EVOLUTION OF MARINE INSURANCE: FROM ANCIENT SEAS TO MODERN COMMERCE

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ABSTRACT

The journey of marine insurance, from ancient maritime trade to the modern business landscape, reflects the evolution of risk management. Insurance, guarding against financial losses, involves compensation for a fee. Marine insurance, tracing back to maritime practices like bottomry and respondentia bonds, emerged as a response to perils of the sea, forming the foundation for today's insurance principles.

Originating in Lombardy, cities like Florence and Genoa played key roles in marine insurance's development. The introduction of "insurance premiums" in Venice in 1255 marked a turning point, allowing compensation for losses due to piracy and spoilage. By the 14th century, Genoa had become a hub for insurance activities, with dedicated brokers facilitating its growth.

The impact of Genoese and Florentine practices led to the comprehensive statutes of Barcelona in 1484, which greatly influenced European insurance law. In England, the Lombards' presence shaped marine insurance, and Lloyd's coffee shop became a focal point.

India's insurance evolution, rooted in ancient practices and influenced by England, culminated in the Indian Marine Insurance Act of 1963. In summary, the voyage of marine insurance highlights its historical significance, its role in trade and navigation, and its enduring relevance as a tool for managing uncertainties.

INTRODUCTION

Insurance functions as a method of safeguarding against potential financial setbacks. It involves one party agreeing to provide financial protection to another party in case of harm, loss, or injury, in return for a payment. This practice serves as a strategy for managing risks, particularly aimed at lessening the impact of uncertain or potential losses.

The primary purpose of insurance is to provide protection against a range of potential risks. The individual seeking this protection is referred to as the "assured" or "insured," while the party assuming the risk and agreeing to offer protection against losses is known as the "insurer." his commitment is facilitated through a nominal payment called the "premium."

In essence, an insurance contract can be described as an agreement where the insurer, commits, in exchange for the premium, to provide a sum of money or its equivalent to the insured, upon the occurrence of a specific event. This specified event's occurrence must result in some form of loss to the insured, or at the very least, expose them to adversity, which is legally termed the "risk" within the context of insurance law. The type of insurance varies depending on the nature of the risk being safeguarded against. Categories of insurance encompass life, fire, marine, and more.

DEVELOPMENT OF MARINE INSURANCE

Marine insurance consists of insurance of property against losses due to marine perils, that is perils consequent on or incidental to the navigation of the sea. Marine insurance is the oldest type of insurance. Out of it grew non-marine insurance and reinsurance.[1]

BOTTOMRY, RESPONDENTIA BOND AND GENERAL AVERAGE

The protection of Ocean Commerce from financial loss resulting from perils of the sea goes back many hundreds of years. [2] Modern marine insurance is basically a development of concepts of maritime trade long in use around the Mediterranean, from at least the early Middle Ages and probably even before.[3] These concepts are bottomry, respondentia bond, and general

[1] European Link S.A., *History of Marine Insurance*, https://www.europeanlink.gr/information/history.
[2] E.R. Hardy Ivamy, *Marine Insurance* (4th ed. 1985).
[3] John D. long & Davis W. Gregg, Property and Liability Insurance Handbook (1965).

average.

The bottomry bond represented a type of promissory note issued by a ship's owner to a money lender who financed the maritime journey, using the ship itself as collateral. Should the ship successfully conclude the voyage, the owner would repay the loan along with the agreed-upon interest. However, if the ship encountered a loss during the voyage, the owner would be exempted from repaying the debt. The borrowed funds could be allocated toward constructing the ship or covering voyage expenses. Nonetheless, the interest rate associated with bottomry bonds was notably higher than prevailing rates in standard money lending.

Similarly, the respondentia bond operated under a comparable arrangement, but with a focus on lending money against a cargo of goods. In this case, the cargo of the ship served as security for the respondentia bond. If the cargo arrived safely at its destination, the borrower would repay the loan along with the agreed interest. However, if the cargo suffered loss or damage during transit, the borrower would not be obligated to repay the debt.

The merchants of Babylon, the Indians and Greeks entered into Bottomry contracts between 4000-400 BCE.[4]

In the *Digesta seu Pandectae*, the second volume of the codification of laws commissioned by Justinian I (527–565 AD) of the Eastern Roman Empire, a legal perspective written by Roman jurist Paulus during the early stages of the Crisis of the Third Century was incorporated. This legal insight pertained to the *Lex Rhodia* or Rhodian law. This law encapsulated the concept of general average, which originated on the island of Rhodes around 1000 to 800 BC.

The principle of general average stands as a foundational concept that serves as the basis for all insurance practices. This legal principle essentially emphasizes the equitable sharing of costs and losses among parties involved in a maritime venture when intentional sacrifices are made to safeguard the overall voyage, such as jettisoning cargo to save a ship in peril. This ancient principle, enshrined in Rhodian law, forms a cornerstone of insurance philosophy and practice.

Thus, the forerunners of insurance were the bottomry bond, the respondentia bond and general

[4] MN Srinivasan & K Kannan, *Principles of Insurance Law* vii (11th ed. 2021).

average. These concepts were in practice two or three thousand years ago.

From the 11th century to the 18th century, a few additional breakthroughs occurred in marine insurance. In 1132, the Danish began to reimburse those who experienced loss at sea.

THE LOMBARDS

The origins of effective marine insurance can be traced back to the urban centers of Lombardy, which is now recognized as Northern Italy. Particularly, cities like Florence and Genoa played a significant role in shaping this practice. A pivotal moment occurred in 1255 when the concept of "insurance premiums" was introduced. This occurred within the Merchant State of Venice, where these premiums were collected and consolidated to provide compensation for losses stemming from events like piracy, spoilage, or pillaging. This marked an early instance of systematically managing maritime risks and offering financial protection in the context of trade and navigation.

In the 14th century, the insurance industry underwent significant growth and prosperity. Within the initial half of the century, merchants from Florence and Genoa integrated the expense of insurance as a standard component of transportation costs. Genoa emerged as a central hub for insurance activities during this period. Distinct organizations of insurance brokers, exclusively dedicated to this trade, were established in Genoa. The thriving nature of this industry is evident from historical records – on a solitary day in 1393, a sole Genoese notary recorded over eighty insurance agreements, underscoring the robust activity and engagement within the insurance business during that time.

Among the earliest instances of legislative action concerning insurance, we find regulations originating from Genoa and Florence. The earliest of these regulations, dating back to the late fourteenth century, takes the form of a Genoese statute. This statute focused to forbid insurance on foreign ships and established specific criteria for the validity of insurance contracts. For instance, it stipulated that insurance agreements made after the occurrence of a loss would be considered null and void. Moreover, the statute defined a loss as "known" if it had been heard by anyone. Despite the attempt to ban insurance on foreign ships, this provision proved to be largely ineffective and was later revoked.

Additional statutes were introduced with various objectives. These included imposing taxes on

insurance, standardizing the format of insurance contracts, and instituting a streamlined procedure for resolving claims related to insurance policies. As the fifteenth century drew to a close, a greater degree of freedom was granted to the parties involved in insurance contracts, allowing them to dictate their own terms. This newfound flexibility resulted in a rise in the practice of entering into insurance agreements primarily for the purpose of gambling or speculation. In response to this trend, the legislative body of Genoa attempted to suppress such contracts, but these efforts encountered limited success.

BARCELONA

The Genoese statutes, while limited in scope, were not extensive in their coverage. The statutes of Barcelona emerged as the initial comprehensive compilation of insurance law. These statutes, eventually codified in 1484, exerted a significant impact on insurance law across Europe. Their influence stemmed from being disseminated alongside the *Consolato del Mare*, sharing its renown and sway. Additionally, due to their formulation at a later stage compared to the earliest Italian legislation, they encompassed more settled legal principles, rendering them more suitable for systematic codification. These statutes served as a blueprint for subsequent insurance law codes established by major trading nations in the sixteenth and seventeenth centuries.

Comprising five statutes enacted in Barcelona between 1435 and 1484, this legislation comprehensively addressed various facets of insurance law and established fundamental principles underlying it. The 1435 statute formed the foundational basis for the subsequent legal framework. Among the matters it covered were parties' legal capacity, insurance of foreign vessels, the necessary ratio of insured property value to coverage amount, rules regarding loss presumption, regulations for insurance brokers, premium payment, contract form, and enforcement procedures.

In subsequent years, minor amendments were introduced, with significant modifications occurring in 1458 to grant insurers and insured parties greater flexibility. These changes also impacted premium payment, loss proof, contract enforcement, and policy cancellation when risks weren't incurred. In 1461, efforts to circumvent rules regarding insurance on foreign ships through the guise of sales or loans were prohibited.

The pivotal development arrived in 1484 when a comprehensive code was enacted,

significantly influencing legal evolution across Europe. The most notable shift was the elimination of restrictions on insuring foreign ships, though this newfound liberty contributed to an increase in speculative policies. Measures were introduced to discourage such policies, including limitations on insuring vessels or cargo beyond the Strait of Gibraltar unless bound for Barcelona, and rules to curtail the practice of insuring non-existent cargo. Provisions were also enacted to nullify contracts made after a loss had transpired and to establish presumptions of loss based on the absence of news.

This portrayal captures the landscape of fifteenth-century insurance law. The Italian and Spanish insurance legal traditions of this era reverberated throughout the trading hubs of the Netherlands and England, further influencing the development of insurance practices in these regions.

ENGLAND

Around the middle of the 13th century, a wave of displacement forced the Lombards to depart from their original cities in Lombardy, as well as from various regions in Northern and Central Italy. These Lombards sought refuge in nearly every maritime nation across Europe. It is noteworthy that England's marine insurance framework was significantly influenced by these Lombards. The roots of England's marine insurance practices can be traced back to this influx of Lombards. By the conclusion of the 15th century, Lombard Street in London evolved into a focal point for marine insurance activities within England. This location became the hub where marine insurance transactions were conducted and where the foundations of the country's marine insurance system were solidified.

Chamber of Assurance

In England, an Assurance Chamber consisting of seven merchants was established in London in 1577 to hear insurance disputes. At the same time, a set of rules was drawn up codifying insurance practice. In 1601, an Act of Parliament reformed the Assurance Chamber, creating a new court with 14 members, including both lawyers and merchants, to deal only with insurance disputes. [5] Under this Act, Insurance Commissioners were appointed to assess and determine insurance claims arising out of policies for goods. The jurisdiction of these Commissioners

[5] Christopher Kingston, *Governance and Institutional Change in Marine Insurance*, 1350–1850, 18 Eur. Rev. Econ. Hist. 7 (2014), available at https://academic.oup.com/ereh/article/18/1/1/450520

were, however, limited to policies issued in London. This limitation proved to be self-defeating and the Court of Insurance Commissioners soon fell into disuse.[6] Also, both the Court of Admiralty and the courts of common law continued to exercise a competing jurisdiction; and both were eager to retain and enlarge it was probably a factor leading to its failure.[7] The merchants and underwriters continued to rely mainly on informal arbitration.

Lloyd's Coffee Shop

In the late 17th century, London's importance was growing as a centre for trade which led to the demand for marine insurance. A man name Edward Lloyd had opened a coffee shop on the Tower Street in London in the late 1680's. His coffee shop soon became a popular place for ship owners, ship captains, and merchants, and thereby a reliable source for the latest shipping news. Lloyd's Coffee House soon became the first marine insurance market. [8]

During this period, a practice emerged where merchants seeking insurance would circulate a slip of paper among individuals gathered, who were willing to provide insurance coverage. The merchant would jot down essential details about the ship, voyage, cargo, and other pertinent information on this slip. Those individuals interested in assuming a portion of the risk would then endorse the slip. Once the total insurance amount needed was fully subscribed, the insurance contract was considered finalized. This practice gave rise to the term "underwriter," a term that still holds significance in the insurance industry today.

Lloyd's coffee shop evolved into a notable gathering place for individuals within the shipping sector who sought to insure ships and cargoes, as well as those who were prepared to underwrite such ventures. The participants in these insurance arrangements eventually organized themselves into a committee, forming the Society of Lloyd's. This group later relocated to the Royal Exchange on Cornhill.

In 1871, a milestone was reached with the passing of the first Lloyd's Act in Parliament, providing the business with a firm legal foundation. The influence of Lloyd's on the field of insurance and insurance law has been substantial. For instance, the standard Lloyd's marine

[6] 1 MN Srinivasan & K Kannan, *Principles of Insurance Law* 5 (11th ed. 2021).
[7] W.S. Holdsworth, *the Early History of the Contract of Insurance*, 17 Colum. L. Rev. 102 (1917).
[8] Addya Mishra & Archika Agarwal, *Marine insurance and its legal aspects in India: Perils of the Sea*, 1 Int. j. law leg. jurisprud. stud. (2014), available at http://ijlljs.in/wpcontent/uploads/2014/12/Short_Article_Marine_insurance_and_its_legal_aspects_in_Indi-1.pdf

insurance policy was adopted as the statutory form within the Marine Insurance Act of 1906, further solidifying Lloyd's impact on insurance practices and regulations.

Bubble act, 1720: London Assurance and Royal Exchange Assurance

In 1720, the enactment of the Bubble Act brought significant changes to the landscape. This act established a monopoly in the domain of marine insurance for London Assurance and Royal Exchange Assurance. The statute achieved this by prohibiting other entities like corporations, partnerships, and societies from engaging in marine insurance as a commercial enterprise. Before these chartered corporations obtained their charters, individual merchants would convene in Lombard Street to arrange marine insurance contracts. These individual merchants continued to operate as competitors to the newly chartered companies.

From the corporate realm, the Royal Exchange Assurance and London Assurance, alongside Lloyd's, which served as a common meeting place for individual underwriters, took the lead in initiating and advancing the practice of marine insurance in England. However, the monopoly held by these corporations was eventually undone after a little over a century, in 1824. This occurred with the entry of a few joint stock companies into the arena, marking a significant transformation in the insurance industry.

Further changes followed, particularly after the Joint Stock Companies Act of 1862 was enacted. This legislation led to the formation of numerous companies, ushering in a new era of diversity and competition in the field of marine insurance.

Around this period, the invention of the steamship took place, coinciding with notable advancements in foreign trade. As a result marine insurance also expanded and provided sufficient business to both the joint stock companies and the individual underwriters, who created a world market for marine insurance.[9]

Marine Insurance Act, 1745

In 1745, the Parliament of Great Britain enacted the Marine Insurance Act. This legislation marked a significant milestone as the first notable statutory intervention in the substantive field

[9] KSN Murthy & KV Sarma, *Modern Law of Insurance in India* 5 (6th ed. 2019).

of marine insurance law within the country. The main purpose behind the Act was to curtail the practice of disguising wagers as insurance concerning maritime vessels.

At that time, individuals without any genuine commercial stake in a marine cargo would acquire an insurance policy in the guise of marine insurance. Essentially, they were gambling on whether the ship would successfully reach its intended destination. This raised concerns on multiple fronts. Not only did it conflict with broader policies against gambling, but it also created a perverse incentive for certain parties to overload ships and dispatch them under risky circumstances.

To address these issues, the Act introduced a novel concept into English law: the requirement of an "insurable interest" in the subject matter covered by an insurance policy. This requirement mandated that individuals seeking insurance coverage must possess a legitimate financial interest in the insured property or cargo. This marked a significant departure from the previous practice and laid the foundation for a more principled and substantive approach to marine insurance law.

The statute did not define an insurable interest, and it was not until the decision of the courts in *Lucena v Craufurd*[10] in 1806 that an insurable interest was first defined as "A right in the property, or a right derivable out of some contract about the property, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party."

For the avoidance of wagering or gaming contracts, the Gaming Act, 1845 was passed which declared all contracts by way of gaming and wagering to be void and finally the Marine Insurance Act, 1745 was repealed by the Marine Insurance Act, 1906.

INDIAN SCENARIO

In India, insurance has a deep-rooted history. It finds mention in the writings of Manu, Yagnavalkya and Kautilya. The writings talk in terms of pooling of resources that could be re-

[10] 127 E.R. 858 (H.L.). The Royal Commissioners insured a number of vessels and their cargoes and was held entitled to recover in respect of their losses. The importance of the case lies in the radically divergent views of insurable interest expressed by Lawrence J. and by Lord Eldon. Lawrence J. formulated a theory of insurable interest which focussed on whether the insured had suffered a loss and ignored the question of whether the insured had any property rights in what was lost. These views were anathema to Lord Eldon. For him an insurable interest could not exist "unless [there] be a right in the property, or a right derivable out of some contract about the property".

distributed in times of calamities such as fire, floods, epidemics and famine. [11] Rulers such as King Pandian, followed by the Mughals, had a history of trading through sea waters and using marine trade loans. These incidents show that the early history of India had traces of insurance.[12]

Insurance in India has evolved over time heavily drawing from other countries, England in particular.

In 1818, the Oriental Life Insurance Company, which initiated life insurance operations in India, was established in Calcutta. However, this company faced failure in 1834. In 1829, the Madras Equitable commenced conducting life insurance business in the Madras Presidency.

The British authorities introduced the British Insurance Act in 1870. During the final three decades of the nineteenth century, several insurance companies emerged in the Bombay Presidency, including the Bombay Mutual in 1871, Oriental in 1874, and Empire of India in 1897.

Throughout this period, foreign insurance offices were a significant presence and achieved success in India. Companies like Albert Life Assurance, Royal Insurance, and Liverpool and London Globe Insurance thrived in the Indian market. The competition that emerged between Indian insurance companies and foreign insurers played a pivotal role in fostering further advancement and growth within the insurance sector in India.

In 1914, the Government of India started publishing returns of Insurance Companies in India. The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life insurance business. In 1928, the Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. In 1938, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.[13]

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[11] M.Venkatesh, *A Study of "Trend Analysis in Insurance Sector in India*", 2 IJES 1 (2013).
[12] Barelawindia, *Insurance – History and Development in India* (2022), https://www.barelaw.in/insurance-history-and-development-in-india/.
[13] Venkatesh, *supra*.

Following India's independence, there was a substantial growth in its shipping industry. This growth prompted the need for an indigenous legal framework specific to marine insurance that aligned with the Indian context. Prior to the introduction of legislation, matters concerning marine insurance were resolved using the principles of general contract law and rulings from English courts.

Presently, marine insurance in India is governed by the Indian Marine Insurance Act of 1963. This legislation draws heavily from the English Marine Insurance Act of 1906 and is designed to cater to the unique conditions prevailing in India. The Indian Marine Insurance Act, 1963, serves as the cornerstone for the regulation of marine insurance practices in the country.

CONCLUSION

Insurance is a means of protection from financial loss in which, in exchange for a fee, a party agrees to compensate another party in the event of loss, damage, or injury. The object of all insurance is to protect the owner from a variety of risks.

Marine insurance has developed over centuries to meet the needs of merchants and traders who were involved in international trade. It is the oldest type of insurance. Out of it grew non-marine insurance. It has a long history that dates back to ancient times. Bottomry, respondentia bonds and general average were the forerunners of marine insurance.

The early practice of sound marine insurance is clearly identified with the cities of Lombardy such as Florence and Genoa. One of the earliest legislation on the subject of insurance comes from Genoa during the last quarter of the fourteenth century. However, it is the statutes of Barcelona that was the first comprehensive code of insurance law. These statutes, as finally codified in 1484, have had a large influence upon the insurance law of the rest of Europe.

During the 18th century, marine insurance became more formalized, and specialized insurance companies began to emerge in England. Lloyd's of London, which was the first marine insurance company, was established in 1769, and it quickly became the leading underwriter of marine insurance. The Royal Exchange Assurance and the London Exchange and Lloyd's developed marine insurance in England.

In British India prior to any enactment, only the Marine Insurance Act, 1906 of England was applied. For other insurance, the British common law was applicable. The Insurance Act, 1938

was borrowed heavily from the British law and covered all sorts of insurance. In 1963, Marine Insurance Act was passed. This was borrowed heavily from the English Marine Insurance Act, 1906.

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