

**The Law
of Liability
Insurance**

**3RD EDITION
VOLUME 1
D K Derrington
R S Ashton**



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The Law of Liability Insurance

Third Edition

VOLUME I

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Foreword

This work is intended to assist judges, legal practitioners and insurers in a practical way by descent into considerable detail of principle and example, both in general and fine particularity. Principle is explained by recourse to the line of reason which is adopted in its practical application to the issues which are encountered by those who are actively involved in this activity. The authors have been guided by what has been useful to them in their own practical experience.

The subject has been approached logically. After a short history and explanation of the distinction of this form of cover from other forms, there is an examination of general principles of contract law, with particular attention to liability insurance contracts. Because of the importance of construction of such policies, that topic has its own separate chapter, for although a policy is no more than a commercial contract to which the usual rules of construction apply, the fashion to which they are applied in practice to policies in particular is informative, if not revelatory. The importance of utmost good faith and material non-disclosure and misrepresentation earn them separate discussion in respect of general principle, but again with some focus on Liability insurance. After some attention to interim cover and the technicalities of a Liability insurance policy as such, the major topic is explored specifically. This is the cover provided by such insurance generally, but, for convenience, with some special attention to Commercial General Liability insurance within that context. Conditions and exclusions are then each discussed generally and in detail because of their affinity to the cover. This is followed by an examination of special forms of liability insurance, and their respective differences from Commercial General Liability insurance. After special discussion of privity, election, waiver and estoppel, the work embarks on the possible classes of actions between various parties who may be touched by liability insurance, causes of action which may be pleaded, and a general discussion of forms of action and various technical features which may be associated with them.

In other words, the discussion begins at the beginning of the Liability Insurance process, and ends at its end.

The text includes American material, and no apology is offered for this. Its jurisprudence differs from that of Australia, New Zealand and Great Britain, which differ from each other, and indeed the American jurisprudence differs within itself, for it does not have the unifying influences which are enjoyed in the other countries mentioned. Nevertheless, it would be a proud mind which would reject what is said in America as an aid to its own full consideration of an issue which is novel in its own jurisdiction. The American jurisprudence enjoys lively activity in insurance law, which sees, frequently and variously ventilated, issues which have not found authoritative determination or consideration in the same depth, in the other countries mentioned. It is a crop too rich to be ignored, even though it be necessary to sort the grain from the weeds. The authors have tried to do this, and have explained their reasons.

For the best use of this work, its size requires that the user become acquainted with the General Table of Contents, then turn to the extensive Index which, due to the misbehaviour of computers, may at times be approximate only. In addition to the specific text so found, it is desirable to refer to the General parts of the particular chapter and of the particular topic. While there is extensive cross-referencing, it would serve the reader well to become acquainted with its structure, and the major titles which it uses. Much work has gone into the detail which is then provided, though of course it is not possible to descend to the most minute analysis. In any case, the researcher should consult the whole of the surrounding text, for a proposition of law will not stand alone and must be understood in the context of the whole topic.

As a further aid, a researcher will find in the Index a lengthy list of 'Words and Phrases'. This is sometimes useful not only to find the meaning of the word but also to locate the text's discussion of the relevant subject matter, though this is only an incidental benefit.

The authors would like to express appreciation of the exceptional editing of the text by Ms Annabel Adair.

The Honourable Desmond Derrington QC

Ronald Shaw Ashton

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