Ratification after loss. It is immaterial that the insurance was effected without the knowledge of the person subsequently ratifying it.[668] In marine insurance, ratification after knowledge of a loss is a good ratification of the contract made without the principal's authority. The received view in England and Scotland is that this rule is anomalous and peculiar to marine insurance, and that in fire insurance, and presumably therefore in all risks other than marine, the contract must be ratified before loss.[669] In a Canadian fire case the Saskatchewan Court of Appeal, after a full examination of the authorities, was equally divided on the point, with the result that the decision of the judge in the court below, allowing ratification after loss, was affirmed[670]; in America, ratification after loss has been allowed.[671] It is submitted that it is difficult to extract from the observations in *Williams v The North China Insurance*[672] the inference that Hamilton J drew from them in *Grover & Grover v Mathews*,[673] and that the marine cases ought to be followed in cases of non-marine risks for reasons which are set out at greater length in the paragraphs of this book dealing generally with ratification.[674] This view was approved obiter by Colman J in *National Oilwell Ltd v Davy Offshore Ltd*.[675] **1-198**

The result of the rules concerning ratification is that, if an agent takes out a policy on the chance that an interested principal will ratify it, it is purely optional whether the interested parties adopt it. The agent runs the risk of losing the premiums he has paid, which he cannot recover from the principal, as he has acted outside the scope of his authority. He cannot recover the premiums from the insurer before the risk ends, as the insurer may answer that it is still open to the principal to ratify.[676] Once the principal has adopted the policy, either he or the agent may sue on it.[677] **1-199**

Trust of right of action. In *Williams v Baltic Insurance Association of London*[678] a comprehensive motor policy provided that the insurers would indemnify the insured against all sums for which he or any licensed friend or relative while driving with his consent should become legally liable in compensation for loss of life or accidental injury caused to any person. Damages were awarded against the insured's sister as compensation for accidental injury caused by her when driving with consent. The insured claimed an indemnity for her benefit. It was held that the policy, being one on goods, fell outside the Life Assurance Act 1774, and by anal- **1-200**

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668 *Routh v Thompson* (1811) 13 East 274; *Hagedorn v Oliverson* (1814) 2 M. & S. 485; *Williams v The North China Insurance* (1876) 1 C.P.D. 757.

669 Hamilton J in *Grover & Grover v Mathews* [1910] 2 K.B. 401, followed by Branson J in *Portavon Cinema v Price* [1939] 4 All E.R. 601; *Ferguson v Aberdeen Parish Council* 1916 S.C. 715.

670 *Goulding v Norwich Union* [1947] 4 D.L.R. 236; [1948] 1 D.L.R. 526.

671 *Marqusee v Hartford Fire Insurance* 198 F. 475 (1912); *Automobile Insurance v Barnes-Manley Wet Wash Laundry* 168 F. 2d 381 (1948).

672 *Williams v The North China Insurance* (1876) 1 C.P.D. 757.

673 *Grover & Grover v Mathews* [1910] 2 K.B. 401 at 403.

674 See Ch.36, below.

675 *National Oilwell (UK) Ltd v Davy Offshore Ltd* [1993] 2 Lloyd's Rep. 582 at 607–608.

676 *Hagedorn v Oliverson* (1814) 2 M. & S. 485 at 490, 492, 493; *Cory v Patton* (1874) L.R. 9 Q.B. 577. There might well also be a breach of warranty of authority; see *Albion Fire & Life Insurance Co v Mills* (1828) 3 W. & S. 218.

677 *Provincial Insurance Co of Canada v Leduc* (1874) L.R. 6 P.C. 224 at 244; *Browning v Provincial Insurance* (1873) L.R. 5 P.C. 263 at 272–273; *Transcontinental Underwriting Agency v Grand Union Insurance Co Ltd* [1987] 2 Lloyd's Rep. 409 at 414.

678 *Williams v Baltic Insurance Association of London* [1924] 2 K.B. 282.

ogy with *Waters v Monarch Fire & Life Assurance Co*[679] the insured, although without a personal interest in his sister's liability, was entitled to enforce the insurance for her benefit as one of a class of persons intended to receive an indemnity. It appears that the insured was treated as a trustee of his right of action on the policy for the benefit of the class of beneficiaries described in it, and not merely of the insurance proceeds as in the *Waters* case. Today the sister would have her own right of suit either under s.148(7) of the Road Traffic Act 1988 or under the Contracts (Rights of Third Parties) Act 1999.

1-201 **Third-party claim on insurance money.** Any concealment, misrepresentation or fraud by the nominal insured in connection with the effecting of the insurance would make the policy voidable, but after the insurance has been effected a breach of condition by the nominal insured would not necessarily avoid the contract with the principal who has complied with the conditions, and, conversely, a breach by the principal would not avoid the policy in so far as the nominal insured intended to insure his own interest. But where an agent insured in his own name and for all others interested, and intended the insurance to be for the benefit of his principal only, and the principal was unable to recover because his own act had caused the loss, it was held that the agent, who had in fact a limited interest, could not avail himself of the insurance to recover on that interest because he had not intended to insure it.[680] Where a policy on goods is effected by a nominal insured for the benefit of others interested, an action in respect of such interest may be brought either by the nominal insured or by the persons in fact interested.[681] The plaintiff must in his pleading name the person or persons for whose benefit the insurance was in fact made.[682]

When the insurers pay the policy moneys to the nominal insured, a third party, on whose behalf and for whose benefit the policy was wholly effected, is entitled to claim the moneys from the insured only if he was in a position to recover the money from the insurers as the person in fact interested in the policy to the extent of the amount claimed by him. The position is different from that relating to an insured who has a limited interest in the goods insured.[683]

1-202 **Joint and composite insurance.** It has become commonplace for reasons of commercial convenience to insure the interests of a number of insured persons under one policy of insurance, either because it concerns property in which they are all interested, as in *General Accident Fire & Life Assurance Corp Ltd v Midland Bank Ltd*[684] and *State of the Netherlands v Youell*[685]; or because they are all companies within one corporate group which can obtain insurance more effectively and cheaply through a single policy than by individual negotiation of separate policies, as in *New Hampshire Insurance v Mirror Group Newspapers*.[686] The fact that a number of insureds are insured by one policy does not by itself make the policy

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679 *Waters v Monarch Fire & Life Assurance Co* (1856) 5 E. & B. 870.

680 *Conway v Gray* (1809) 10 East 536.

681 *Hagedorn v Oliverson* (1814) 2 M. & S. 485; *Sutherland v Pratt* (1843) 12 M. & W. 16; *Williams v Baltic Insurance Association* [1924] 2 K.B. 282; *Fire Assurance v Merchants* 66 Md. 339 (1886).

682 *Cohen v Hannam* (1813) 5 Taunt. 101; *Bell v Ansley* (1812) 16 East 141.

683 For which see para.1-191, above.

684 *General Accident Fire & Life Assurance Corp Ltd v Midland Bank Ltd* [1940] 2 K.B. 388.

685 *State of the Netherlands v Youell* [1997] 2 Lloyd's Rep. 440; appealed on a different point [1998] 1 Lloyd's Rep. 236.

686 *New Hampshire Insurance v Mirror Group Newspapers* [1997] L.R.L.R. 24.

a joint insurance. There cannot be a joint insurance policy unless the interests of the several persons who are interested in the subject-matter are joint interests, so that they are exposed to the same risks and will suffer a joint loss by the occurrence of an insured peril. So if two persons are joint owners of property, an insurance to indemnify both against damage to it will afford an indemnity against their common loss which they will both necessarily have suffered.[687] The interests of such co-insureds are so inseparably connected that a loss or benefit must necessarily affect them[688] both.[689] One consequence is that a non-disclosure, misrepresentation or wilful misconduct on the part of one insured will affect the rights of co-insureds to recover on the policy.[690]

1-203 Where the interests of different persons in the same insured subject-matter are diverse interests, a policy expressed to insure all interested persons must be construed as a composite policy which is intended to insure each co-insured separately in respect of his own interests. Not only does the policy wording show that it is intended to cover the different co-insureds separately for their respective interests, but perforce the elements of joint risk, joint interest and joint loss will be absent.[691] It is usual to describe the co-insureds in a composite policy as being insured "for their respective rights and interests",[692] but a policy lacking that wording may nonetheless be construed as composite.[693] By contrast, where an "over-redemption" insurance policy provided that co-insured A was insured against a particular loss but that on a certain contingency his rights of suit on the policy in respect of such loss were transferred to co-insured B, this was not a composite insurance, with the result that a misrepresentation, non-disclosure or breach of warranty by A would provide a defence to a claim brought by B.[694]

1-204 Another decision which shows that the naming of two or more co-insureds in a policy does not necessarily make it either a joint or composite policy is *Sumitomo Bank Ltd v Banque Bruxelles Lambert SA*[695] (BBL), in which mortgage indemnity guarantee policies covering the interests of a number of banks making loans to finance the purchase of commercial properties in London were held to be single-insured policies and not composite policies. In this case BBL was described as "Agent" in the loan documentation, under which it was itself one of the lenders.

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687 *General Accident Fire & Life Assurance v Midland Bank* [1940] 2 K.B. 388 at 404–405. In Scots law the meaning of the phrase "joint owner" is the opposite of its use in English law, and as used in the text above. The equivalent term in Scots law to describe the interests of co-owners which are indistinguishable is "common owners" and property owned by two or more persons whose interests are identical to one another is known as "common property". See K.G.C. Reid, *The Law of Property in Scotland* (Edinburgh: Butterworths, 1996), para.34. In Scots law, the term "joint owner" is only used to refer to those persons who are co-owners of joint property and "joint property" refers only to property held in trust by trustees or unincorporated associations; co-owners of joint property could only secure composite insurance; co-owners of common property would secure "joint insurance" in the sense used in the text above.

688 This paragraph in the 6th edition of this work was approved and followed by the High Court of Ontario in *Goldschlager v Royal Insurance Co* (1978) 84 D.L.R. (3d) 355 at 376.

689 *Samuel & Co Ltd v Dumas* [1924] A.C. 431 at 445.

690 *Samuel & Co Ltd v Dumas* [1924] A.C. 431; *Central Bank of India v Guardian Assurance* (1936) 54 Lloyd's Rep. 247; *State of the Netherlands v Youell* [1997] 2 Lloyd's Rep. 440 at 445.

691 *General Accident Fire & Life Assurance v Midland Bank* [1940] 2 K.B. 388 at 405–406; *New Hampshire Insurance Co v Mirror Group Newspapers* [1997] L.R.L.R. 24 at 41, 57; *State of the Netherlands v Youell* [1997] 2 Lloyd's Rep. 440 at 447–448.

692 *General Accident Fire & Life Assurance v Midland Bank* [1940] 2 K.B. 388.

693 *New Hampshire Insurance Co v Mirror Group Newspapers* [1997] L.R.L.R. 24.

694 *DSG v QBE International Insurance Co Ltd* [1999] Lloyd's Rep. I.R. 283.

695 *Sumitomo Bank Ltd v Banque Bruxelles Lambert SA* [1997] 1 Lloyd's Rep. 487.

BBL obtained two mortgage indemnity guarantee policies for the benefit of all the lending banks to protect them in the event that the borrowers defaulted on the loan agreements. When this occurred the insurers declined to pay on the ground of non-disclosure, and disputes arose between BBL and the other banks over responsibility for inadequate disclosure. On a trial of preliminary issues BBL contended that all the banks were co-insureds under the insurance policies, which were by nature composite policies, so that all the co-insureds owed separate duties of disclosure to the insurers and non-disclosure by BBL and, if proved, would not affect the rights of the other banks to claim an indemnity. Langley J held, however, that this was an impossible construction of the policies. BBL was the sole "Insured", and was described not as having contracted "as agent for the Banks" but "as agent for the benefit of the Banks". In other words, BBL had been granted insurance as the sole insured, but additionally for the benefit of the other lending banks, so that in the event of a claim BBL was to recover sums in respect of its own and their interests and hold any recovery in excess of its own interest for their account.[696] It followed that BBL was the sole insured owing a duty of disclosure to the insurers. However, the court went on to hold that BBL owed to the other banks a duty to take care in performing its obligations under the loan agreement to arrange mortgage indemnity cover, and issues of breach of that duty and contributory negligence by the other banks arose for further determination.

8. Specification and Alteration of Interest

1-205 **Specification not generally required.** The general rule of law is that one who effects an insurance against the occurrence of an event need not, in the absence of specific inquiry, state the nature or extent of his interest in the subject-matter of the insurance unless the interest is such as to affect the risk being insured against.[697] It is sufficient to describe the subject-matter of the insurance itself in adequate terms, and this is so even where the insured has several differing interests in the same subject-matter.[698]

1-206 One who insures the life of another need not state whether he is interested in the life as a creditor or dependant.[699] Where property is insured, the insured need not state whether his title is legal or equitable,[700] so that a purchaser with a valid contract can insure as owner although the legal title or property has not passed to him.[701] A trustee need not disclose that he is a bare trustee without beneficial interest, and may insure to the full value.[702] A tenant who effects insurance in respect of his liability

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696 *Sumitomo Bank Ltd v Banque Bruxelles Lambert SA* [1997] 1 Lloyd's Rep. 487 at 495.

697 *Crowley v Cohen* (1832) 3 B. & Ad. 478; *Dixon v Whitworth* (1879) 4 C.P.D. 371 at 375; *Mackenzie v Whitworth* (1875) L.R. 10 Ex. 142, 148, explaining *Glover v Black* (1763) 3 Burr. 1394; *Palmer v Pratt* (1824) 2 Bing. 185; *Russell v Union Insurance Co* 1 Wash. 409 (1806); *Bartlett v Walter* 13 Mass. 267 (1816); *Cross v National Fire Insurance Co* 132 Sickel 133 (N.Y.C.A., 1892); *Tomlinson (Hauliers) v Hepburn* [1966] A.C. 451 at 468; *Caldwell v Stadacona Fire and Life Insurance Co* (1883) 11 Can.S.C. 212 at 226; *Insurance Co v Chase* 72 U.S. (5 Wall.) 509 at 515 (1866).

698 *Carruthers v Sheddon* (1815) 6 Taunt. 14.

699 *McCormick v Ferrier* (1832) Hayes & J. 12.

700 *Inglis v Stock* (1885) 10 App. Cas. 263 at 270, 274; *Aetna Fire Insurance Co v Tyler* 16 Wend. 385 (N.Y.Sup.Ct., 1836); *Dohn v Farmers' Joint Stock Insurance Co* 5 Lans. 275 (N.Y.Sup.Ct., 1871).

701 *Castellain v Preston* (1883) 11 Q.B.D. 380.

702 *Lucena v Craufurd* (1806) 2 Bos. & P. N.R. 269 at 324; *Insurance Co v Chase* 72 U.S. (5 Wall.) 509 (1866).

to repair need not disclose that his interest is not that of an owner.[703] A mortgagor insuring in the name of the mortgagee need not specify the amount of the mortgage,[704] and a mortgagee can insure the mortgaged property without stating that his interest is not that of the sole owner of it.[705] On the same principle, someone who insures goods need not specify his interest, although it may in fact be limited to that of a carrier or bailee in respect of his lien or liability to the owner in the case of loss.[706] An insurer of goods may effect a reinsurance of his risk by an insurance on the goods, not specifying his interest.[707]

Cases where interest must be stated. The terms of the proposal or policy may require the insured to have an interest of a particular kind or to specify his interest, and any such condition must be complied with as part of the contract between the parties. The ordinary form of fire policy provides that "the interest of the insured if other than that of absolute owner of the property must be stated". That clause has not been much discussed in the courts in this country. In North America it has been held that "absolute owner" does not necessarily imply that the insured must have the legal title vested in him. If he has an equitable title, or is sole beneficial owner of the property, it is sufficient.[708] If, on the other hand, he holds the legal title as trustee he is "absolute owner", notwithstanding that others may have an equitable or beneficial right to the property.[709] Unless the conditions expressly provide that the property must be unincumbered or that incumbrances must be disclosed, it is not necessary to disclose incumbrances on the property. The insured is "sole and unconditional owner", notwithstanding that he has mortgaged his property or that there is a lien upon it.[710] If a limited interest is expressly specified, the sole and unconditional ownership can apply only as a warranty of sole and unconditional ownership of that interest.[711] **1-207**

Another condition found in fire policies is that the policy shall not extend to cover "goods held in trust or on commission" unless expressly insured as such. "Goods in trust" means goods with which the insured has been entrusted, and not goods held

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703 *Lawrence v St Mark's Fire Insurance Co* 43 Barb. 479 (N.Y., 1865).

704 *Ogden v Montreal Insurance Co* (1853) 3 U.C.C.P. 497.

705 *King v State Mutual Fire* 61 Mass. (7 Cush.) 1 (1851).

706 *LNWR v Glyn* (1859) 1 El. & El. 652 at 664; *Crowley v Cohen* (1832) 3 B. & Ad. 478; *Walker v Maitland* (1821) 5 B. & Ad. 171; *Western v Home Insurance Co* 145 Pa. 346 (1891); *Pittsburgh Storage v Scottish Union and National Insurance Co* 168 Pa. 522 (1895).

707 *Mackenzie v Whitworth* (1875) L.R. 10 Ex. 142; *Maurice v Goldsbrough, Mort & Co* [1939] A.C. 452 at 461.

708 *Hartford Fire v Keating* 86 Md. 130 (1898); *American Basket Co v Farmville Insurance Co* 3 Hughes 251 (C.C.A., 3 1878); *White v Home Insurance Co* (1870) 14 Low.Can.Jur. 301.

709 *Gill v Canada Fire and Marine Insurance Co* (1882) 1 Ont.R. 341.

710 *Hanover Fire Insurance Co v Bohn* 48 Neb. 743 (1896); *Jones v Protection Mutual Fire Insurance Co* 93 F.Supp. 505 (1950), affirmed 192 F. 2d 1018 (1951).

711 *Traders Insurance Co v Pacaud* 150 Ill. 245 (1894); *Hanover Fire Insurance Co v Bohn* 48 Neb. 743 (1898). In any event the company's knowledge, through its agent, of the insured's real interest may well preclude reliance on the "sole and unconditional owner" clause: see, e.g. *Cross v National Fire Insurance Co* 132 Sickel 133 (N.Y. 1892); *Welsh v London Assurance Co* 151 Pa. 607 (1892); *Carpenter v German American Insurance Co* 135 Sickel 298 (N.Y., 1892); *Hartford Fire Insurance Co v Keating* 86 Md. 130 (1898); *Brooks v Erie Fire Insurance Co* 76 N.Y. 275 (App.Div., 1902); *Dupuy v Delaware Insurance Co* 63 Fed.Rep. 680 (1894). It might be otherwise if the clause was incorporated into the policy by legislation—see *North Empire Fire v Vermette* [1943] S.C.R. 189.

on trust in the technical, equitable sense of trusteeship.[712] A bailee, such as a wharfinger, carrier or mercantile agent, holds goods "in trust" for their owner in this commercial sense.[713] If the insured thus situated omits to declare his interest and insures "on goods" simpliciter, he can recover on the policy in respect of his own personal loss, assuming there is no "absolute owner" clause, because the condition is only applicable to an insurance beyond the interest of the insured.[714]

1-208 In some cases the subject-matter of the insurance, in respect of which the insured sought cover, could not be known to the underwriter without the nature of the insured's interest being spelt out.[715] Thus, for example, while it is permissible to insure against loss of prospective profits,[716] an insurance on a building such as an inn or a shop would not of itself include profits earned on the business carried out there, and the policy would need to state in addition that profits were insured.[717] The insurer could not know from a mere description of the premises that this collateral interest existed, and a similar rule must apply wherever a description of property does not reveal a collateral interest in respect of which cover is sought.[718]

1-209 In some cases it is necessary to disclose the nature of the insured's interest in order that the insurance should not be avoided for concealment of a material fact which might have influenced the insurers in determining whether or not they should accept the risk and, if so, at what rate.[719] It was on that ground that Story J expressed the view that a mortgagee's interest was of so special a nature that it ought to be disclosed.[720] In *Anderson v Commercial Union*[721] it was said that the fact that the insured was a tenant at will ought to have been disclosed because it affected the

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712 *Waters v Monarch Fire and Life Assurance Co* (1856) 5 El. & Bl. 870; *LNWR v Glyn* (1859) 1 El. & El. 652; *Tomlinson (Hauliers) v Hepburn* [1966] A.C. 451 at 467; *Lake v Simmons* [1926] 1 K.B. 366, upheld in the House of Lords [1927] A.C. 487. Goods entrusted to carriers through the handing over of a delivery order are held "in trust" by them: *Rigby Haulage Ltd v Reliance Marine* [1956] 2 Q.B. 468.

713 *Waters v Monarch Fire and Life Assurance Co* (1856) 5 El. & Bl. 870; *LNWR v Glyn* (1859) 1 El. & El. 652; *Roberts v Firemen's Insurance Co* 165 Pa. 55 (1894); *Pittsburgh Storage v Scottish Union and National Insurance Co* 168 Pa. 522 (1895). In order for there to be a "commercial trusteeship" the owner of the goods must have a right to the return of the very same goods or the delivery of them to another on his order, so that the insured does not at any time acquire the property in them: *South Australian Insurance Co v Randell* (1869) L.R. 3 P.C. 101.

714 *LNWR v Glyn* (1859) 1 El. & El. 652.

715 *Palmer v Pratt* (1824) 2 Bing. 185; *Routh v Thompson* (1809) 11 East 428.

716 *Barclay v Cousins* (1802) 2 East 544; *Lucena v Craufurd* (1806) 2 Bos. & P. N.R. 269.

717 *Re Wright and Pole* (1834) 1 Ad. & El. 621; *Menzies v North British Insurance Co* (1847) 9 D. 694; *Lucena v Craufurd* (1806) 2 Bos. & P. N.R. 269 at 315; *Eyre v Glover* (1812) 16 East 218; *Anderson v Morice* (1875) L.R. 10 C.P. 609 at 622, 624; *Maurice v Goldsbrough Mort & Co* [1939] A.C. 452 at 463.

718 *M'Swiney v Royal Exchange Assurance Co* (1849) 14 Q.B. 634; *Mackenzie v Whitworth* (1875) L.R. 10 Ex. 142, affirmed (1875) 1 Ex. D. 36; *Dixon v Whitworth* (1879) 4 C.P.D. 371 at 375. Failure to define the insured's interest with precision may lead the court to infer that he possesses no insurable interest—*M'Swiney v Royal Exchange* (1849) 14 Q.B. 634; *Anderson v Morice* (1875) L.R. 10 C.P. 609 at 622; *Macaura v Northern Assurance* [1925] N.I. 141 at 163.

719 For non-disclosure, see Ch.16, below.

720 *Carpenter v Providence Washington* 41 U.S. (16 Pet.) 495 at 505, (1842), in accord *Columbian Insurance Co v Lawrence* 27 U.S. (2 Pet.) 25 (1829); *Kernochan v N.Y. Bowery Insurance Co* 17 Barb. 428 at 439 (N.Y., 1858); *sed contra King v State Mutual Fire* 61 Mass. (7 Cush.) 1 (1851); *Franklin Fire v Coates* 14 Md. 285 (1859).

721 *Anderson v Commercial Union* (1885) 34 W.R. 189; 55 L.J.Q.B. 146. See discussion on the materiality of a reinsurer's interest in *Mackenzie v Whitworth* (1875) L.R. 10 Ex. 142; *Insurance Co v Chase* 72 U.S. (5 Wall.) 509 (1866).

exercise of the option to reinstate. An agent acting for an undisclosed principal will often need to disclose the fact.[722]

Misrepresentation as to insurable interest. If the insured has stated incorrectly the nature of his interest, the effect of such a misstatement depends upon the policy and the proposal form. If the answer was warranted to be accurate, then naturally the insurers could repudiate liability on the policy, although this is no longer possible in any insurance contract.[723] If the insurers seek to avoid the policy for misrepresentation, they will have to establish that it was material to the risk, satisfy the other requirements now contained in statute,[724] and in many cases the degree of importance to be attached to one interest as opposed to another may well be insufficient. **1-210**

The problem arose in a case brought before the Industrial Assurance Commissioner where the society's agent had without the proposer's authority inserted in the proposal form the incorrect statement that the proposer was the wife of the life insured.[725] The statements in the proposal form were warranted to be true.[726] The proposer was in fact unmarried and lived with the life insured as his salaried housekeeper. The Commissioner held that inasmuch as the incorrect statement was the statement of the society's agent and not the statement of the insured, the society could not set up its untruth as a defence to a claim on the policy and they were therefore estopped from alleging that the insured had not an insurable interest as the wife of the life insured. Alternatively, the Commissioner held that the incorrect statement as to the nature of the interest did not prevent the insured from recovering in respect of her actual interest as housekeeper. That alternative finding appears to be sound inasmuch as the society could not avoid the policy for breach of warranty or misrepresentation, and if the insured in fact had an insurable interest she was entitled to recover on that interest. The decision that the society was estopped from denying that the insured was the wife of the life insured cannot, it is submitted, be supported. First, it is doubtful whether the statement of the agent could be used to estop the insurers, following the decision in *Newsholme v Road Transport and General Insurance Co*.[727] Secondly, assuming that an insured has an insufficient interest to support an insurance, it cannot be the law that an insurer's agent can place the insurer in the position of being estopped from asserting the invalidity of the policy on the ground that it is illegal by statute. The doctrine of estoppel cannot be deployed so as to circumvent or nullify a statutory prohibition,[728] especially as the court is under a duty to take cognisance of such illegality.[729] **1-211**

Change of interest. If the insurance is upon property and not upon any speci- **1-212**

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722 See para.1-196, above.

723 See para.10-033.

724 The Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015; see Chs 16 to 18, below.

725 *Brunskill v Pearl Assurance* [1926] I.A.C. Rep. 56.

726 As noted above, this is no longer possible.

727 *Newsholme v Road Transport and General Insurance Co* [1929] 2 K.B. 356.

728 *Barrow Mutual Ship Insurance v Ashburner* (1885) 54 L.J.Q.B. 377 at 378; *Collins v Nation Life and General* [1929] I.A.C.(N.I.)Rep. 57.

729 *Gedge v Royal Exchange Assurance Co* [1900] 2 Q.B. 214; *Anctil v Manufacturers Life Insurance Co* [1899] A.C. 604; *Mercantile Credit Co v Hamblin* [1964] 1 All E.R. 680 (Note); *Royal Exchange Assurance Co v Sjoforsokrings AB Vega* [1902] 2 K.B. 384; *Bird v British Celanese Ltd* [1945] K.B. 336 at 339. See para.1-019, above.

fied interest in it, and assuming that no condition in the policy prohibits an alteration in interest, the fact that the insured's interest changes during the risk does not affect the validity of the contract,[730] as where, for instance, a lessee becomes a mortgagor of the insured premises by charging his interest.[731] Even if an owner of premises insures them after mortgaging them, and his equity of redemption is then sold under an execution, leaving him in possession as tenant to the mortgagee at the time of loss, he is entitled to the sums insured by the policy, notwithstanding the change in the nature of his interest.[732]

If, however, the contract is wholly one of personal indemnity, a diminution in the value of the interest of the insured diminishes proportionately the amount which he can recover. If the contract is one to indemnify him against loss to a specified interest, then he can recover only in respect of that interest.[733] If the policy requires the nature of the interest to be disclosed and specified, then the insurance is likely to be read as one on the interest disclosed and on that alone.[734]

1-213 **Condition prohibiting sale or transfer.** A usual condition in policies of insurance against fire and other property risks is to the effect that the insurance will cease to be in force,

> "as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law, unless notice thereof be given to and accepted by the company and the subsistence of the insurance in favour of such other person be declared by a memorandum endorsed hereon by or on behalf of the company."

Where hay and straw was insured against destruction by fire on such terms, and the insured abandoned it when he left his farm on receipt of a notice to quit, he was divested of all his rights in the hay and straw by virtue of an Act of Parliament, and the property in it passed to his landlord. It was held that this transfer or property in the insured produce was one "by … operation of law", so that the condition did not cause the insurance to terminate.[735]

1-214 Such a condition should be construed as referring not only to a transfer of the absolute property in the land or goods insured but also to a transfer of any interest which the insured may possess therein.[736] So where a mortgagor was insured as an owner, and later sold the equity of redemption, it was held that, although he retained an insurable interest in respect of his liability for the mortgage debt, the passing of

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730 *Alston v Campbell* (1779) 4 Bro.P.Cas. 476; *Ward v Beck* (1863) 13 C.B.(N.S.) 668. *Collingridge v Royal Exchange Assurance* (1877) 3 Q.B.D. 173; *Castellain v Preston* (1883) 11 Q.B.D. 380 at 385; *Martin v Fishing Insurance Co* 37 Mass. (21 Pick.) 389 (1838).

731 *Garden v Ingram* (1852) 23 L.J.Ch. 478.

732 *Strong v Massachusetts Mutual Fire* 27 Mass. (10 Pick.) 40 (1830).

733 *Aetna Fire Insurance Co v Tyler* 16 Wend 385 (N.Y.Sup.Ct. 1836).

734 So where a car owner indemnifies himself as owner in respect of third-party risks, the policy lapses when he sells the car: *Rogerson v Scottish Auto and General Insurance Co* (1931) 146 L.T. 26; *Tattersall v Drysdale* [1935] 2 K.B. 174; *Peters v General Accident Fire and Life Insurance Co* [1937] 4 All E.R. 628. But see para.29-016, below. Similarly when his interest ceases to be that of an owner: *Travelers' Indemnity Co v Lefleche* (1965) 47 D.L.R. (2d) 498 at 501. If he was never really an owner at all the policy never attaches: *Zurich General Accident Co v Buck* (1939) 64 Lloyd's Rep. 115; *O'Leary v Irish National Insurance Co* [1958] Ir.Jur.Rep. 1; *Coen v Employees Liability Assurance Corp* [1962] Ir.Rep. 314.

735 *Thomas v National Farmers' Union Mutual Insurance Society* [1961] 1 W.L.R. 386.

736 *Pyman v Marten* (1906) 13 Com. Cas. 64 at 67; *Pinckney v Mercantile Fire Insurance Co* (1901) 2 O.L.R. 296.

the equity of redemption was a breach of the condition against transfer.[737] If, however, a person is insured expressly in respect of more than one interest in the insured property, the passing of one such interest does not normally avoid the policy *quoad* any remaining interest.[738]

1-215 Where a person is insured expressly in respect of a limited interest, the passing of the property from one owner to another subject to that interest does not avoid the policy under the transfer clause. For instance, if an insurance were effected by a warehouseman expressly on goods in trust or on commission, the passing of the property in the goods would not affect the validity of his insurance. Where a person who was insured in respect of his interest as a purchaser of land under an executory contract sold half of his interest, it was held that the policy remained valid as to the other half of the interest which he retained.[739]

1-216 Where A, B and C insure property as co-partners, A retires and transfers his interest to B and C absolutely, and a loss occurs before the transfer is perfected, the insurance will not lapse under a "sale or transfer" clause.[740] Neither would it lapse if A were content to cede some of his interest without divesting himself of his share completely,[741] nor if A, B and C were to take D into the partnership.[742] Similarly, if A transfers his whole interest to B and C, the insurance does not cease.[743]

1-217 Where the condition was against "sale or conveyance", it was held that it applied to a voluntary sale only, and that a compulsory sale on execution did not terminate the insurance.[744] Where the insured as warehouseman, and the policy was declared to be void "if any change takes place in the possession of the subject-matter of the insurance", it was held that a constructive change of possession by the delivery of the warehouse receipt did not avoid the policy.[745] Where transfer without the company's consent by indorsement of the policy is prohibited, it is not sufficient to obtain an indorsement "payable in case of loss to B". Such an indorsement is not a consent to a transfer of the property to B but merely a substitution to B as payee.[746]

It may be asked, what happens if the subject-matter of the insurance is transferred to someone to whom the benefit of the policy is also assigned at the same time? At least one eminent judge thought that the condition against transfer could not apply,[747] and this serves to illustrate the difference between conditions prohibiting assignment and those prohibiting transfer of the *res*.

Assignment of life assurance policies and the Life Assurance Act 1774 s.2. **1-218** Although the object of the statute is to prevent speculation, it applies only to the contract of insurance between the insurer and the insured, and it does not ap-

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737 *Springfield Fire and Marine v Allen* 43 Hand 384 (N.Y.C.A., 1871).
738 *Germania Fire Insurance Co v Thompson* 95 U.S. 547 (1877).
739 *Manley v Insurance Co of North America* 1 Lans. 20 (N.Y.Sup.Ct., 1869).
740 *Forbes v Border Counties Fire Insurance Co* (1873) 11 M. 278.
741 *Forbes v Border Counties Fire Insurance Co* (1873) 11 M. 278.
742 *Jenkins v Deane* (1933) 47 Lloyd's Rep. 342, following New York authority.
743 *Forbes v Border Counties Fire Insurance Co* (1873) 11 M. 278, obiter. See too, J. Appleman and J. Appleman, *Insurance Law and Practice* (1981), Vol.4A, para.2752, confirming that the weight of American authority is to the effect that the sale of one partner to the remaining partners does not relieve the insurer of liability.
744 *Strong v Massachusetts Mutual Fire Insurance Co* 27 Mass. (10 Pick.) 40 (1830).
745 *California Insurance Co v Union Compress Co* 133 U.S. 387 (1889).
746 *Bates v Equitable Insurance Co* 77 U.S. (10 Wall.) 33 (1869).
747 *Ward v Beck* (1863) 13 C.B.(N.S.) 668 at 673 per Willes J.

ply to contracts whereby the policy is subsequently assigned or otherwise dealt with between the insured and third parties. If the policy is valid in its inception, that is to say, if it was in fact effected for the use and benefit of the person named who had an insurable interest in the life insured, it cannot afterwards be invalidated by assignment to a person who has no interest, but who takes it merely as a speculation.[748]

1-219 In a case decided in the Supreme Court of Canada an assignment to a purchaser without interest was held to be valid even though the assignment was made before the insured had paid a single premium or even received delivery of his policy.[749] The insured had applied for a policy on his own life, and his proposal had been accepted and the policy forwarded to the company's local agent for delivery against payment of the first premium. The insured, however, found that he was unable to pay the premium and asked the agent to get the policy assigned for him, which he did, and the policy was assigned to a purchaser who had no interest in the life of the insured. The court held that as the contract was originally made bona fide by the insured without any intention to assign it, the subsequent dealing with it could not invalidate it, and that the assignment was not in itself unlawful. In an American case the insured had allowed a policy on his own life to lapse, and subsequently by arrangement with the company it was renewed and assigned to a purchaser.[750] The court held that the assignee could not recover, and although the ground of the decision, viz that no assignment to a speculative purchaser is valid, cannot be approved,[751] the decision itself is probably right, because the renewal of the policy for the benefit of the assignee was in reality a fresh contract of insurance between the insurers and the assignee, and would in England have been void under 14 Geo. 3, c. 48.

1-220 **Participation in payments made without interest.** It has been held that if the insurers waive the illegality and pay the policy money on a policy effected without interest the absence of insurable interest cannot be raised by the person into whose hands the money has come as a defence against those claiming to participate in it as principals, assignees, beneficiaries or otherwise.[752]

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748 *Ashley v Ashley* (1829) 3 Sim. 149; *M'Farlane v Royal London FS* (1886) 2 T.L.R. 755. See para.1-114, above.

749 *Vozina v New York Life Insurance Co* (1881) 6 Can.S.C. 30.

750 *Carpenter v U.S. Life Insurance Co* 161 Pa. 9 (1894).

751 Nor does it represent prevailing American law: see J. Appleman and J. Appleman, *Insurance Law and Practice* (1981), Vol.2, para.854.

752 *Worthington v Curtis* (1875) 1 Ch. D. 419; *Attorney General v Murray* [1904] 1 K.B. 165; *Hadden v Bryden* (1899) 1 F. 710; *Carmichael v Carmichael's Executrix* 1919 S.C. 636 at 640, reversed on another point, 1920 S.C. (HL) 195; *Re Slattery* [1917] 2 Ir.R. 278. In previous editions of this work the propriety of these decisions was doubted. Following the analysis of the acquisition of property rights under illegal contracts in *Tinsley v Milligan* [1994] 1 A.C. 340, the present editors think that these doubts are no longer appropriate.