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Share this: Facebook Twitter Reddit LinkedIn WhatsApp Introduction The marine insurance is based on an important principle that is 'Utmost Good Faith' which is the crown field in this law. It is the responsibility of the ship-owner or the cargo owner to an insurance contract makes statement of facts, expectations, belief to the insurer before or at the time of the contract being made. The assured must disclose every material fact known to him before the contract is concluded. According to Marine Insurance Act of 1906 material circumstance is one which is known to the assured and the assured is deemed to know every circumstance which in the ordinary course of business ought to be known by him. The impact for the non disclosure of a material circumstance by the assured leads to avoidance of the contract by the other party that is the insurer, this happens because a contract of marine insurance is a contract based on good faith. It is very essential for the assured not to misrepresent as it may lead to avoidance of the contract, therefore if the assured fails to make any disclosure or misrepresentation, the insurer may avoid the contract from the time of inception of the contract. The marine insurance contracts are just like the other contracts and they follow the procedure of 'offer' and 'acceptance'. Due to the characteristics of the insurance market, the marine insurance contracts have a higher degree of credit, particularly that both the party should perform the 'duty of utmost good faith'. In common law, only insurance contracts provide an example of 'utmost good faith'. It shall be duty on the person taking up the insurance to disclose to the insurance company all facts of which he is aware or which may affect the premium or acceptance of the risk. The failure to do so make the contract void able at the option of the insurance company, which means the contract is rescinded. Section 17 to 20 of the Marine Insurance Act 1906 provides two leading aspects of 'utmost good faith' that is the duty of disclosure and not to make misrepresentation pending negotiation of contract. Insurance Is Ubberrimae Fidei This is an important feature which shall be applied to all the policies whatever the risk or the subject matter is included. 'A contract of marine insurance is based upon the utmost of good faith, and if this is not to be observed by either party, the contract shall be avoided by the other party. It means if the party does not act in good manner then the other party is free to avoid the contract. Lord Stephenson stated that 'it is enough that much more than an absence of bad faith is required for both the parties to all contract of insurance'. In the contract the underwriter trusts the representation and proceeds upon confidence that he does not mislead or the ground of breach of the contract, then the insurer cannot avoid the contract on the ground of breach of the contract. Similarly the contract would be equally void, against the underwriter if he concealed; as if he insured a ship on a voyage, which he privately knew to be arrived; and an action would lie to recover a premium. In Banque Keyser Ullmann V Skandia Justice Steyn remarked that the duty, 'not only to abstain from bad faith but to observe in a positive sense the utmost of good faith.....' It is necessary for the parties to act in good faith that is to provide complete and truthful information the other party about the subject matter of the contract and that subject matter is nothing but the risk which is present in the contract. Thus we can see the general duty of good faith acts upon both the parties that is the assured and insured, the good faith should be carried out till the contract is completed and finally either party can avoid the contract if any one is found to breach the contract. Disclosure Of Material Facts According to section 18 and 19 of the Marine Insurance Act 1906, it shall be the duty to disclose every material fact before the contract is concluded. It means that before entering into a contract it shall be the duty of the assured to disclose every matter that he knows or reasonably expected to know, facts, includes reports, information and opinions from credible sources which are relevant to the contract. The contract does not require disclosure of matters that diminish the risk that is of common knowledge certain other details which indicate that are not required Any matter which is not required either by implied or express warranty. These disclosures of circumstances play a very important role in fixing upon the premium of the contract or determining whether the risk will be taken or not. In earlier cases the assured should disclose to his hull underwriter reports that his ship may be damaged, if these sort of reports are not disclosed then there can be a breach of duty to be found and contract can be avoided, this principle was modified in the Grecia Express Case and made an impact by the need to temper the broad test for the issue of materiality. The additional requirement was that the misrepresented or non disclosed fact must have induced the actual insurer to enter into the contract. This was affected by reasoning that the inducement requirement in general contract law must also be held to apply to misrepresentations in non disclosure and insurance law. The case Carter V Boehm to played an important role in the pre contractual duties of good faith. Here the case was whether the Fort Marlborough in Sumatra would be captured by an enemy within the year of insurance cover. The Fort was taken by the French, and the Governor of the Fort claimed under the policy. The underwriter put forward the defence that the weakness of the fort and probability of being attacked were not disclosed. The judgement was ruled out in favour of the assured that he was under no obligation to disclose the matter which the underwriter could have investigated themselves. We can see from this that there was no obligation on an assured to disclose, to the underwriter facts material to the risk that came to the assured's knowledge after the contract was made. But in Banque Financiere case Steyn J made a comment that there shall be reciprocal duties rest on both the parties to an insurance contract not only to abstain from bad faith, but to observe in a positive sense the utmost good faith by disclosing all material circumstances. This statement tells us that both the parties in the contract shall have the equal liability to perform the contract in utmost good faith. In Container transport International Inc and Reliance Group Inc V Mutual Underwriting Association Ltd , in this case CTI was a container leasing company which took insurance for their containers from Crum and Forester, the insurance company was unhappy with the policy and declined to renew the policy after the expiry. Then CTI approached CE health and Co to obtain 100% cover, even they refused to renew it. Later on the insurance was placed with Oceans, this company refused to pay and sought to avoid the insurance. The court ruled that the insurer was entitled to the policy because there was both non disclosure and misrepresentation to be found. From this we can see that it was necessary to disclose previous claims history. The view of presumption of inducement was followed in St Paul Fire and Marine Insurance Co (UK) Ltd V McDonnell Dowell Constructors Ltd; it was held that it would be sufficient if the non disclosed fact was an inducement and not necessarily the particular inducement. This creates difficulty for the assured while provides more flexibility for the insurer in defence. This situation was further classified in Marc Rich and Co V Portman. In this case Longmore J held that presumption can only operate where the actual underwriter cannot, for good reason, give evidence and there is no reason to suppose that he acted other than prudently. Longmore J further explained that "where he is called and the court cannot make up its mind, the defence of non disclosure should fail because he will not have been able to show that he had been induced. At the end of the day it is for the insurer to prove that the non disclosure did induce the writing of the risk". The Court of Appeal upheld the decision and the inducement requirement were introduced to remove the advantage given to the insurer by the very broad definition of materiality. In the case Drake Insurance Plc V Provident Insurance Plc, the Court of Appeal stated that the inducement must be proved by the insurer. Further in this case the court recognised the dilemma whether the allegations would have been of interest to a prudent insurer and was therefore material and held further that avoidance did not depend upon the correctness of the allegation. The Court of Appeal confirmed that any party seeking to rely on the material representation or non disclosure must prove that they were induced into a contract. Conclusion The term utmost good faith is always an intriguing one. 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Bibliography The law of marine insurance by professor howard bennett The modern law of insurance, edited by d. Rhidian thomas, volume two Law of marine insurance by susan hoggess Templeman on marine insurance : its principles and practices, fifth edition Export trade: the law and practice of international trade by schmittthoff, eleventh edition, carole murray, david holloway and darren timson - hunt. Websites 1. Www.google.com Share this: Facebook Twitter Reddit LinkedIn WhatsApp Ask the publishers to restore access to 500,000+ books. Share this: Facebook Twitter Reddit LinkedIn WhatsApp Introduction The marine insurance is based on an important principle that is 'Utmost Good Faith' which is the crown field in this law. It is the responsibility of the ship-owner or the cargo owner to an insurance contract makes statement of facts, expectations, belief to the insurer before or at the time of the contract being made. 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In earlier cases the assured should disclose to his hull underwriter reports that his ship may be damaged, if these sort of reports are not disclosed then there can be a breach of duty to be found and contract can be avoided, this principle was modified in the Grecia Express Case and made an impact that if the assured proved that the allegations were unfounded and he had not been dishonest towards the contract, then the insurer cannot avoid the contract on the ground of breach of the duty of good faith on the part of the insurer. However, it is essential for us to know what are the material circumstance which has to be disclosed to the insurer. It is the duty of the assured to disclose facts to the insurer but not everything. The disclosure made by the assured should contain the risk factor which shall allow the insurer to enable him to make his underwriting judgement. It is necessary for the agent or the broker to disclose every material circumstance known to him. According to Marine Insurance Act of 1906 'every material circumstance which the assured is bound to disclose, unless it comes to the assureds knowledge too late to communicate it to the agent.' It shall be the responsibility of the broker to pass on every material circumstance within the assured's knowledge. The other two important aspects of section 19 of the Marine Insurance Act of 1906 is that he needs to keep the material facts confidential which are obtained from the insurer while acting for another and the second important aspect is that this section does not have impact on the intermediate brokers in a chain but only to a placing broker. The remedy which is available for the breach of duty of disclosure is avoidance of the contract. Representation The term representation under the Marine Insurance Act of 1906 carries out principles of uberrimae fidei as laid own under section 17.Representations are statements made by the assured or his agent, during the negotiations of the contract, and before the contract is concluded. Representations are nothing but answers to questions put to the assured by his insurer. It shall be the duty of the assured to answer truthfully regardless of the materiality of the question to the risk. If the answer given by the assured turn out to be false with the intention of deceiving the insurer, though it may not be a material fact, and this act by the assured would lead him to a breach of duty of utmost good faith, the effect of which would render the contract voidable at the option of insurer under section 17. Representations can be made orally or in writing and representation made by the assured to the insurer may be withdrawn or corrected before the contract is concluded. The duty of representation is applied to both the assured and their broker; if anyone of them fails to represent truthfully to deceive another then the remedy shall be recession of the contract. The representation which are made are the material facts which is nothing but the every material circumstances which is known to the assured, and the assured is deemed to know every circumstance which in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure the insurer may avoid the contract. The other important feature of representation is that section 20(3) of the Marine Insurance Act tells us that 'representations may be either a representation as to a matter of fact, or as to a matter of expectation or belief'. It means that if a representation of expectation or belief is true if it is made in good faith, here belief may imply a statement of facts. There is a difference between representation and warranty. A representation only needs to be substantially correct but a warranty has to be inserted in the policy and must be strict and literally complied. The case Pawson V Watson distinguishes between warranty and representations. In this case a vessel was captured after sailing on a voyage where it was represented that the ship carried 12 guns and 20 men but in fact the ship carried only 9 guns, 6 swivels, 16 men and 9 boys. The court ruled out that the insurers were liable, because the condition in the policy only amounted to a representation and not a warranty. Types Of Representation According to Templeman there are three types of representations: a representation as simply of a fact; and not a representation of expectation and belief. Section 20(3) gives the impression that there are two types of representations and they are namely, as to a matter of fact and as to a matter of expectation or belief. A matter of fact is nothing but disclosure of material circumstances made by the assured to the insurer and it works on the principle of utmost good faith. The disclosure made should be true and before the contract is concluded, a matter of expectation or belief The term belief or expectation here means any statement of facts made which has reasonable grounds for belief. These statements which are made of a matter of expectation or belief are to be done under good faith. Avoidance According to the Marine Insurance Act 1906 it is not possible to claim damages for the breaches of the duty of good faith. The only remedy available for the breach of duty of good faith is avoidance of the policy. Avoidance under section 17 means 'avoidance by ab initio'. No other remedy can be claimed such as right to damages. For any breach of the duty of utmost good faith, non-disclosure and misrepresentation avoidance shall be the only remedy available. Avoidance of a contract can be done from the time of a breach of duty is to be found in the contract. Rescission is not compulsory, only if the party discovers that there is a breach of duty of good faith, then the party may choose to avoid the policy or not, the party is under no obligation to avoid the policy and it depends on his decision, it is also not necessary that avoidance of a policy should be exercised for serious breaches of duty and the court shall not have the power to intervene the party to do so. In Banque Financiere case there was an attempt made by the party to introduce damages for the breach of the duty of utmost good faith but the court ruled that the insurer was entitled to the policy because there was both non disclosure and misrepresentation to be found. From this we can see that it was necessary to disclose previous claims history. 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