

*MacGillivray on Insurance Law* (10<sup>th</sup> ed.) EDITED BY NICHOLAS LEIGH-JONES  
Q.C., JOHN BIRDS AND DAVID OWEN [London: Sweet and Maxwell, 2002,  
cxlvii + 1135 pp (including index). Hardcover: £302]

This work has always been the cornerstone of any legal practitioner's library or at least that part which deals with the law of insurance. Any advocate or solicitor

whose budget limits him to only one English book on the law of insurance would do well to shell out the money on this tome. As most courts take a citation from MacGillivray on Insurance Law as an accurate and succinct statement of the current state of the law, it would be a brave lawyer who does not have one close at hand. Users who are familiar with previous editions of this will note that there has been a slight streamlining of the title of the work. As we have come to expect, the work impresses in terms of its breadth and depth of its treatment of the relevant principles and case law.

The book is divided into three main parts. The first deals with the general principles of law which apply across and are common to various types of insurance. The second is concerned with the specific issues which arise out of different types or areas of insurance. The last section deals with the parties involved in the underwriting industry—the insurance companies, Lloyd's and the role of insurance agents.

Chapter 1 covers two of the most fundamental issues underlying insurance law—the definition of insurance and the concept of insurable interest. The authors first embark on a chronological analysis of the development of insurance at common law prior to legislation, laying out the relevant historical background behind this requirement peculiar to insurance contracts and then moving through the various legislative initiatives in this area. The authors also make reference to the position under American law. The general definition of insurable interest is laid out. The latter part of the chapter is thoughtfully divided into the various categories of insurance—life and property.

Chapters 2 and 3 cover the general principles relating to the formation of a contract of insurance, as well as the rules relating to the form which the policy should take. Chapter 4 deals with the typical situation of most insurance underwriting—what happens during that interim period between the agreement to underwrite and the time the policy is actually issued. It specifically lays down the rules governing the role of the Cover Note and temporary cover thereunder. Chapter 5 deals with the execution and delivery of the Policy.

Chapter 6 deals with the issue of when the Policy commences in its cover of the risk sought to be placed and when such cover terminates. It also specifically deals with the question of when the Policy commences cover when such commencement is pegged to a date or event and when it is instead framed with reference to the payment of the premium. Chapters 7, 8 and 9 deal with the various principles relating to premiums. Of particular interest would be Chapter 8 which deals with the various combinations and permutations which may result in the termination of insurance cover and in which situations would premiums be returnable.

Chapters 10, 11 and 12 deal with the terms of the Policy itself. Chapter 10 deals with the various types of terms found in insurance contracts and the impact of such difference in the different results for the contracting parties. Anyone who has some basic knowledge about insurance law would know about the draconian nature of warranties in insurance law. It may surprise the uninitiated to know that in insurance law, it is the warranty (and not the condition) which leads to more serious consequences upon breach. Chapter 10 thus deals with the rules which the courts have devised in order to determine if a term is indeed such a warranty, and whether it is one of past or present facts or does it represent a continuing promise throughout the entire duration of the Policy. Chapter 10 also deals with the other difference

between insurance law and general contract law—under insurance law, once there is a breach of a warranty, there is automatic discharge, i.e., there, is no need for an election. However, the innocent party may waive such breach.

Chapter 11 deals with a subject that any commercial lawyer would be familiar with—construction of the contract of insurance. Of course, in this book, the authors focus on the terms and words which are used in insurance contracts. The general rules on construction are also dealt with.

Chapter 13 deals with some rules of the conflict of laws which are germane to insurance contracts. Chapter 14 deals with the issue of illegality and how it affects the claims made by the insured and how the illegal acts of the insured may affect the claims of third parties under such policies. Under the illegality or public policy bar, even though the contract may provide for a loss being covered, the courts may still refuse to enforce such a claim. This is a tricky area. Fortunately, the authors are very clear in their dealing with the issues arising thereunder.

Chapters 15, 16, 17 and 18 deal with issues of mistake, misrepresentation and non-disclosure. Herein is another of the peculiar features of an insurance contract—because it is considered a contract *uberrimae fidei*, any person who wishes to take out insurance cover is bound a duty to disclose all facts material to the risk to be insured. The authors do a bit to trace the historical development of the doctrine as well as the differences of opinion that has arisen along the way. The work also covers a few examples of such a duty. The work covers the issue of how the duty and its breach affect the rights of the insured persons when there is a breach by a third party.

Chapters 19 and 20 deal with the situation where a loss has occurred. Chapter 19 touches on the various issues which may arise when a claim is made—who bears the burden of proving the loss, did the insured risks cause the loss claimed for, was notice of the loss given within the time stipulated and what if there is a fraudulent claim. Chapter 20, on the other hand, deals with who is entitled to claim under the policy. The first part deals with the situation where there has been an assignment. The second part deals with situations where more than party who has an interest in any property may be insured under the policy and the issues arising therefrom, like who can claim and to what extent.

Generally speaking, the indemnity paid out by insurers would be in terms of monetary compensation. However, there are times when they may elect for reinstatement. Chapters 21 deals with the issues arising out of this area. Chapter 22 deals with an area which most insured do not think about—the right of the insurer, after paying out, to step into the shoes of the insured and exercise his rights to sue third parties who have caused the insured loss.

Chapter 23 covers the two areas of double insurance and contribution. The question of contribution between two insurers only arise where there is double insurance, i.e., where two or more insurers are covering the same risk. If the insured only claims against one, the one paying out can look towards the other insurers who are insuring the same risk to contribute their share of the loss.

Section 2—which is entitled “Particular Classes of Business” then move on to deal with specific issues which arise in Life Insurance (Chapter 24), Personal Accident Policies (Chapter 25), Fire Policies (Chapter 26), Other Insurances on Property (Chapter 27), Third Party Risks (Chapter 28), Motor Vehicle Insurance (Chapter 29) and other types of specialised insurance cover.

Section 3 of the work rounds off the book by dealing the regulatory framework governing insurance companies in the United Kingdom, as well as those of Lloyd's. This section also contains an entire chapter to deal with that very vexing of questions for most insured persons—who does the Insurance Agent act for?

While this work is wonderful in its breadth and depth of coverage, it should always be borne in mind that the statutory provisions governing the law of insurance may not have a counterpart under Singapore law. Hence, caution should always be exercised in the use of this otherwise impeccable reference book. This book is clearly written with the practitioner in mind. The division of the book into Sections is particularly useful so that the busy lawyer can start with looking at Section 1 for the basic principles, before diving into Section 2 under the specific type of insurance the case relates to. Such a logical division allows the reader a ready overview of the general principles before zooming in on the specific principles applicable to the type of insurance. This logical division of the topics will allow any user to undertake systematic and efficient reading for any case.

On the whole, the authors have once again succeeded in bringing us the leading practitioners' handbook on the general principles of insurance law. This book recommends itself—it is user-friendly, it is well organised and it is superlative in its comprehensive survey of the relevant authorities.

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