

*The Chartered Institute
of Loss Adjusters*



Future Focus 2015

Subrogation

*Executive Director Malcolm Hyde
BSc (Hons) Dip Fr FCII FCILA FIFAA*



What we will be exploring:

- Definition of Subrogation
- What it means in common law
- How policies amend common law position
- Certificate, C1 and C2 questions
- What answers should include



Some helpful elements to warm us up...

- Contract
- Common Law
- Statute
- Case Law



Some helpful elements to warm us up...

Contract - Legally enforceable agreement; e.g. your employment contract

Common Law – Basic law dating back to before 1066

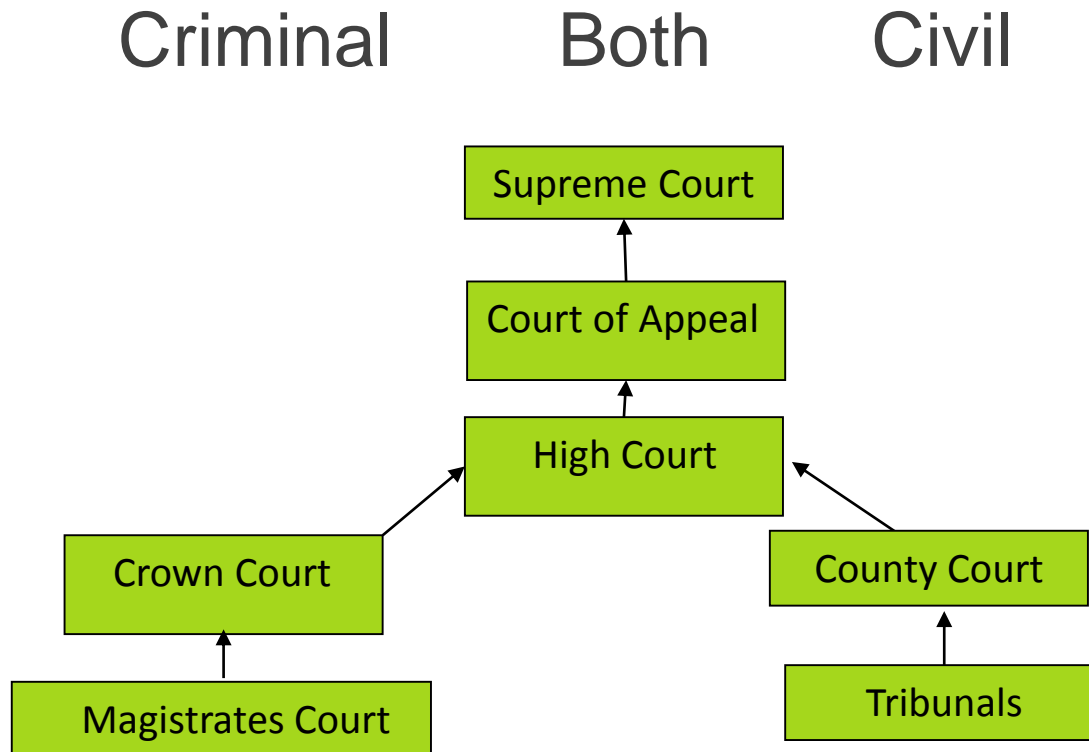
Equity – Fairness a system to fill in the gaps where Common Law had no comment...

Statute – Acts of Parliament e.g. Riot Damages Act 1886

Case Law – Decisions made by Courts e.g. Hyde v Wrench 1840



Hierarchy of Courts in England



Subrogation - Definition

- Subrogation is the **common law right to takeover** the **legal rights** and **remedies** of the **Policyholder** by the **Insurer**.
- Common law means that this **right exists without** the need of a **statute** or **contract term**.
- *Legal rights*....what do we mean?
- *Remedies*....what do we mean?
- *Corollary of indemnity* (naturally flows from)



Common Law Position

- Having paid an indemnity subrogation exists
- Prevents policyholder from receiving double indemnity
- Means that those responsible are still liable
- Method of apportioning the recovery
 - What happens if not all the loss is insured?



How policies amend common law position?

- Allows insurers to take over the recovery before the claim is paid.

Why?

- **Ensure that everything is done to maximise opportunity of the recovery by:**
 - Starting action immediately
 - Involving the third party responsible in quantum
 - Enables you to agree the agreeable

What to do?

- Always look for the responsible party
- Secure evidence



Castellain v Preston (1883)

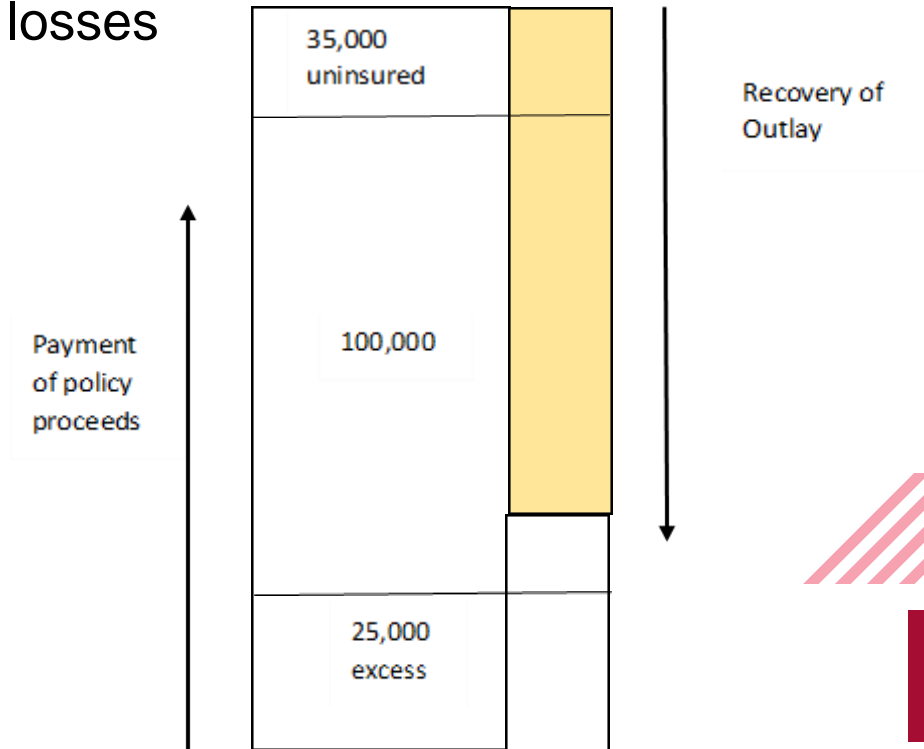
- Policyholder must account for monies recovered elsewhere
- There are **three** exceptions to this rule; namely:
 1. The policyholder only becomes liable to account to insurers for any profit once they have been fully indemnified in respect of the loss under the policy
 2. If the policyholder receives a gift from a third party following the loss, which was intended as extra compensation for the policyholder personally, they will not be deemed to have profited from their loss, and
 3. If the monies received by a policyholder from a third party exceed the amount of money paid to them by insurers, then the policyholder is entitled to keep the surplus, once they have accounted to insurers.



Apportion the recovery

- What happens when not all the loss is recovered?:

- ❖ Uninsured losses
- ❖ Excess



Certificate

Subrogation is:

- The right to **recover** under a policy
- The right to a **just** and **fair settlement**
- The right to **share a loss** with **another insurer**
- The right to **take over** the **policyholder's rights** of **recovery**



C1

- Provide the **definition** of subrogation, **explain** the common law position and **how** the subrogation clause amends the common law position.



Definition

- Subrogation is the **common law right to takeover the legal rights and remedies of the Policyholder by the Insurer.**
- Common law means that this **right exists without the need of a statute or contract term.**
- Legal rights....What do we mean?
- Remedies....what do we mean
- Corollary of indemnity (naturally flows from)



Common Law Position

- Having paid an indemnity subrogation exists
- Prevents policyholder from receiving double indemnity
- Means that those responsible are still liable
- Method of apportioning the recovery
 - ❖ What happens if not all the loss is insured



- **How policies amend common law position**

- Allows insurers to take over the recovery before the claim is paid.

- **Why?**

- Ensure that everything is done to maximise opportunity of the recovery by:
 - Starting action immediately
 - Involving the third party responsible in quantum
 - Enables you to agree the agreeable



C2



Mrs Miggins' house is seriously damaged by fire. At your first visit you find out that the seat of the fire was a washing machine that had been purchased by Mrs Miggins 13 months ago. Mrs Miggins explains that it is out of its guarantee period of 12 months.

What if any rights do insurers have and under what legal principle does this arise?

Detail the action you should take in respect of this issue.

- **The right is subrogation explain**
 - The principle
 - Common law position
 - How the policy amends the common law position
 - The method of apportioning the recovery
- **Action:**
 - **Practical application so what would you do?**
 - Secure evidence
 - Consider forensic evidence
 - Engage with the third party
 - Engage with the TP Insurer
 - Agree the agreeable



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