The Chartered Institute of Loss Adjusters

CILA

Future Focus 2015 Contribution

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What we will be exploring

- Definition of Contribution
- Case law and statute law
- Understand why it is important
- Methods of apportioning the loss
- Certificate, C1 and C2 questions
- What answers should include

Contribution is:

- **Marine Insurance Act 1906 Section 32 – Double Insurance**

  (1) “Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.”

- **Marine Insurance Act 1906 Section 32 – Double Insurance**

  (2)(a) “The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit…”

Contribution is:

Marine Insurance Act 1906 Section 32 – Double Insurance

(2)(b)“Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured.”

Marine Insurance Act 1906 Section 32 – Double Insurance

(2)(c)“Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy”.

Contribution is:

- **Marine Insurance Act 1906 Section 32 – Double Insurance**

  (2)(d)“Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.”

- **Requirements for Contribution**

  1. The same subject matter
  2. The same interest
  3. The same peril/risk

Same interest

- **North British & Mercantile Insurance Co v London Liverpool and Globe Insurance Co (1877)**

- Where the interest was not the same (in this case owner and Bailee) Contribution did not arise…
- No Cover? (Insurers modify the position)

- **Weddell v Road Traffic and General Insurance Co (1932)**

- Two policies both excluding liability if another existed – held that both policies were liable

Rateable proportion

Legal and General v Drake Insurance Co 1992

- No right of recovery where whole claim paid despite rateable proportion clause.

Drake v Provident Insurance Plc 2004

- There was a right of recovery – seemingly because the first insurer paid under protest

Methods of apportionment

A. Maximum liability method

B. Independent liability basis

Which method to use?

A. Average does not apply use Maximum liability basis

B. Average does apply use Independent liability basis

Maximum Liability Method

Shared by the Insurers in proportion to the total of all actual liabilities

Insurer A Sum Insured £10,000
Insurer B Sum Insured £20,000
Loss £6,000

Insurer A pays

$$\frac{£10,000}{£30,000} \times £6000 = £2,000$$

Insurer B pays

$$\frac{£20,000}{£30,000} \times £6,000 = £4,000$$

Independent Liability Method

- Assess the liability for each Insurer as though its policy was the only one in force
- The figure which results in each case represents the independent liability of the Insurer for the loss
- The loss is then shared in proportion to the independent liabilities of the Insurers

Example

Policy A Sum Insured	£10,000
Policy B Sum Insured	£20,000
Loss	£15,000
(Not subject to average)	

Step 1 calculate the independent liability of Policy A

This is £10,000

Step 2 calculate independent liability of policy B

This is £15,000

Step 3 the loss is shared in proportion to the two independent liabilities

A pays $\frac{£10,000}{£\ 25,000}$ x £15,000 = £6,000

B pays $\frac{£15,000}{£25,000}$ x £15,000 -= £9,000

Independent Liability Method

- Policy A Sum Insured £10,000
- Policy B Sum Insured £15,000
- Full Value Sum Insured £20,000
- Loss £5,000

Certificate

Contribution is:

- An interim payment to share the burden of the loss
- The right to seek a recovery to share the loss
- The excess paid by the policyholder to share the loss
- Where Insurers share a loss they both cover

C1

- Provide the definition of Contribution, explain the principle providing statute and case law as appropriate.

- Group work

C2

Frank Zappa insures his musical instruments against the risk of Fire with RT Insurance Company. The policy is in force from 1st Jan 2015 to 31st Dec 2015 He also takes out an “All Risk” policy with AD Insurance Company covering the same goods with cover effective from 1st March 2015 to 29th February 2016. Average applies to both policies.

On the 1st September his Fender American Standard Strat HSS Shawbucker, RW, 3-Color Sunburst guitar is damaged by fire. The total value of the guitar and agreed loss is £1,200.

Frank realises he is insured twice and as the Loss Adjuster you are handling the claim. Explain the legal considerations that arise with regard to the double insurance and explain the basis upon which you should settle the claim. Detail how the position would be different if the loss took place on 2nd Jan 2016 and was for damage as the guitar had been dropped.

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