

# **THE INSURANCE ACT ,1938**

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# Course outcomes

**Note: Out of 84 units, 63 shall be for teaching and 21 for continuous assessment**

## **COURSE OUTCOMES**

CO1: Experiential knowledge of the practice relating to Insurance.

CO2. Professionals can find lucrative opportunities in all branches of insurance such as life, property, automobile, and medical insurance.

CO3. The rapidly growing turf of insurance is a new opportunity for legal practitioners attracting many reputed firms and independent legal consultants.

# INTRODUCTION

- ❖ Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual.
- ❖ Therefore, the fundamental function of the insurance is **to shift the loss suffered by a sole individual to a willing and capable professional risk-bearer in consideration of a comparatively small contribution called the premium.**

• **Prior to 1912, there was no insurance law in india.** The insurance companies were **goverened by** the provisions of the **indian companies Act, 1882.**

• **In 1912, the indian life insurance Companies Act and the provident insurance Societies Act were passed to control life insurance only.**

• **In 1935 the government decided to proceed with the reform of the insurance law. Mr. Chandra sen , a well-known culcatta solicitor was assigned a special duty to report on the amendments necessary to modernize insurance legislation in india.**

• **The Advisory committee made several changes and the Government of india introduced the bill in the legislative Assembly in 1937 which emerged as the insurance Act of 1938. it was enforced since july, 1939.**

• **Short title – This Act may be called The Insurance Act, 1938.**

• **It extend to the whole of india.**

# Meaning of insurance.

- **Insurance is a contractual arrangement** whereby one party agree **to compensate another** party for losses.
- Insurance in broad terms may be described as a **method of sharing financial losses** of few from a common fund who are equally exposed to the same loss.
- Insurance is defined as the **equitable** transfer of the risk of a loss, **from one entity to another**, in exchange for a premium, and can be thought of a guaranteed small loss to prevent large, possibly **devastating loss**.
- An insurer is a company selling the insurance. The insurance rate is a factor used to determine the amount, called the premium, to be charged for a certain amount of insurance coverage.

# Definition of insurance.

- **E.W. Patterson-** Insurance is a contract by which one party, for a consideration called premium **assumes particular risk of the other** party and promises to pay him or his nominee a certain or ascertainable sum of money on specified contingency.
- **According to Ghosh and Agarwal** –Insurance is a co-operative device of distribution a risk over a group of person who are exposed to it.

❖ Insurance is an arrangement in which you pay money to a insurance company, and they provide a guarantee to you if something unpleasant happens with you.

❖ For example- if your property is stolen or damaged, or if you get a serious illness.

# Nature or Characteristics of Insurance:

- On the basis of the definitions of insurance discussed above, one can observe the following nature or characteristics:
- **1. Contract**

Insurance is a contract between the insurance company and the policyholder wherein the policyholder (insured) makes an offer and the insurance company (insurer) accepts his offer. The contract of insurance is always made in writing.
- **2. Consideration**

Like other contracts, there must be lawful consideration in insurance also. The consideration is in the form of premium which the insured agrees to pay to the insurer.
- **3. Co-operative Device**

All for one and one for all is the basis for cooperation. The insurance is a system wherein large number of persons, exposed to a similar risk, are covered and the risk is spread over among the larger insurable public. Therefore, insurance is a social or cooperative method wherein losses of one is borne by the society.

#### 4. Protection of financial risks

An insurer is protected from financial risks which can be measured in terms of money. As such insurance compensates only financial or monetary loss or risks.

#### 5. Risk sharing and risk transfer

Insurance is a social device for division of financial losses which may fall on an individual or his family on the happening of some unforeseen events. When insured, the loss arising out of the events are shared by all the insured in the form of premium. Therefore the risk is transferred from one individual to a group.

#### 6. Based upon certain principles

The insurance is based upon certain principles like insurable interest, utmost good faith, indemnity, subrogation, causa-proxima, contribution, etc.

## 7. Regulated by Law

Insurance companies are regulated by statutory laws in almost all the countries. In India, life insurance and general insurance are regulated by Life Insurance Corporation of India Act 1956, and General Insurance Business (Nationalization) Act 1972, and IRDA Regulations etc.

## 8. Value of Risk

Before insuring the subject matter of the insurance contract, the risk is evaluated in order to determine the amount of premium to be charged on the insured. Several methods are being adopted to evaluate the risks involved in the subject matter. If there is an expectation of heavy loss, higher premiums will be charged. Hence, the probability of occurrence of loss is calculated at the time of insurance

## 9. Payment at contingency

An insurer is liable to pay compensation to the insured's only when certain contingencies arise. In life insurance, the contingency — the death or the expiry of the term will certainly occur. In such cases, the life insurer has to pay the assured sum. In other insurance contracts, the contingency — a fire accident or the marine perils, may or may not occur. So, if the contingency occurs, payment is made, otherwise no payment need to be made to the policyholders.

## 10. Insurance is not gambling

An insurance contract cannot be considered as gambling as the person insured is assured of his loss indemnified only on the happening of such uncertain event as stipulated in the contract of insurance, whereas the game of gambling may either result into profit or loss. 11. Insurance is not a charity Premium collected from the policyholders under an insurance is the cost of risk so covered. Hence, it cannot be taken as charity. Charity lacks the element of contract of indemnity and compensation of loss to the person whosoever makes it

## Every contract of Ins must have following

1. There must be a **contract b/w parties** – ‘Insurer’ & ‘Insured’
2. Contract must be that the insurer **undertakes** to protect the insured from **any loss or damage** to be insured on the **happening of the event**
3. In consideration for the above, the assured undertakes to make the insurer a periodical payment of a sum of money called ‘**Premium**’
4. The contract must be in **writing** & document is called the ‘Insurance **Policy**’

## To be valid – there should be

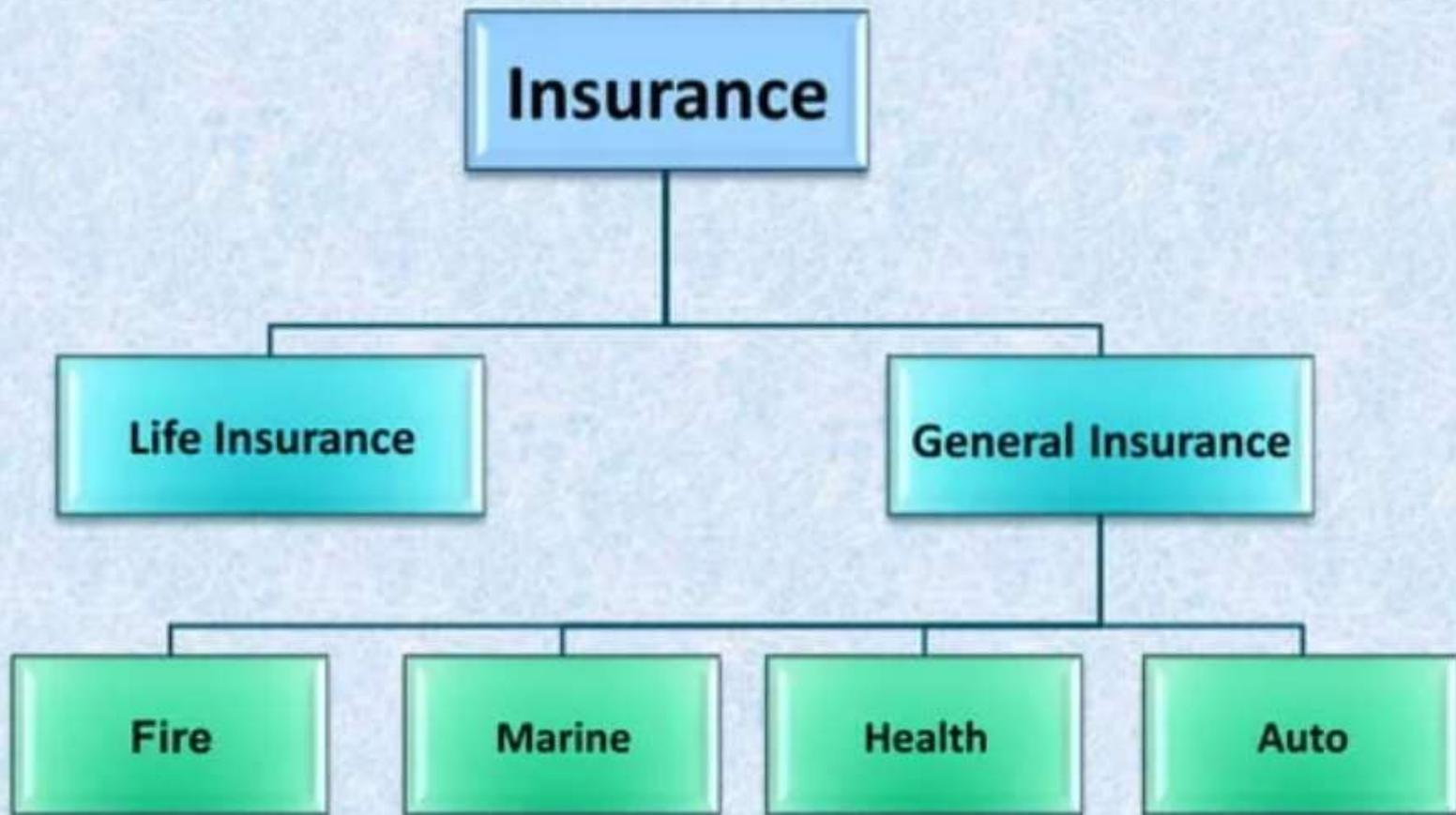
### Contract

- Satisfy sec 10 ICA
- *10. ALL agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*
- It must be a contract for **consideration** – to secure some benefit – not necessarily money/money's worth upon happening of **uncertain event** – will it ever happen or not

# Types of insurance

- Insurance policies provide protection against the various types of uncertainties that can occur in the life of an individual.
- Having health insurance can help you cover up for the expenses paid for any diseases, while an accident insurance can help you in getting cover for any kind of accidents that may occur.
- There are various types of insurance in the market due to the presence of a large number of insurance companies.
- The types of Insurance that will be discussed are:
  - 1. Life Insurance
  - 2. General Insurance (which includes fire insurance, health insurance and marine insurance)

# Insurance Classification



## **PURPOSE OF INSURANCE**

Twofold purpose

1. Short term: to give security of loss and individual investment
2. Long term: to accelerate the growth of the nation through capital formation

Thus we can say that insurance is one of the means of furthering the object of welfare State



# Importance of insurance.

- Provide protection against the loss.
- Eliminates risk.
- Co-operative methods of sharing the loss.
- National importance by capital formation.
- Provides employment.
- Medical support.

# Proposal?

- ❖ Proposal form in Insurance form serves as the basis on which an insurance policy is issued.
- ❖ Accurate details need to be filled in order to avoid issues later on  
Verification of details entered are necessary to enjoy benefits of policy.  
When applying for insurance, a proposer has to fill out the proposal form of the insurance company.
- ❖ The Insurance Proposal is an important document which provides the details of the proposer and the life assured and which is used as a basis to ascertain the insurability of an individual.
- ❖ Important aspects of your policy such as premiums, and the terms and conditions are based on the information that you provide in this document.
- ❖ The insurance contract is based on the trust that the details you enter in the proposal form are accurate and to the best of your knowledge

## •The Insurance Proposal Form

There are many details required in the insurance proposal form, but here are some of the basic and most important ones, that if not filled properly can lead to issues in claim settlement.

**Name** – This is very important, as the name entered here will be the name of the policyholder. At the time of claim, if this name does not match, it can lead to non-settlement of the claim.

**Address** – If the address is not properly stated, it can lead to a communication gap, which might mean missing out on crucial correspondence from the insurance company.

**Occupation** – Which occupation the proposer is involved in affects the decision of the insurance underwriter to a great extent. It can lead to rejection of the proposal or hike in the rate of premium.

**Sum Insured** – This is the reason why you are opting for the insurance policy. The sum insured is the amount for which you are seeking coverage, and is also the limit to which the insurer is liable.

**Age**- the age as per the last birthday before the filling of the proposal form.

# Policy?

- **An insurance policy** is a **contract between** an **insurer and an insured**.
- The insurer is the insurance company, the one agreeing to pay claims.
- The insured is the person **who bought the policy to protect them, their home, and their stuff**.
- Insurance policies describe what sort of claims the insurer is agreeing to pay and the various responsibilities of both parties (the insurer and the insured).
- Insurance contracts are based on the **principle of utmost good faith**. That means that both parties to the contract (the insurance company and the person buying the policy) must be forthcoming about all the details that might affect the contract.

# Parties

- **Insurer** – The party agreeing to pay for the losses is called insurer.
- **Insured**- The party who will receive the payment for loss, and who pays little premium for that in advance is called the insured.

# Consideration

- A consideration is an exchange of money for the guarantee of an act preformed or another benefit provided.

# Need of Utmost good faith

- Utmost good faith or the **Principle of Utmost Good Faith** is one of the most fundamental laws that are applicable in insurance. It is also known as **ubberimae fidei** in Latin.
- The principle of utmost good faith states that **the insurer and insured both must be transparent and disclose all the essential information** required before signing up for an insurance policy.
- It states that both the parties must disclose all the material facts before subscribing to the policy.
- Material facts are those facts which increase the risk factor associated with the insurance policy.
- The insurer needs to disclose all the investment strategies and the insured needs to disclose any medical history, existing health conditions, or any kind of habits like drug abuse, alcoholism or smoking.

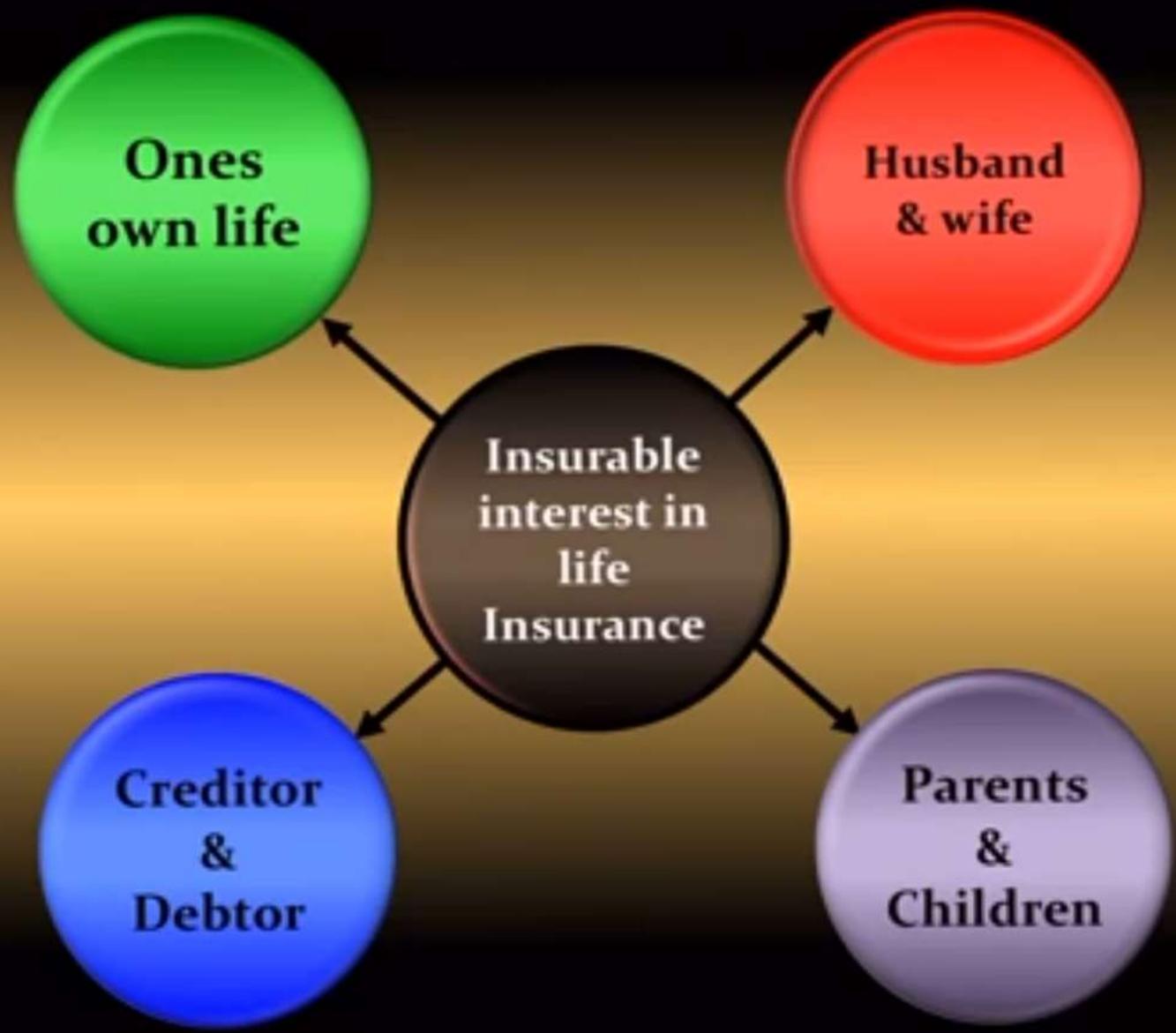
- It can happen that in situations of misrepresentation of facts by either the insurer or the insured, the terms of contract will be violated and the policy becomes void.
- The presence of a medical record will lead to higher premium or overall rejection of the policy.
- Similarly, the insurer has to inform the insured about the exclusions present in the policy.

# Insurable Interest

- According to Patterson insurable interest is a relation between the insured and the event insured against so that occurrence of the event would result in substantial loss or injury of some kind to the insured.
- Rodda interpreted it as an interest of such nature that the occurrence of the event insured against would cause financial loss to the insured.

# Characteristics of Insurable Interest

- a. There must be some subject-matter to insure, namely, the life of a person, property like house, vehicle etc.;
- b. The insured must have some legally recognised relationship with the subject matter of the insurance;
- c. The insured must be benefited by the safety of the subject - matter and suffers loss if the subject - matter is lost, damaged or destroyed;
- d. The subject-matter should be definite and it should be capable of being valued in terms of money.



Agent

Bailee

Vender  
& Vendee

Insurable interest in Property  
Insurance

Landlord  
&  
Tenant

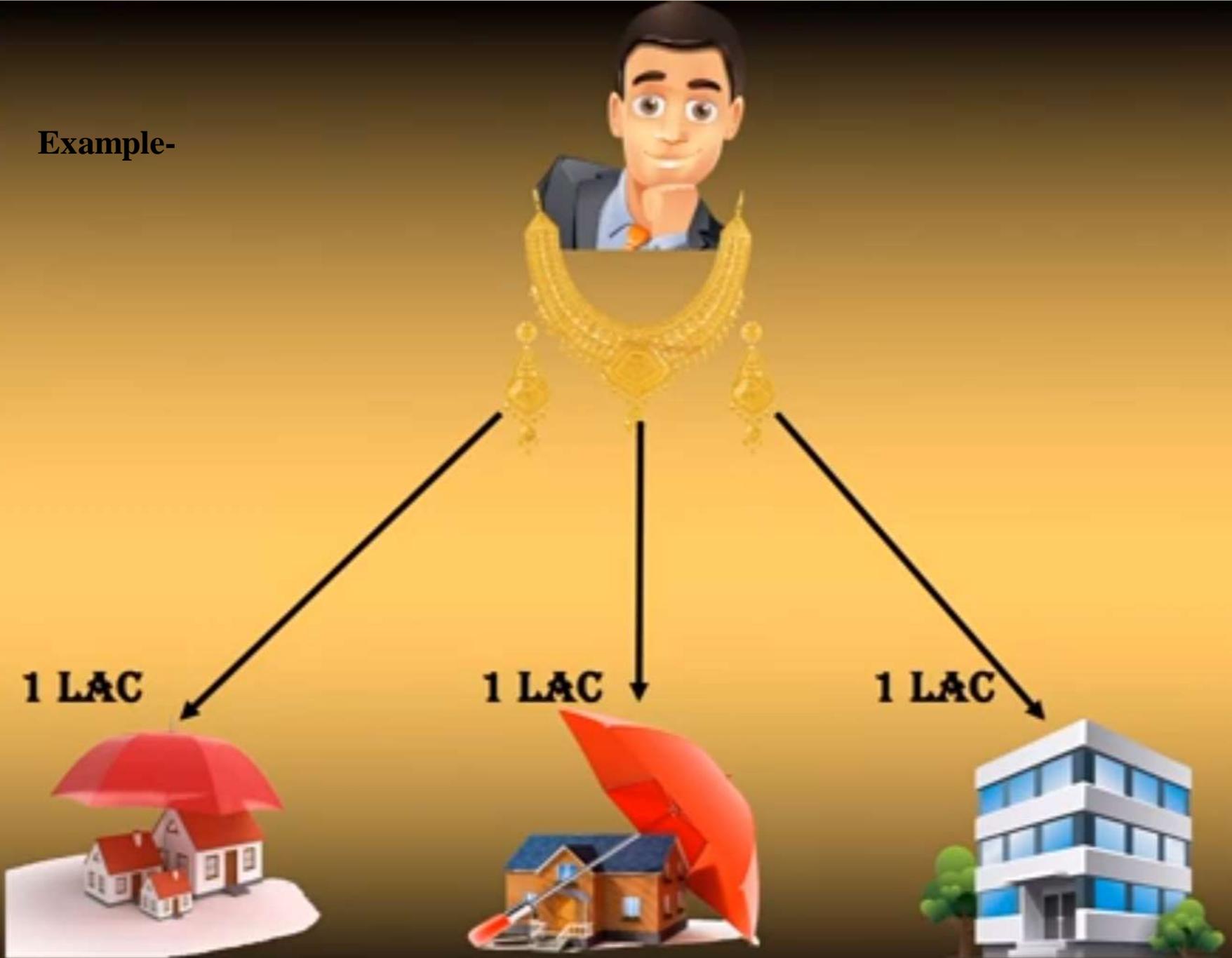
Mortgagor  
&  
Mortgagee

Lessor  
&  
Lessee

# Principle of Indemnity

- All insurance policies, except the life policies and personal accident policies are contract of indemnity.
- This principle may be defined as "under the indemnity contract the insurer undertakes to indemnify the insured against the loss suffered by the insured peril."
- Literally, indemnity means "make good the loss."
- The object of the insurance is to place the insured as far as possible in same financial position in which he was before the happening of the insured peril.
- The insured is not allowed to make any profit out of the happening of the event because the object is only to indemnify him and profit making would be against the principle

**Example-**



# The Risk- commencement, Alteration, Duration & Termination of Risk

- **Introduction:-**

- Man is continuously exposed to risk, life may stop suddenly with a massive heart attack, the crop may be lost by nature, the house may unexpectedly catch fire.
- Understandably we wish to protect ourselves against such contingencies.
- A contract of insurance is a contract under which the insurer undertakes to protect the insured from a specified loss if it occurs.

- The insured is afraid of loss which is called the risk of loss and the insurer undertakes to indemnify him from the apprehended loss if it occurs for a consideration called the premium.
- The insurer calculates the premium according to the probability, nature and extent of risk of which insured desires to be protected.
- The insured must describe the risk which he wants.

# Commencement of Risk

- Risk commences when legally binding contract comes into existence.
- The issue of the policy by the company itself shows that the risk has commenced, payment of premium is not that material.
- Usually the company issue a risk note, known as cover note, after receiving the proposal from the the assured.
- In life policies, there is a limitation that the risk will not attach till the first premium is paid.
- Mere payment of premium to the agent doesn't amount to a concluded contract, unless a cover note or an insurance policy is issued by the company.

# Alteration of Risk

- The insurer accept the proposal of insurance on the assumption that there has been no material change in the risk between the date of the proposal and the date of its acceptance.
- Any material change in the risk between these dates exempts the insurer from liability.
- The insured may under the policy have right to alter the risk but he has to give due notice to the company.
- The insurer usually demands higher premium if the assured wants to alter the risk.

# Duration of Risk

- A contract of insurance is incomplete till the duration of the policy is specified.
- If the period is not mentioned in so many words, the duration of the policy may be inferred from general usage.
- For instance the period of insurance in general insurance i.e. Fire, burglary, accident insurance is one year.
- The period of insurance may also be inferred from the previous contracts of insurance between the parties.
- If the policy is expressed to be in force till a specified date, the risk continues till the end of that day.
- Similarly, if the policy is to be renewed on a particular date, it cannot be said that the policy would not be in force for the whole of that day.

# Termination of Risk

- As soon as the duration of the policy elapsed the risk of the insurance company has been terminated.

# Assignment of insurance policy.

- The provision of assignment and transfer are given in section 38 of the insurance Act, 1938.
- An assignment is the complete transfer of the rights, title and the interest in the policy.
- briefly stated, an assignment is an instrument through which the beneficial interest rights and title under the policy are transferred.
- So far life policies are concerned, the assignment could be made either by endorsement on the policy itself or through a separate instrument which should be signed either by the assigner or his duly authorised agent and attested by at least one witness.

# Feature of Assignment

- Section 38 of the insurance Act speaks that an assignment can be effected either by an endorsement on the policy itself or through a separate instrument.
- A notice in writing must be given to the insurance company by the assigner along with the policy document.
- The insurer must register the assignment in the book, and give written acknowledgement of the receipt of such notice.
- The effect of the assignment should be the transfer of all rights and liability under the policy to the assignee subject to condition.

# Necessary condition for Assigner and Assignee.

- An assignment can be made by a person competent to contract and the assignee should not have any legal disqualification.
- It must be in writing under the signature of the assignor and it should be attested at least by one witness.
- Further the assignment should also not be in contravention of any law.

# Effect of Assignment

- The assignment once made cannot be cancelled despite the fact that no notice had been given to the insurance company.
- if such an assignment is required to be cancelled, there should be a valid re- assignment.
- If the assignment is made on the policy itself, there is no need of any court fee.
- But if it has been done through a separate instrument it must be dully stamped.

# Absolute Assignment

- An assignment may be absolute or conditional.
- Where all rights, title and interest in the policy are transferred to assignee without any reservation it is known as absolute assignment.
- Generally it is made for a valuable consideration.
- Once such assignment made, it is irrevocable and assignor loses all rights in the policy.
- It becomes the property of assignee that, in his turn, may assign it to any other person.

# Conditional Assignment

- Where the interest in the policy is transferred to the assignee only on assignor death, it is known as conditional assignment.
- Such type of assignment is effected generally due to natural love and affection.