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Extrait intitulé
pour la discussion
en Comité de
Révision
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CIVIL AND COMMERCIAL CODE

TITLE XIX

I N S U R A N C E .

(redrafted under directions of the
Revising Committee)

Preliminary Draft

21st. December

1 9 2 3

GENERAL OBSERVATIONS

I. - Insurance against loss and insurance on life are so different business that it is impossible to give a general definition of "insurance" which could apply to both contracts. Consequently no such general definition takes place in the preliminary Chapter of "General Provisions"; - See the Japanese Code, where they have even been reluctant to make a general Chapter on "General Provisions"; they have divided the matter in 2 Parts (namely Insurance against Loss and Insurance on Life), and their Chapter of General Provisions is really one for the "Insurance against loss".

II. - Contents of Policy. - The Japanese Commercial Code takes a great care to enumerate what must be contained in the policy (see s. 403, 425, 430). When the Siamese draft was made, it was not deemed necessary to specify such contents. Since this time, public opinion in Siam has had many times its attention drawn upon the necessity to have a stronger control of so-called Companies of Insurance which make business here, have as a fact no serious guarantees or

capitals (especially Chinese concerns) and disappear when they have to pay compensation. The Department will be shortly requested to legislate for providing in Siam conditions of control and authorization for Companies of insurance, so that this kind of cheating be no longer possible. This induces to consider if it would not be timely to introduce in the Code imperative rules for such and such contents of the policies as made in the Japanese Code ?

CHAPTER I

GENERAL PROVISIONS

A

(old section 928)

In the present Title:

"insurer" means the party who agrees to make compensation in case of loss or other event specified in the contract, or to pay a sum of money in case of insurance on life;

"assured" means the party who agrees to pay the premium;

"beneficiary" means the person who is to receive compensation or to be paid a sum of money in case of insurance on life.

B
(old section 928
paragraph James)

The assured and the beneficiary may be one and the same person, *or not.*

C
(insurable interest)

If the assured or the beneficiary, or in case of insurance on life the person upon life or death the payment of the sum depends, have no insurable interest in the event insured against, the contract is void.

(*cf. Jink. 3* English Digest No. 688)

ILLUSTRATIONS. - I. - A is the owner of a house and insures it against damages or destruction caused by fire or floods. A has an insurable interest.

II. - A is the creditor of D, his debtor for 10,000 baht. D has no other properties than a house the rent of which is 1000 baht per month. A and D agree that A will be paid by receiving 500 baht each month out of the monthly rent paid to D for twenty months. A is interested in the value of D's house not being diminished and insures it against damages or destruction caused by fire

or floods. Both the owner D (beneficiary) and the creditor A (assured) have an insurable interest.

III. - Amdeng A, who has a personal income of 200 baht per month, marries H who has no personal income but receives in his firm 1,000 baht salary per month. Amdeng A may make a contract of insurance on H's life so that she will be the beneficiary of a sum of money if H comes to die within such specified time. Amdeng A has an insurable interest.

IV. - A is the creditor of D, his debtor for 10,000 baht. D has no personal properties and receives only a small salary per month with which he could hardly pay his debt unless for many years. A may make a contract of insurance on D's life, so that D will receive a sum of 10,000 baht from the insurer if he reaches the age of fifty. D will be the beneficiary, but as A has an evident interest in D receiving this sum of money so that A be paid, A has an insurable interest.

D

(old section 947)

No change, except to delete the word "on" "on life" in order to make the section apply both to insurance against loss and on life.

(Cf. Japan. Com. 400)

E

(new section)

If, during the period of insurance, the insurable interest is substantially reduced, the assured is entitled to ~~have the insurer reducing~~ the sum insured and the premium.

The reduction of the premium shall take effect only for the future.

(Jap. Com. 392)

F

(new section)

The insurer cannot claim a reduction of the amount of the compensation to be paid by him unless he proves that the insurable interest as agreed by the parties was substantially too high.

(Jap. Com. 394)

G

(old section 944)

If, at the time of making the contract, the assured, or, in case of insurance on life, the person upon whose life or death the payment of the sum payable depends, knowingly omits to disclose facts which would have induced the insurer to raise the premium or to refuse to enter into the contract, or

knowingly makes false statements in regard to such facts, the contract is voidable.

(Cf. Jap. Com. 399 - 2 in insurance against loss)

H

(new section)

If, during the period of insurance, the risk taken by the insurer is substantially increased ^{or not} either by the fact of the assured or beneficiary ~~or otherwise~~, the contract is voidable.

(Cf. Jap. Com. 410, 411)

If such risk is substantially increased by another cause the contract of the insurer may terminate the contract.

I

(old section 927)

A contract of insurance is void unless made in writing.

J

(maritime insurance)

Contracts of Maritime insurance remain under the provisions of the maritime law.

CHAPTER II
INSURANCE AGAINST LOSS

K
(old section 925)

A contract of insurance against loss is a contract whereby a person agrees to make compensation for a contingent loss and another person agrees to pay therefor a sum of money called premium.

Loss includes damages caused by any kind of injury, provided such damages may be estimated in money.

(Cf. section 5 Civil Code, definition of injury; Ja. Com. 385.)

L
(old section 928)

No change.

M
(old section 929)

No change.

N
(old section 930)
(amended upon request of
Prince Nagara Svarga)

When a person has his property insured

and the ownership of such property is trans-
ferred to another person, the contract of
 insurance is extinguished except in the fol-
 lowing cases :

1) when the property is transferred
 by way of inheritance or in case of bank-
 ruptcy (to the official receiver ?);

2) when the insurer, having received
 notice of the transfer, agrees to it.

O

(old section 931)

No change.

P

(old section 932)

No change.

Q

(old section 934)

No change.

R

(old section 935)

1st. paragraph: no change.

2nd. paragraph amended upon request
 of Prince Nagara Svarga as follows:

If the insurer has paid part only of the amount of the loss, he cannot exercise his right to the prejudice of the right of the assured or of the beneficiary to claim from the third person the remainder of the compensation.

S

(old section 936)

No change.

part of the loss paid by the insurer to the remainder

T

(old section 937)

No change.

U

(new section)

Under otherwise agree between the parties, an
~~An insurer is not liable when the loss has been caused by the nature or the defects of the subject of the insurance, or by its natural waste, or by the fact of the assured or beneficiary acting in bad faith or with omission of such care as may be expected from a person of ordinary prudence.~~

(Jap. Com. 396)

The insurer is not liable when the loss has been caused by the fact of the assured or beneficiary acting in bad faith

V

(old section 938)

No change.

CHAPTER III
SPECIAL RULES IN CASE
OF INSURANCE AGAINST FIRE

It seems that "insurance against fire" is entirely covered by the General Provisions and by the Chapter on Insurance Against Loss.

See for instance:

in the Japanese Commercial Codes 4 sections (section 419 says that the insurer is bound to indemnify for any loss caused by fire, irrespective of its origin; the section is particular to Japan and is probably intended to cover cases where fire are a consequence of earthquakes; otherwise, why would not the parties be at liberty to specify exceptions in their contract as they agree ?; - Section 420, expenses for preservation, is covered by our section 932 - 2; - Section 421 says that an owner has a direct claim against the insurer when the thing has been insured by a hirer, depositor, etc. who detains it; this could be as well be admitted in other cases than fire, and the compensation to the owner seems sufficiently covered in our Code by the general principles; - Section 422 is an enumeration for the contents of policies, but we have given no such enumeration);

in the English Digests, section 688 is a general rule for insurable interest and section 691 is a quite special clause (direct rebuilding by the insurer of the building destroyed) which must be let at the discretion of the parties.

CHAPTER IV

SPECIAL RULES FOR INSURANCE ON CARRIAGE

X

(old section 933)

No change.

Y

If the goods carried are insured in course of their transportation (in transit) the insurable interest of such goods includes their value at the place and time where they have been received by the carrier, increased by the freight to the place of delivery to the consignee and other expenses connected with transportation.

(Jap. Com. 424)

Profits ~~expected by the~~ to be made at the time when the goods ~~were~~ to be delivered are included in the insurable interest only if there is an express agreement to that effect.

Z

Unless otherwise specified by the contract, a contract of insurance on carriage remains valid if, under the necessities of transportation, the carriage is interrupted for a time, or there are modifications in the route or manner of carriage.

(Jap. Com. 426)

CHAPTER V

INSURANCE AGAINST BODILY INJURIES
OR DISEASES

This question has much less interest when the liability of employers in case of injuries to their workmen, employees, servants, etc. is not taken into consideration; and this is not ripe for Siam nowadays.

The only point is that in case of insurances for persons, it is generally admitted that there is no real compensation, but a sum of money which may be fixed at the discretion of the parties. And such contracts are generally nearer to the insurance on life than to the insurance against loss. - But in Siam, if we admit the "insurable interest" as an objection and a remedy against insurances

being likely to become a kind of game, it seems, that it is the reverse: the insurance for persons injuries is as a fact nearer to an insurance against loss, and the insurable interest or the compensation paid ought to be really the eventual loss or the actual loss, respectively, to be incurred by the assured or the beneficiary. In this way, to insure one's body comes really to the same as to insure one's house or motor-car. In these conditions, provisions for "insurance against loss" ought to cover the matter as well. The important point would be to remove any doubt: as intended by the new and final paragraph of section K.

CHAPTER VI

INSURANCE ON LIFE

AA

(old section 939)

No change.

BB

(old section 940)

To be cancelled on account of section B in the Chapter I General Provisions and of the system of insurable interest.

CC

(old section 941)

(amended upon request of Prince Nagara Svarga

The sum payable may be a lump sum or an annuity, as may be agreed between the parties.

DD

(old section 942)

Subject to the provisions of section C, the person upon whose life or death the payment of the sum depends may be the assured, the beneficiary or a third person.

EE

(old section 943)

No change.

FF

(old section 944)

1st. paragraph has been transferred in General Provisions.

2nd. paragraph as follows:

In case on cancellation of the contract under section ~~G and H~~, the insurer has to return to the assured or to his heirs the redemption value of the policy.

GG

(old section 945)

No change.

HH

(old section 946)

No change.

II

(old section 949)

No change.

JJ

(old section 950)

No change.

KK

(old section 951)

No change.

CHAPTER VII

GUARANTEE INSURANCE

(Cf. Capitant Vol II, page 681 and page 830
and foll.) France C. Civ. art. 1798; 1.
19th. February 1889 art. 3 and 28th. May 1913;

Switzerland l. 2nd. April 1908 art. 60; Germany l. 30th. May 1908, art. 157)

LL

Guarantee-insurance means a contract of insurance where the insurer agrees to make compensation, on behalf of the assured, for an injury caused to another person by such assured.

The injured person is entitled to receive the compensation actually due to him from the insurer directly, but such compensation cannot exceed the sum due by the insurer under the contract. *In any case where an action arises between the insurer and the injured person, the assured shall be summoned to appear.*

The insurer is not discharged from his liability to the injured person by delivering the compensation to the assured, unless he proves that the sum paid has been transferred by the assured to the injured person.

MM

If the compensation paid under the contract does not cover the whole of the compensation due by the assured, he remains liable to the injured person for the surplus, unless

such injured person has failed to summon the assured to appear in an action between the injured person and the insurer if any.

NN

(Note. - Question of the privilege

granted to the injured person upon the compensation, as explained in Capitant's book. If we have to create a privilege in this case. we meet this difficulty that our system of "Special Preferential Rights" is already promulgated, with a list in section 380 C.C.C. Please examine if the provisions of sections KK and LL are not sufficient to expressly cover the right of the injured person without creating a new privilege for his special case ?)

1) A examiner

43/63

950 (of 936 à amiser)

951

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2) Illustrations par amiser 936 (1)
et par l'article final.

3) note sur la bankruptcy.

(1) The insurer is liable even if the loss or other event specified in the contract is caused by the fault of the beneficiary, unless such beneficiary acted in bad faith or failed to comply with a particular clause of the contract.