

ex amplius

De 25/89

M. Gerson

CIVIL AND COMMERCIAL CODE

TITLE XIX

I N S U R A N C E

(redrafted under directions of the
Revising Committee)

Draft

Submitted

to

the Legislative Committee

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1 9 2 4

CHAPTER I
GENERAL PROVISIONS

1
(old section 326)

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.

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

2
(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. Jenk's English Digest No. 638)

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 1,000 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.

3

(old section 341)

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

(Cf. Japan. Com. 400)

4

(new section)

If during the period of insurance, the insurable interest is substantially reduced, the assured is entitled to a reduction of the sum insured and of the premium.

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

(Jap. Com. 392)

5

(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. 324)

6

(old section 244)

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. 392 - 2 in insurance against loss)

7

(new section)

If, during the period of insurance, the risk taken by the insurer is substantially increased or modified by the fact either of the assured or beneficiary, the contract is voidable.

If such risk is substantially increased or modified by another cause, the insurer may determine the contract.

(Cf. Jap. Com. 410, 411)

7 bis

(old section 236)

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.

8

(old section 927)

A contract of insurance is void unless made in writing.

9

Any policy of insurance shall be made in two copies at least, one of them having to be delivered to the assured.

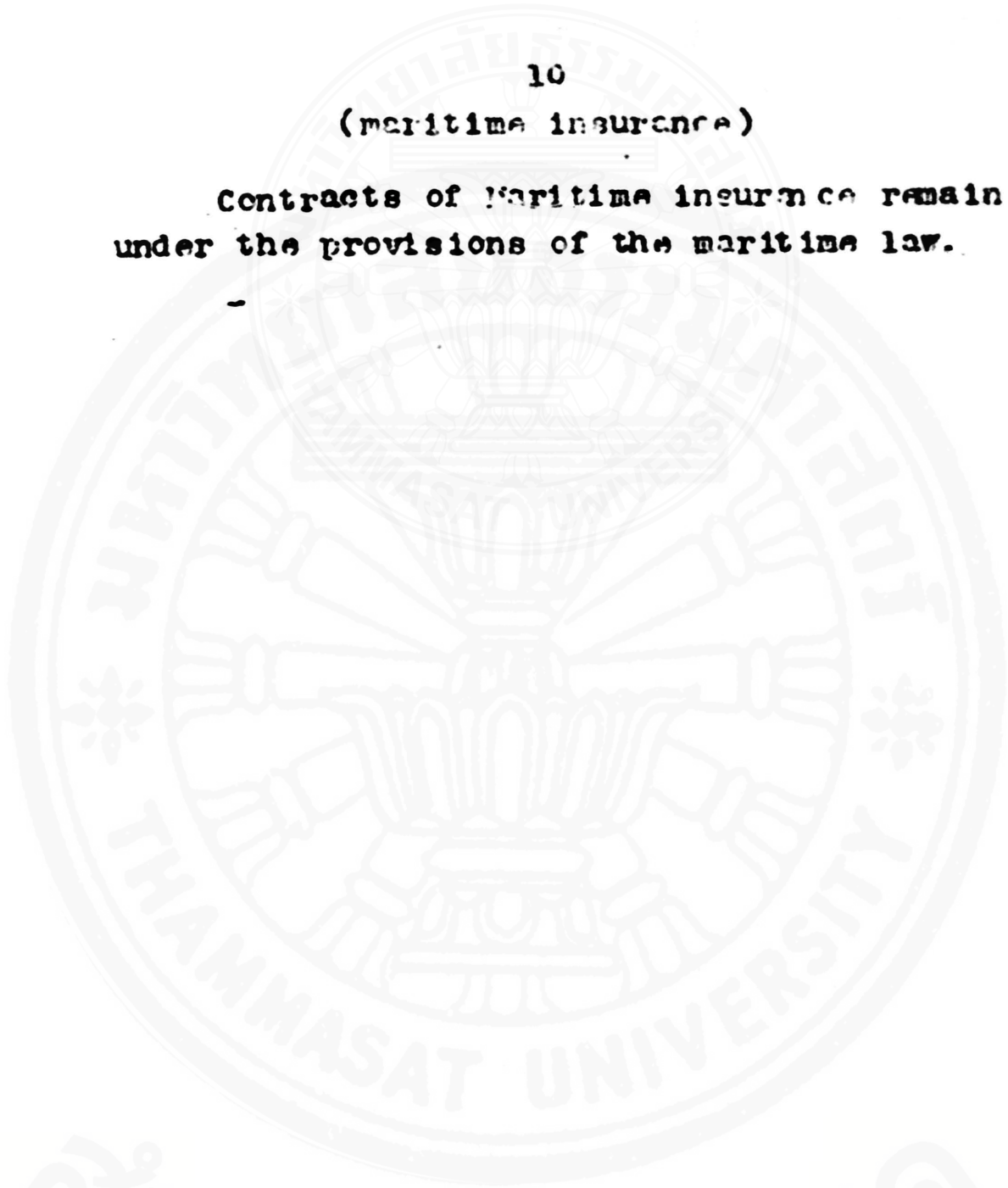
The policy must be signed by the insurer and contain:

- 1) the subject of the insurance;
- 2) the risk taken by the insurer;
- 3) the value of the insurable interest, if it has been fixed;
- 4) the sum insured;
- 5) the amount of the premium and manner of its payment;
- 6) the time of the commencement and of the end of the insurance;
- 7) the name or trade name of the insurer;
- 8) the name or trade name of the assured;
- 9) the name of the beneficiary if any;
- 10) the date of the contract of insurance;
- 11) the place where and the date when the policy was made.

10

(maritime insurance)

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



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CHAPTER II
INSURANCE AGAINST LOSS

11
(old section 225)

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; Jap. Com. 225)

12
(old section 228)

No change.

13
(old section 229)

No change.

14
(old section 230)
(amended upon request of
Prince Nagara Svarga)

and the ownership of such property is transferred to another person, the contract of insurance is extinguished except in the following cases:

1) when the property is transferred by way of inheritance, or, in case of bankruptcy, is transferred to the official receiver;

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

Note. -

15

(old section 231)

No change.

16

(old section 232)

No change.

17

(old section 233)

No change.

18

(old section 235)

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 com-
pensation.

19

(old section 237)

No change.

20

(new section)

Unless otherwise agreed between the parties, 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 wastage, or by the assured or beneficiary omitting such care as may be expected from a person of ordinary prudence.

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

(Jap. Com. 386)

21

(old section 928)

No change.

SPECIAL RULES IN CASE OF INSURANCE AGAINST FIRE

The Revising Committee have ^{been} requested to consider if special rules for Insurance against Fire are not necessary.

It seems that "insurance against fire" is entirely covered by the General Provisions and by the Chapter on Insurance Against Loss: the meaning of the word "loss" having been explained in order to remove any misunderstanding as to its extent

Take for instance the Japanese Commercial Code where there are provisions concerning Insurance against fire. We read in section 419 that the insurer is bound to indemnify for any loss caused by fire, irrespective of its origin; but the section seems quite particular to Japan and is probably necessary to cover these cases where fire is a consequence of earthquakes; otherwise, why could 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 282 (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 (floods for instance) and the compensation to the owner seems sufficiently covered in our Code by the general principles; — Section 422 is an addition to the contents of policies, but which are a mere matter of course and are included in all policies of insurance against fire.

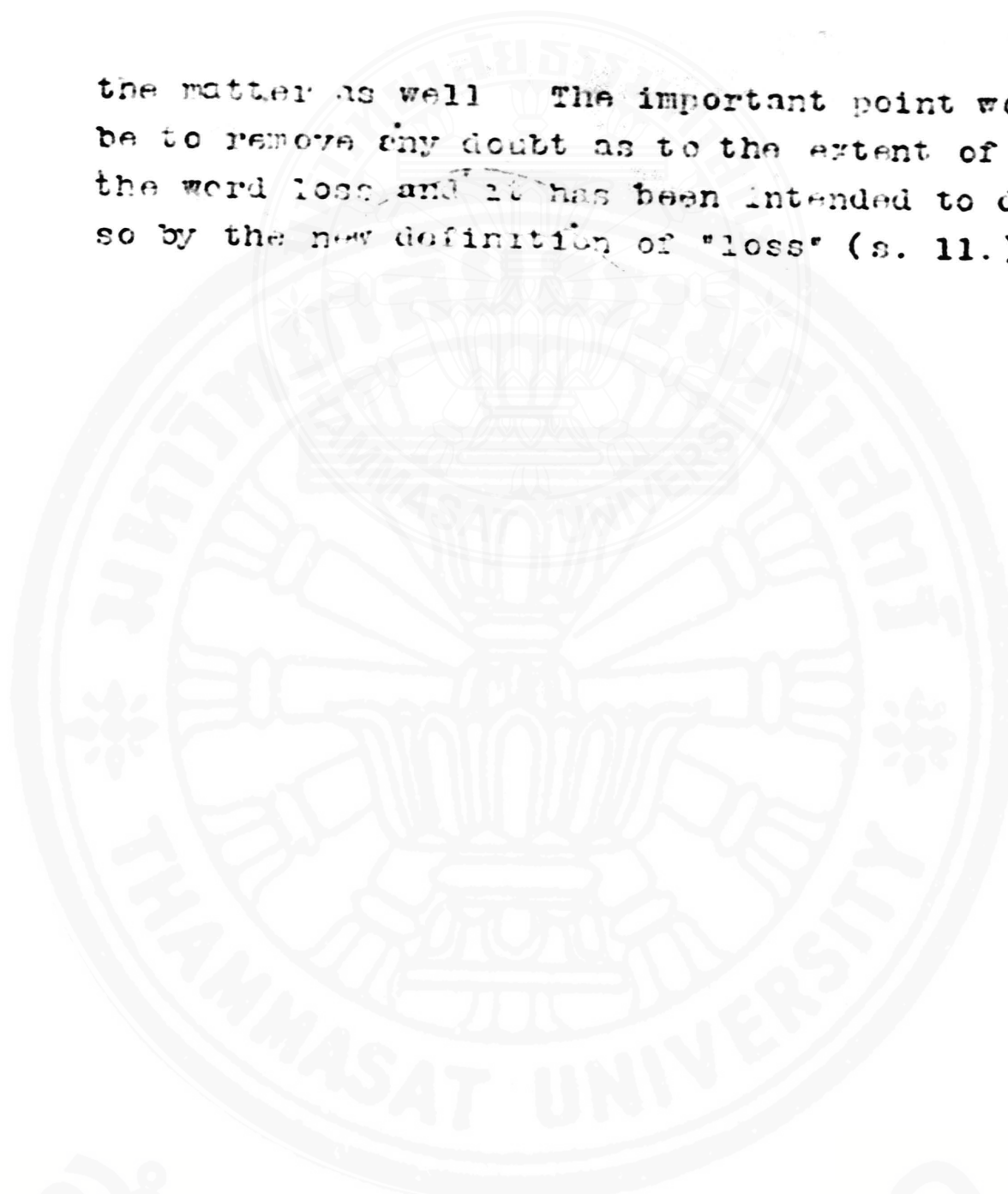
In the Jenks' English Digest, section 688 is a general rule for insurable interest and section 691 is a quite special clause (direct rebuilding by the insurer of the building destroyed) which in fact has better to be left at the discretion of the parties.

SPECIAL RULES IN CASE
OF INSURANCE AGAINST BODILY INJURIES
OR DISEASES

This question has much less interest when the special 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.

As to personal bodily injuries or diseases of the assured himself, it is a curious part to see that the continental laws have a general tendency to admit, instead of compensation for the actual damage, the allowance of a sum of money to be fixed at the discretion of the parties. The consequence is that such contracts are generally nearer to the insurance on life than to the insurance against loss. - But in Siam, we have admitted the "insurable interest" as a remedy against insurances being likely to become a kind of game. Then we shall admit, in case of the insurance for personal injuries, that it must be nearer to the insurance against loss, and that the insurable interest or the compensation paid ought to be really the eventual loss or the actual loss, respectively, as incurred by the assured or beneficiary. With that policy, 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 to the extent of the word loss, and it has been intended to do so by the new definition of "loss" (s. 11.).



CHAPTER III
SPECIAL RULES FOR
INSURANCE ON CARRIAGE

22
(old section 323)

No change.

23
(new section)

If the goods carried are insured in course of their transportation 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.

Profits 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.

(Jap. Com. 424)

24
(new section)

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)

25

The policy of insurance on carriage must contain in addition to the particulars specified in section 3:

- 1) the specification of the route and manner of the carriage;
- 2) the name or trade-name of the carrier;
- 3) the place where the goods are to be received and delivered;
- 4) the period fixed for the carriage, if any.

(Japan Com. Code, s. 425)

CHAPTER IV
INSURANCE OF LIFE

26

(old section 939)

No change.

27

(old section 940)

To be cancelled on account of section ~~939~~ ^{7 (final)} in the Chapter I General Provisions and of the system of insurable interest.

28

(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.

29

(old section 942)

Subject to the provisions of section ~~28~~ 3, the person upon whose life or death the payment of the sum depends may be the assured, the beneficiary or a third person.

30

(old section 943)

No change.

31

(old section 944)

1st. paragraph has been transferred in.
General Provisions.

2nd. paragraph as follows:

In case on cancellation of the contract
under section 6, the insurer has to return to
the assured or to his heirs the redemption
value of the policy.

32

(old section 945)

No change.

33

(old section 946)

No change.

34

(old section 949)

No change.

35

(old section 950)

No change.

36

(old section 951)

No change.

The policy of insurance on life must contain, in addition to the particulars specified in Section 5, the specific nature of the insurance

(Japan Com. Code s. 430)

CHAPTER V

GUARANTEE INSURANCE

(France Code Civil art. 1798; 1. 19th. February 1888 art. 2 and 25th. May 1913; Switzerland 1. 2nd. April 1908 art. 60; Germany 1. 30th. May 1908, art. 157)

38

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.

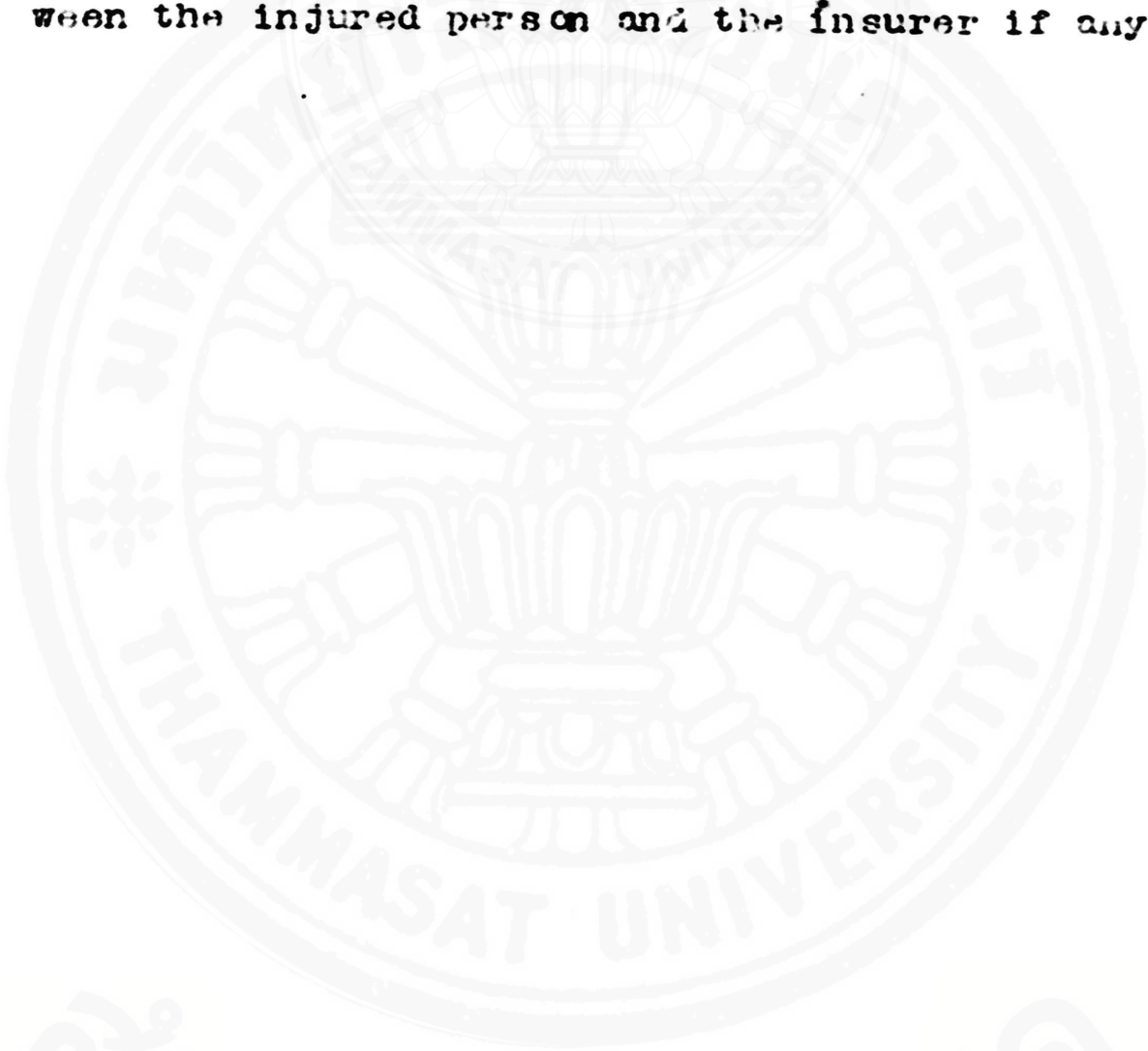
The injured person is entitled to receive the compensation actually due to him from the insurer directly, but such compensation cannot exceed the sum due by the insurer under the contract. In ^{any} case where an action arises between the injured person and the insurer, the injured person shall summon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

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.

39

If the compensation paid under the con-

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.



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