>The date of the contract;</b> and</li> <li>➢ <b>The date of loss.</b></li> </ul> </li> <li>❖ To have an insurable interest, the insured must have: <ul style="list-style-type: none"> <li>➢ A <b>proprietary right</b>: <ul style="list-style-type: none"> <li>▪ That is, a right either <i>in the property</i> (a legal or equitable interest), or derivable out of a contract about the property);</li> </ul> </li> <li>➢ <b>Which is lost</b> in the event that a contingency <b>affects the insured’s possession or enjoyment of the property.</b></li> <li>➢ <a href="#">Lucena v Craufurd (1806) 2 B. &amp; P.N.R. 269</a></li> </ul> </li> <li>❖ In the context of <a href="#">Lucena</a>, captured enemy ships were insured whilst they were still at sea. A number of the ships were lost before reaching British ports. The House of Lords held that the British Commissioners who insured the ships <b>were only empowered to take charge of them when they had reached British ports.</b> This meant that, at the time the ships were lost, the Commissioners <b>had no proprietary right to the ships</b>, and hence no insurable interest.</li> </ul> <table border="1" data-bbox="327 1361 1484 2054"> <tr> <td data-bbox="327 1361 550 1541"> <p><b>A mere “expectation” is not enough.</b></p> </td> <td data-bbox="550 1361 1484 1541"> <ul style="list-style-type: none"> <li>❖ It is <b>not</b> sufficient for the insured to have had <b>an expectation of loss</b> arising from the circumstances surrounding a particular event. They <b>must</b> have a <b>proprietary right</b> to the property in question.</li> </ul> </td> </tr> <tr> <td data-bbox="327 1541 550 2054"> <p><b>Trust Property</b></p> </td> <td data-bbox="550 1541 1484 2054"> <ul style="list-style-type: none"> <li>❖ A <b>remainderman will</b> have an insurable interest providing <b>their interest is vested.</b></li> <li>❖ In other words, a beneficiary who is entitled to the capital after another beneficiary, who is entitled to the income, ceases to be so entitled, will have an insurable interest <b>providing they do not have to meet any conditions for the interest to take effect.</b></li> <li>❖ If the beneficiary has only a <b>contingent interest</b> (that is, they must satisfy some condition before they become entitled to the trust property, for example, reaching the age of 25), they will <b>not have an insurable interest.</b></li> </ul> </td> </tr> </table>	<p><b>A mere “expectation” is not enough.</b></p>	<ul style="list-style-type: none"> <li>❖ It is <b>not</b> sufficient for the insured to have had <b>an expectation of loss</b> arising from the circumstances surrounding a particular event. They <b>must</b> have a <b>proprietary right</b> to the property in question.</li> </ul>	<p><b>Trust Property</b></p>	<ul style="list-style-type: none"> <li>❖ A <b>remainderman will</b> have an insurable interest providing <b>their interest is vested.</b></li> <li>❖ In other words, a beneficiary who is entitled to the capital after another beneficiary, who is entitled to the income, ceases to be so entitled, will have an insurable interest <b>providing they do not have to meet any conditions for the interest to take effect.</b></li> <li>❖ If the beneficiary has only a <b>contingent interest</b> (that is, they must satisfy some condition before they become entitled to the trust property, for example, reaching the age of 25), they will <b>not have an insurable interest.</b></li> </ul>
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		<ul style="list-style-type: none"> <li>❖ Similarly, a <b>beneficiary of property under a will</b> does <b>not</b> have an insurable interest whilst the testator is still alive.</li> </ul>
	<p><b>Company property.</b></p>	<ul style="list-style-type: none"> <li>❖ A shareholder has <b>no insurable interest in a company's property</b>; the company is a separate legal person and therefore the proprietary interest <b>belongs to the company</b> (<a href="#">Macaura v Northern Assurance Co Ltd [1925] A.C. 619</a>).</li> <li>❖ However, a shareholder can insure <i>their shares</i> <b>against loss of value due to a company's failure</b></li> <li>❖ A <b>creditor</b> does not have an insurable interest in property where there is <b>no proprietary security interest</b> (such as a mortgage, or charge). However, a creditor may <b>insure against their debtor's insolvency</b>.</li> </ul>
	<p><b>Possession alone is not enough.</b></p>	<ul style="list-style-type: none"> <li>❖ Mere <b>possession</b> of property is <b>not enough to establish insurable interest</b>.</li> <li>❖ If property is <b>standing on the insured's land</b>, this alone is not sufficient to give the insured an insurable interest if they <b>do not have a right of enjoyment</b> (beneficial interest) or legal liability in respect of it.</li> <li>❖ However, <b>possession with legal liability</b> for a specific purpose <b>does</b> give rise to an insurable interest. Therefore a "bailiee", (someone to whom goods belonging to another are delivered for a specific purpose, such as repair), may have an insurable interest.</li> </ul>
	<p><b>Co-habitants</b></p>	<ul style="list-style-type: none"> <li>❖ A <b>non-owner</b> of property will only have an insurable interest if they have <b>shared possession or use</b> of the property.</li> <li>❖ So, for example, a husband will not have insurable interest in his wife's jewellery if he <b>does not have ownership or possession</b> of it.</li> </ul>
	<p><b>Limited interests in property that give rise to an insurable interest.</b></p>	<ul style="list-style-type: none"> <li>❖ The following interests in property are sufficient to support an insurable interest: <ul style="list-style-type: none"> <li>➤ Mortgagor and mortgagee;</li> <li>➤ Vendor and purchaser;</li> <li>➤ Landlord and tenant;</li> <li>➤ Trustee and beneficiary.</li> </ul> </li> <li>❖ The extent of the insurable interest depends on the <b>value of the insured's interest at the time of the loss</b>. The insured can only recover sufficient value to indemnify themselves. So: <ul style="list-style-type: none"> <li>➤ <b>A weekly tenant with no obligation to insure or repair</b> will be limited to recovering up to four weeks' rent for a dwelling house.</li> <li>➤ <b>A tenant with a fixed-term lease who is liable to pay full rent regardless of property destruction</b>: will be limited to recovering the extent of their obligation to pay the rent.</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>➤ <b>A tenant with obligation to insure or repair:</b> will be limited to recovering the full value of the property.</li> <li>➤ <b>A landlord (reversioner):</b> will be limited to recovering full value of the property, even when the tenant is liable for repair, due to the risk of tenant non-compliance.</li> <li>➤ <b>A mortgagee:</b> will be limited to recovering the value of the outstanding debt.</li> <li>➤ <b>A vendor of land:</b> a vendor may recover nothing if they can <b>still enforce the contract of sale</b> against their purchaser.</li> <li>➤ <b>An insured with an expectancy based on proprietary interest (e.g., expected profits):</b> consequential losses must be insured separately, as typical property indemnity policies do not cover these.</li> </ul>
<p><b>Insurable Interests in Liability Insurances</b></p> <p><i>Birds' Modern Insurance Law; 3-13</i></p>	<ul style="list-style-type: none"> <li>❖ The concept of an insurable interest is largely irrelevant to <b>liability insurances</b>.</li> <li>❖ These are policies which insure the <b>insured's potential legal liability</b> to a third party, whether in contract or tort.</li> <li>❖ This is because <i>anyone</i> will have an <b>insurable interest in their own potential legal liability</b>.</li> </ul>	

**Waiver of Insurable Interest**

❖ *Birds' Modern Insurance Law; 3-23*

<p><b>Can the requirement that the insured must have an insurable interest be waived?</b></p>	<ul style="list-style-type: none"> <li>❖ In principle, the requirement of an insurable interest <b>can be waived</b>.</li> <li>❖ This is because, for indemnity insurances, the requirement arises as an <b>implied contractual term</b> which does not have a statutory basis. There is nothing to stop this requirement from being <b>waived by the insurer</b>.</li> <li>❖ This means that if the insurer provides a <b>contractual undertaking to pay a particular loss</b>, this may become payable notwithstanding the fact that the Insured does not have an insurable interest in it (<a href="#">Prudential Staff Union v Hall [1947] K.B. 685</a>).</li> </ul>
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**Employer’s Liability Insurance**

❖ [Birds’ Modern Insurance Law, Chapter 22](#)

<p><b>What is Employer’s Liability Insurance?</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-02</a></p>	<ul style="list-style-type: none"> <li>❖ Employer’s liability insurance protects employers from financial losses arising from their legal liability to pay compensation to <b>employees who suffer bodily injury or disease as a result of their employment.</b></li> </ul>						
<p><b>Compulsory insurance</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-02</a></p>	<ul style="list-style-type: none"> <li>❖ It is <b>mandatory</b> for employers to have employer’s liability insurance (<a href="#">s1(1) The Employers' Liability (Compulsory Insurance) Act 1969 (ELCI 1969)</a>).</li> <li>❖ The cover <b>must</b> include liability for: <ul style="list-style-type: none"> <li>➤ Bodily injury or disease;</li> <li>➤ Sustained by his employees;</li> <li>➤ “Arising out of and in the course of employment”.</li> </ul> </li> </ul> <table border="1" data-bbox="331 896 1484 2042"> <tr> <td data-bbox="331 896 571 1137"> <p><b>“Bodily injury or disease”.</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-02</a></p> </td> <td data-bbox="571 896 1484 1137"> <ul style="list-style-type: none"> <li>❖ The employer must insure against disease <b>caused during the period of the policy</b>, even if the disease manifests later (<a href="#">BAI (Run-Off) Ltd v Durham [2012] UKSC 14</a>).</li> </ul> </td> </tr> <tr> <td data-bbox="331 1137 571 1379"> <p><b>“Sustained by his employees”</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-04</a></p> </td> <td data-bbox="571 1137 1484 1379"> <ul style="list-style-type: none"> <li>❖ An “employee” is defined by <a href="#">s2 ELCI 1969</a> as anyone who works: <ul style="list-style-type: none"> <li>➤ Under a contract of service or apprenticeship;</li> <li>➤ Whether express or implied, written or oral.</li> </ul> </li> <li>❖ Thus, this <b>excludes</b> any obligation to insure against liability to the self-employed, who work under a contract for services.</li> </ul> </td> </tr> <tr> <td data-bbox="331 1379 571 2042"> <p><b>“Arising out of and in the course of employment”.</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-03</a></p> </td> <td data-bbox="571 1379 1484 2042"> <ul style="list-style-type: none"> <li>❖ The accident must arise “in the course of employment”.</li> <li>❖ That is, it must arise when the employee is <b>“doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time to do that thing”</b> (<a href="#">Moore v Manchester Liners Ltd [1910] A.C. 498</a>).</li> <li>❖ <b>Traveling to and from work</b> is not “in the course of employment” unless it is required by the terms of employment (<a href="#">Vandyke v Fender [1970] 2 Q.B. 292</a>).</li> <li>❖ <b>Travelling for work purposes</b>, whilst at work, may be done in the course of employment (<a href="#">Paterson v Costain &amp; Press (Overseas) Ltd [1979] 2 Lloyd’s Rep. 204</a>).</li> </ul> </td> </tr> </table>	<p><b>“Bodily injury or disease”.</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-02</a></p>	<ul style="list-style-type: none"> <li>❖ The employer must insure against disease <b>caused during the period of the policy</b>, even if the disease manifests later (<a href="#">BAI (Run-Off) Ltd v Durham [2012] UKSC 14</a>).</li> </ul>	<p><b>“Sustained by his employees”</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-04</a></p>	<ul style="list-style-type: none"> <li>❖ An “employee” is defined by <a href="#">s2 ELCI 1969</a> as anyone who works: <ul style="list-style-type: none"> <li>➤ Under a contract of service or apprenticeship;</li> <li>➤ Whether express or implied, written or oral.</li> </ul> </li> <li>❖ Thus, this <b>excludes</b> any obligation to insure against liability to the self-employed, who work under a contract for services.</li> </ul>	<p><b>“Arising out of and in the course of employment”.</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-03</a></p>	<ul style="list-style-type: none"> <li>❖ The accident must arise “in the course of employment”.</li> <li>❖ That is, it must arise when the employee is <b>“doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time to do that thing”</b> (<a href="#">Moore v Manchester Liners Ltd [1910] A.C. 498</a>).</li> <li>❖ <b>Traveling to and from work</b> is not “in the course of employment” unless it is required by the terms of employment (<a href="#">Vandyke v Fender [1970] 2 Q.B. 292</a>).</li> <li>❖ <b>Travelling for work purposes</b>, whilst at work, may be done in the course of employment (<a href="#">Paterson v Costain &amp; Press (Overseas) Ltd [1979] 2 Lloyd’s Rep. 204</a>).</li> </ul>
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		<ul style="list-style-type: none"> <li>❖ The <b>location</b> of the accident is not conclusive; if an employee is at work but <b>conducting matters which are merely reasonably incidental to the employment</b> (such as playing football for a work team at the employer’s sports’ ground), this will not necessarily be covered (<a href="#">R. v National Insurance Commissioner Ex p. Michael [1977] 1 W.L.R. 109</a>).</li> <li>❖ An insurer’s liability is not limited to the start and end time of the employee’s shift; they are likely to be liable for accidents which occur within a <b>reasonable time period before and after work</b> (<a href="#">R. v National Insurance Commissioner Ex p. East [1976] I.E. 206</a>).</li> </ul>
		<ul style="list-style-type: none"> <li>❖ It is <b>not compulsory</b> for the employer to insure against <b>property</b> belonging to employees which is lost or damaged by the employer’s negligence.</li> </ul>
<p><b>Exceptions</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-07</a></p>		<ul style="list-style-type: none"> <li>❖ Certain local government councils, nationalised industries, and public bodies, are <b>exempt from the requirement to insure</b> (<a href="#">s3 ELCI 1969</a>).</li> </ul>
<p><b>Minimum Amount of Cover</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-06</a></p>		<ul style="list-style-type: none"> <li>❖ Employers must be insured for a minimum of £5 million <b>in the aggregate for any one occurrence</b>, including costs and expenses<sup>1</sup>.</li> <li>❖ This means that <b>one claim</b> can exhaust the policy limit and any further claims may not be compensated adequately.</li> </ul>
<p><b>Scope of Cover in Mesothelioma Cases</b></p>		<ul style="list-style-type: none"> <li>❖ In a mesothelioma case, if an employer did not have insurance throughout the entire period of exposure to asbestos, any insurer <b>covering part of the period</b> will be liable for the <b>whole damages awarded</b>.</li> <li>❖ However, they can <b>claim contribution from other insurers</b> or the employer for periods without coverage (<a href="#">Zurich Insurance Plc v International Energy Group Ltd [2015] UKSC 33</a>).</li> </ul>
<p><b>Prohibited Conditions</b></p> <p><a href="#">Birds’ Modern Insurance Law, 22-05</a></p>	<p><b>The conditions.</b></p>	<ul style="list-style-type: none"> <li>❖ The insurance must be under an <b>“approved policy”</b> with an authorised insurer (<a href="#">s1(1) ELCI 1969</a>). This means that the policy must not be <b>“subject to any conditions or exceptions prohibited for these purposes by regulations”</b> (<a href="#">s1(3)</a>).</li> <li>❖ There are four “prohibited conditions” specified by <a href="#">Regulation 2 of the ELCI Regulations</a>: <ul style="list-style-type: none"> <li>➤ Any condition which allows the insurer to reject the claim because some specified thing is done or not done <b>after the happening of the event giving rise to a claim</b>. <ul style="list-style-type: none"> <li>▪ This prohibits, for example, the insurer rejecting a claim due to the insured failing to comply with</li> </ul> </li> </ul> </li> </ul>

<sup>1</sup> [Reg 3\(1\), Employers’ Liability \(Compulsory Insurance\) Regulations 1998 \(SI 1998/2573\) \(ELCI Regulations\)](#).

	<p>obligations relating to the <b>notification and handling of claims.</b></p> <ul style="list-style-type: none"> <li>➤ Any condition allowing the insurer to reject the claim where the policyholder <b><i>does not take reasonable care to protect their employees against the risk of bodily injury</i></b> or disease in the course of their employment. <ul style="list-style-type: none"> <li>▪ To allow an insurer to exclude such liability would render the whole purpose of employers’ liability insurance pointless.</li> </ul> </li> <li>➤ Any condition allowing the insurer to reject the claim where the policyholder <i>fails to comply with the requirements of any enactment for the protection of employees against the risk of bodily injury</i> or disease in the course of their employment.</li> <li>➤ Any condition specifying that the insurer may reject the claim where the policyholder <b><i>does not keep specified records or fails to provide the insurer with or make available to him information from such records.</i></b></li> </ul>
	<ul style="list-style-type: none"> <li>❖ The purpose of these prohibited conditions is to ensure that an <b>employee</b> is not deprived of an indemnity simply because of the <b>employer’s</b> failure to comply with the relevant policy terms.</li> <li>❖ If an employer fails to comply with any of the above conditions, the insurer <b>will not be entitled to reject the claim.</b> However, the insurer may <b>recoup the amount paid to the employee</b> from the insured employer (<a href="#">Regulation 2(3), ELCI Regulations</a>)<sup>2</sup>.</li> <li>❖ Note that there are <b>no</b> restrictions on an insurer being able to <b>avoid liability</b> for a breach of the duty of fair presentation, or breach of warranty.</li> </ul>
<p><b>Subrogated Recoveries</b></p>	<ul style="list-style-type: none"> <li>❖ Employer’s liability insurers take the general view that where an employee's negligence is covered by insurance, the court is likely to hold that it would be <b>inequitable</b> for the employer to <b>seek recovery from the employee who is responsible for the accident.</b></li> <li>❖ This general view arises from the case of <a href="#">Morris v Ford Motor Co [1973] Q.B. 792</a>. See notes on <a href="#">Subrogated Recoveries</a> for more detail on this.</li> <li>❖ As such, members of the British Insurance Association and Lloyd’s have agreed to generally <b>not pursue a negligent employee</b> for a recovery in an employer’s liability claim.</li> </ul>

<sup>2</sup> Relevant to [Workshop 3, Workshop Task 3](#)

<p><b>Displaying proof of insurance.</b></p> <p><i>Birds' Modern Insurance Law, 22-08</i></p>	<ul style="list-style-type: none"> <li>❖ An insurer who provides employers' liability insurance must <b>issue a certificate in a prescribed form</b>, no later than 30 days after the day on which the insurance commences or is renewed (<a href="#">s4(1), ELCI 1969</a> and <a href="#">Sch 1 and Reg 4(2), ELCI Regulations</a>).</li> <li>❖ The insured employer must display and make available for inspection easily legible <b>copies of this certificate</b> at each place of business.</li> <li>❖ The certificate must be kept <b>on display until the date of expiry</b>, or until termination of the relevant policy (<a href="#">reg 5(3)</a>).</li> <li>❖ These certificates <b>may be subject to inspection by inspectors authorised by the Secretary of State</b>.</li> <li>❖ If an employer <b>fails to display an insurance certificate</b>, it may be liable to pay a fine of up to £1,000 (<a href="#">s4(3) ELCI 1969</a> and <a href="#">s37 Criminal Justice Act 1982</a>).</li> </ul>
<p><b>What happens if an employer does not have compulsory insurance as required?</b></p> <p><i>Birds' Modern Insurance Law, 22-08</i></p>	<ul style="list-style-type: none"> <li>❖ It is a <b>criminal offence</b> for an employer to not hold the required compulsory insurance, for which they <b>may be fined up to £2,500</b> (<a href="#">s5 ELCI 1969</a>).</li> <li>❖ However, the courts have <b>rejected</b> the argument that, in addition to criminal penalties, an <b>employer should also be liable for the loss</b> that the employee has suffered as a result of the employers' failure to insure (namely, the inability to recover damages from the employer).</li> <li>❖ The directors of the company are NOT personally liable in tort for breach of statutory duty (<a href="#">Campbell v Gordon [2016] UKSC 38</a>).</li> </ul>
<p><b>Criticisms and Lack of Protection</b></p> <p><i>Birds' Modern Insurance Law, 22-08</i></p>	<ul style="list-style-type: none"> <li>❖ The criticisms of employer's liability insurance are that:             <ul style="list-style-type: none"> <li>➤ There is <b>no mechanism</b> whereby the injured employee can recover <b>directly from the insurer</b>.</li> <li>➤ There are <b>no restrictions</b> on the right of the insurer to avoid liability, or the policy for <b>breach of the duty of fair presentation</b> or <b>breach of warranty</b>.</li> <li>➤ The directors of a company that has failed to insure are <b>not personally liable</b> in tort for breach of statutory duty.</li> <li>➤ If an employer is not insured, or not effectively insured, there is <b>no equivalent of the Motor Insurers' Bureau</b>, which operates a compensation scheme for drivers who are involved in an accident caused by an uninsured driver.</li> </ul> </li> </ul>

**Motor Insurance**

❖ [Birds' Modern Insurance Law; 21-01](#)

<b>Overview</b>	<ul style="list-style-type: none"> <li>❖ Motor insurance is <b>insurance for a road vehicle</b>.</li> <li>❖ Its main use is to ensure that <b>funds are available to third party victims</b> of physical damage or bodily injury which result from a road traffic collision.</li> <li>❖ Additionally, motor insurance may offer the policyholder <b>protection against damage or theft</b> to their own vehicle or person.</li> </ul>
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<b>Compulsory Insurance</b>  <a href="#">Birds' Modern Insurance Law; 21-01</a>	<ul style="list-style-type: none"> <li>❖ The law requires anyone who:             <ul style="list-style-type: none"> <li>➢ <b>Uses, or causes or permits</b> another to <b>use a motor vehicle</b>;</li> <li>➢ <b>On a road</b> or other public place;</li> <li>➢ To be <b>insured against liability to pay damages</b> for:                 <ul style="list-style-type: none"> <li>▪ Death or bodily injury; or</li> <li>▪ Property damage;</li> <li>▪ Caused by or arising out of <b>the use of the vehicle</b>.</li> </ul> </li> </ul> </li> <li>❖ This is commonly referred to as “third-party” insurance; that is, the <b>insurance covers the cost of damage to someone else’s property or person</b>.</li> </ul>
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<b>Features of Motor Insurance Policies</b>  <a href="#">Birds' Modern Insurance Law; 21-01</a>	<ul style="list-style-type: none"> <li>❖ Motor policies are conventionally sold under labels such as:             <ul style="list-style-type: none"> <li>➢ <b>“Comprehensive”</b>: this covers first-party property damage, injury, and personal effects (i.e., damage to the <i>insured’s</i> person, property, etc.).</li> <li>➢ <b>“Third-party, fire and theft”</b>: this covers third-party liability and vehicle losses caused by fire or theft.</li> </ul> </li> <li>❖ These categories do not, however, have any legal significance by themselves. They are merely labels which describe the scope of cover.</li> <li>❖ Policies may cover:             <ul style="list-style-type: none"> <li>➢ <b>Named others</b> or anyone driving the car with the <b>insured’s permission</b>;</li> <li>➢ The insured driving <b>other vehicles</b>;</li> <li>➢ Different <b>categories of use</b>, such as “social, domestic and pleasure purposes” and “business purposes”, which places <b>limits on the use that the vehicle can be put to whilst remaining covered</b>.</li> </ul> </li> </ul>
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<b>Common Terms and Exceptions</b>  <a href="#">Birds' Modern Insurance Law; 21-08</a>	<ul style="list-style-type: none"> <li>❖ Motor policies will <b>commonly include the following terms and exceptions</b>:             <table border="1" style="width: 100%; margin-top: 10px;"> <tr> <td style="background-color: #e0e0e0;"><b>Standard Extensions</b>  <a href="#">Birds' Modern Insurance Law; 21-09</a></td> <td> <ul style="list-style-type: none"> <li>❖ Motor policies often insure people <b>other than the insured or policyholder</b>.</li> <li>❖ The policy may insure, for instance:                     <ul style="list-style-type: none"> <li>➢ The policyholder’s <b>spouse</b>;</li> <li>➢ <b>Named drivers</b>, or a drivers identified by a class; or</li> </ul> </li> </ul> </td> </tr> </table> </li> </ul>	<b>Standard Extensions</b>  <a href="#">Birds' Modern Insurance Law; 21-09</a>	<ul style="list-style-type: none"> <li>❖ Motor policies often insure people <b>other than the insured or policyholder</b>.</li> <li>❖ The policy may insure, for instance:                     <ul style="list-style-type: none"> <li>➢ The policyholder’s <b>spouse</b>;</li> <li>➢ <b>Named drivers</b>, or a drivers identified by a class; or</li> </ul> </li> </ul>
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		<ul style="list-style-type: none"> <li>➤ <b><u>Anyone driving the vehicle with the insured’s permission.</u></b></li> <li>❖ Where a policy names a third party, that third party can <b><u>enforce the contract directly</u></b>, on the basis of either:             <ul style="list-style-type: none"> <li>➤ <a href="#">s148(7) Road Traffic Act 1988</a>: this provides that “a person issuing a policy of insurance under section 145 of this Act shall be <b><u>liable to indemnify the persons or classes of persons specified in the policy</u></b> in respect of any liability which the policy purports to cover in the case of those persons or classes of person.</li> <li>➤ Or, the <a href="#">Contracts (Rights of Third Parties) Act 1999</a>.</li> </ul> </li> </ul>
	<p><b>Permitted Drivers</b></p> <p><a href="#">Birds’ Modern Insurance Law; 21-10</a></p>	<ul style="list-style-type: none"> <li>❖ As stated above, it is common for motor insurance policies to allow the insured to give <b><u>permission to a third party to drive the car</u></b>.</li> <li>❖ It is likely that a permitted driver cannot themselves give permission to another without <b><u>the insured’s direct consent</u></b> (<a href="#">Sands v O’Connell [1981] R.T.R. 42</a>).</li> <li>❖ If the <b><u>insured</u></b> is injured by the negligence of the permitted driver, the <b><u>insured can become a third party and recover on their own policy</u></b>. The insurers will be liable to indemnify <b><u>the driver</u></b> in respect of their liability <b><u>to the insured</u></b> (<a href="#">Digby v General Accident Fire and Life Assurance Corp [1943] A.C. 212</a>).</li> <li>❖ Permission may be <b><u>expressly or impliedly limited to a specific class of use</u></b> (for example, if the permitted driver is given consent to use the car for <b><u>social use</u></b>, but they use the car for a <b><u>business purpose</u></b>, the insurer may not cover them) (<a href="#">Singh v Ratour [1988] 2 All E.R. 16</a>).</li> <li>❖ Once given, permission can be <b><u>revoked</u></b>; however, in the absence of revocation, permission continues <b><u>even</u></b> if the <b><u>insured dies</u></b> (<a href="#">Kelly v Cornhill Insurance Co [1964] 1 All E.R. 321</a>). The suggestion from this case is that revocation is only effective when <b><u>communicated</u></b> from the insured, to the person given permission.</li> <li>❖ Note that a car purchaser cannot drive with the former owner's permission <b><u>unless insurers expressly consent</u></b>.</li> </ul>
	<p><b>Limitations on Use</b></p> <p><a href="#">Birds’ Modern Insurance Law; 21-11</a></p>	<ul style="list-style-type: none"> <li>❖ Insurers have established categories of “permitted use” for insured vehicles.</li> <li>❖ This can include, for instance:             <ul style="list-style-type: none"> <li>➤ <b><u>Social, domestic, pleasure</u></b> purposes;</li> <li>➤ Use by the insured for travel <b><u>to and from a place of business</u></b>;</li> <li>➤ Use by the insured in person, or by others, <b><u>in connection with a business</u></b>.</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>❖ The distinctions between these categories can be difficult to apply. The courts will <b>attempt to identify the “essential character” or “primary purpose” of the journey</b>, however the courts also acknowledge that there will be cases in which the <b>insured’s use falls either side of the line</b>, and it is impossible to state any firm principle under which it can be predicted on which side of the line a particular case will fall (<a href="#">Seddon v Binions [1978] 1 Lloyd’s Rep. 381</a>).</li> <li>❖ Where a car is used for a <b>mixed-purpose</b>, the policy will <b>not apply if one of the uses is an unauthorised purpose</b> (<a href="#">Seddon v Binions [1978] 1 Lloyd’s Rep. 381</a>).</li> <li>❖ Insurers may also exclude driving for motor trade purposes; which may present issues where the car is being driven for the purposes of a repair. Insurers may qualify such an exception to provide that cover is provided where the vehicle <b>is in the custody of a motor trader for repair purposes</b>.</li> </ul>		
	<p><b>Terms Regarding the Condition of the Insured Vehicle</b></p> <p><a href="#">Birds’ Modern Insurance Law; 21-12 – 21-15</a></p>	<ul style="list-style-type: none"> <li>❖ Motor policies generally state that the insurer will not be liable if:             <ul style="list-style-type: none"> <li>➢ The insured vehicle is <b>driven in an “unsafe or unroadworthy condition”</b>; or</li> <li>➢ The insured <b>fails to maintain the vehicle in an “efficient or roadworthy condition”</b>.</li> </ul> </li> <li>❖ The question of whether or not a car is in a “roadworthy” condition is <b>not</b> limited to the car being roadworthy <b>only at the commencement</b> of a voyage. It is a question of <b>whether or not the car is in a “roadworthy” state</b>. The knowledge of the insured is also irrelevant (<a href="#">Trickett v Queensland Insurance Co [1936] A.C. 159</a>).</li> <li>❖ The question is also <b>not limited</b> to consideration of the <b>mechanical condition of the vehicle</b>. It can include, for instance, a situation where the car is in an unroadworthy state because it is <b>overloaded with passengers</b> (<a href="#">Clarke v National Insurance Corp [1963] 2 All E.R. 375</a>).</li> </ul> <table border="1" data-bbox="513 1608 1460 2067"> <tr> <td data-bbox="513 1608 730 2067"> <p><b>Condition or Warranty?</b></p> </td> <td data-bbox="730 1608 1460 2067"> <ul style="list-style-type: none"> <li>❖ Terms regarding the <b>condition of the vehicle</b> may be included as either:                     <ul style="list-style-type: none"> <li>➢ An <b>exception to the risk</b> that is insured; or</li> <li>➢ As a <b>condition or warranty</b> that the insured will “<i>maintain the vehicle in a roadworthy or efficient condition</i>”.</li> </ul> </li> <li>❖ Inclusion of this term as a condition or warranty is arguably <b>narrower</b>, because breach requires a “failure to maintain” on the part of the insured.</li> </ul> </td> </tr> </table>	<p><b>Condition or Warranty?</b></p>	<ul style="list-style-type: none"> <li>❖ Terms regarding the <b>condition of the vehicle</b> may be included as either:                     <ul style="list-style-type: none"> <li>➢ An <b>exception to the risk</b> that is insured; or</li> <li>➢ As a <b>condition or warranty</b> that the insured will “<i>maintain the vehicle in a roadworthy or efficient condition</i>”.</li> </ul> </li> <li>❖ Inclusion of this term as a condition or warranty is arguably <b>narrower</b>, because breach requires a “failure to maintain” on the part of the insured.</li> </ul>
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			<p>This suggests that the insured must <b><i>know or be in a position to know that something is wrong</i></b>, rather than the insurer having to merely show that the car was in an unroadworthy condition.</p> <ul style="list-style-type: none"><li>❖ Regardless of how the term is worded, insurers will <b><i>not</i></b> be able to rely on these exceptions in respect of <b><i>a breach against an injured third party</i></b>.</li><li>❖ However, in such circumstances, the Insurer will have:<ul style="list-style-type: none"><li>➤ A statutory right to recover <b><i>their outlay</i></b> under <a href="#">s148(4) Road Traffic Act 1988</a>.</li><li>➤ If the provisions are <b><i>included as conditions or warranties</i></b>, arguably a right to recover their outlay under common law as <b><i>damages for breach of condition</i></b>.</li></ul></li></ul>
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