

INSURANCE LAW IN THE UNITED KINGDOM

THIRD EDITION

JOHN BIRDS



Wolters Kluwer

Insurance Law in the United Kingdom

Third Edition

John Birds

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Insurance Law.

General Editors: Roger Blanpain, Frank Hendrickx
Volume Editor: Herman Cousy



Wolters Kluwer

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wklawbusiness.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-6675-3

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

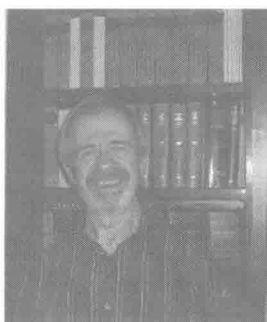
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Insurance Law in the United Kingdom

The Author



John Birds is Emeritus Professor in the School of Law, University of Manchester and Honorary Professor in the School of Law, University of Sheffield. He was Professor of Commercial Law at Manchester from 2006 to 2010, having previously been Professor of Commercial Law and Head of the Department of Law at the University of Sheffield. He taught at Sheffield from 1978 after six years as a lecturer at Queen Mary College, University of London. His interests lie in Insurance Law and Company Law and he has lectured and written widely on these topics. Among other things, he is the author of *Modern Insurance Law*, the ninth edition of which was published in 2013, has

been for several editions one of the editors of *MacGillivray on Insurance Law*, the twelfth edition being published in 2012, is one of the editors of *The Principles of European Insurance Contract Law*, and is General Editor of the *Encyclopedia of Insurance Law*. He is a contributor to *Gore-Browne on Companies* (forty-fifth edition, 2004) and co-editor of *Boyle and Birds' Company Law* (ninth edition, 2014). He has been on the editorial board of a number of journals and is Insurance section editor of the *Journal of Business Law*. He has also written numerous articles in the fields of insurance and company law, is a consultant to the UK Law Commissions concerning their project on insurance law reform and a member of the Project Group and Drafting Committee of the Project for the Restatement of European Insurance Contract Law.

Table of Contents

The Author	3
List of Abbreviations	15
General Introduction	17
§1. GENERAL BACKGROUND INFORMATION	17
I. Political and Legal System	17
II. Commerce and Industry	21
III. Financial Institutions	21
IV. Currency Legislation and Monetary Regulations	21
V. Insurance Business, General Organization and Special Features	21
§2. HISTORICAL BACKGROUND OF INSURANCE AND INSURANCE LEGISLATION	22
§3. SOURCES OF INSURANCE LAW	23
I. Legislation	23
II. Government Regulations	23
III. Regulation by Government Agencies	24
IV. Private International Law and Jurisdiction	24
§4. DISPUTE SETTLEMENT AND ARBITRATION	25
§5. CONSUMER PROTECTION	26
§6. COMPULSORY INSURANCES	30
Part I. The Insurance Company	33
Chapter 1. The Insurance Company: Its Form	33
§1. MUTUAL AND PREMIUM INSURANCE	33
§2. LLOYD'S	34

Table of Contents

Chapter 2. Access to Business	35
§1. AUTHORIZATION IN THE UK	35
§2. FREEDOM OF SERVICES WITHIN THE EC AND THE EEA	37
Chapter 3. Supervision	40
§1. SOLVENCY CONTROL	40
§2. CHANGES OF MANAGEMENT AND CONTROL	41
§3. GENERAL POWERS OF INTERVENTION	42
Chapter 4. Technical Reserves and Investments	45
Chapter 5. Accountancy	47
Chapter 6. Transfers of Business	48
Chapter 7. Policyholder Protection	50
Part II. The Insurance Contract: General	53
§1. INTRODUCTION	53
Chapter 1. Generalities	54
§1. DEFINITION OF INSURANCE	54
§2. CATEGORIES OF INSURANCE	54
§3. RISK	55
§4. CHARACTERISTICS OF INSURANCE CONTRACT LAW	56
§5. INTERPRETATION	57
§6. FURTHER POINTS ON COVERAGE	60
§7. CAUSATION	61
§8. PUBLIC POLICY	62
§9. INSURANCE AS A PERSONAL CONTRACT	63

Table of Contents

Chapter 2. Insurable Risk	65
§1. INSURABLE INTEREST IN LIFE INSURANCE	65
I. Requirement	65
II. The Time When Interest is Required	65
III. The Meaning of Insurable Interest in Life Insurance	66
§2. INSURABLE INTEREST IN INDEMNITY INSURANCES	67
I. The Nature of Insurable Interest in Property Insurance	67
II. Extent of Insurable Interest in Property Insurance	69
III. When Insurable Interest in Property Must Be Shown	69
IV. Waiver of Interest in Property Insurance	70
§3. INSURABLE INTEREST IN MISCELLANEOUS CASES	70
Chapter 3. Formation of the Insurance Contract	71
§1. PRE-CONTRACTUAL PHASE	71
§2. FORMALITIES	71
§3. FORMATION OF THE CONTRACT	73
§4. AGREEMENT ON MATERIAL TERMS	74
§5. PAYMENT OF PREMIUM AND ISSUE OF POLICY	75
§6. THE INSURANCE CONTRACT AT LLOYD'S	75
§7. COVER NOTES	75
Chapter 4. Obligations of the Insured	77
§1. DESCRIPTION OF THE RISK	77
§2. MISREPRESENTATION UNDER THE COMMON LAW AND THE MARINE INSURANCE ACT 1906	77
§3. NON-DISCLOSURE UNDER THE COMMON LAW AND THE MARINE INSURANCE ACT 1906	78
§4. RESTRICTIONS ON INSURER'S RIGHTS AND REFORM FOR CONSUMERS	82
§5. MODIFICATION OF THE LAW FOR BUSINESS INSURANCE CONTRACTS	86
§6. DISCLOSURE DURING CONTRACT	87

Table of Contents

§7. WARRANTIES AND CONDITIONS 88

 I. General Remarks 88

 II. Warranties 89

 III. Conditions 93

 IV. Onus of Proof 95

 V. Exclusion of the Insurance Act in Non-consumer Contracts 95

§8. PAYMENT OF PREMIUM 95

§9. OBLIGATIONS IN THE CASE OF INSURED EVENT 96

§10. FRAUDULENT CLAIMS 97

§11. ARBITRATION CLAUSES 98

§12. WAIVER AND ESTOPPEL 99

Chapter 5. Obligations of the Insurer 101

§1. THE MEASUREMENT OF LOSS 101

§2. UNDER-INSURANCE 103

§3. REINSTATEMENT 104

§4. THE DOCTRINE OF SUBROGATION 105

 I. Definition 105

 II. The No-Profit Rule 106

 III. The Insurer’s Right to Take Action 107

§5. DOUBLE INSURANCE AND CONTRIBUTION 110

Chapter 6. Insurance and Third Parties 113

Chapter 7. Termination of the Insurance Contract 116

§1. LIFE INSURANCE 116

§2. NON-LIFE INSURANCES 116

Part III. Property and Liability Insurance 119

Chapter 1. Fire Insurance 119

§1. THE MEANING OF FIRE 119

Table of Contents

§2. STANDARD POLICY COVER AND EXCEPTIONS	120
§3. ADDITIONAL INSURABLE RISKS	121
§4. WARRANTIES AND CONDITIONS	122
§5. OTHER STANDARD PROVISIONS	123
§6. SPECIFIC WARRANTIES	124
§7. STANDARD OPTIONAL CLAUSES	124
Chapter 2. Loss of Benefits Insurance	125
Chapter 3. Transport Insurance	127
§1. GOODS IN TRANSIT INSURANCE	127
I. Description	127
II. Warranties, Conditions and Exceptions	128
Chapter 4. Marine Insurance	130
§1. STRUCTURE OF MARINE INSURANCE BUSINESS IN THE UK	130
§2. MARINE INSURANCE ACT 1906	131
§3. INSURABLE INTEREST	132
§4. DUTY OF DISCLOSURE	132
§5. MISREPRESENTATION	133
§6. GENERAL RULES	133
I. Classification of Policies	134
A. Voyage and Time Policies	134
B. Valued and Unvalued Policies	134
C. Floating Policies	136
§7. OPEN COVER	136
§8. BLANKET COVER	136
§9. SUBJECT MATTER OF INSURANCE	137
§10. ATTACHMENT AND DURATION OF RISK	137
I. Time Policies	137

Table of Contents

II. Attachment and Duration of Risk under Voyage Policies	138
A. Hulls and Freight	138
B. Cargo	139
§11. RISKS	141
I. Included in a Marine Policy	141
II. Risks Excluded in a Marine Policy	143
§12. EXCLUDED LOSSES	144
I. The Doctrine of Proximate Cause	144
II. The Burden of Proof	145
§13. PARTICULAR AND GENERAL AVERAGE LOSSES	146
§14. PARTIAL LOSS AND TOTAL LOSS	147
§15. WARRANTIES	148
§16. PREMIUMS	149
§17. SUE AND LABOUR CLAUSES	150
§18. ASSIGNMENT	151
§19. SUBROGATION	152
Chapter 5. Liability Insurance	153
§1. NATURE OF THE COVER	153
§2. INSOLVENCY OF THE INSURED	156
§3. ADMISSIONS OF LIABILITY AND THE CONDUCT OF PROCEEDINGS	159
§4. SUMS INSURED AND COSTS	162
§5. INSURERS' DUTY TO THE VICTIM	163
§6. PROFESSIONAL INDEMNITY INSURANCE	163
Chapter 6. Legal Aid Insurance	165
Chapter 7. Aviation and Space Insurance	166
Chapter 8. Theft and Embezzlement Insurance	167

Table of Contents

Chapter 9. Agricultural Insurance, Hail Insurance, Livestock Insurance	169
Chapter 10. Catastrophe Insurance	170
Chapter 11. Credit Insurance	171
Chapter 12. Technical Insurance	173
Part IV. Motor Vehicle Insurance	175
§1. COMPULSORY COVER	175
I. The Scope of Compulsory Cover	176
II. Exemptions from Section 143	181
III. Sanctions for Failure to Insure	182
§2. COMMON TERMS AND EXCEPTIONS	183
I. Standard Extensions	183
II. Limitations on Use	185
III. Conditions regarding the Condition of the Insured Vehicle	187
§3. THIRD PARTIES' RIGHTS UNDER THE ROAD TRAFFIC ACT	189
I. Insurer's Duty to Satisfy Judgments	190
II. The Alternative Right to Sue Insurers	193
III. Information regarding Insurance	194
§4. THIRD PARTIES' RIGHTS AGAINST THE MOTOR INSURERS' BUREAU	194
I. The First MIB Agreement	196
II. The Second MIB Agreement	199
Part V. Insurance of the Person	201
Chapter 1. Workman's Compensation and Occupational Disease	201
§1. EMPLOYER'S LIABILITY (COMPULSORY INSURANCE) ACT 1969	201
I. Compulsion to Insure	201
II. Scope of Insurance	204
III. Exceptions	204
IV. Enforcement	204
Chapter 2. Personal Accident and Bodily Injury	206
§1. GENERAL	206

Table of Contents

I. Bodily Injury	207
II. Violent Means	207
III. Accidental Means	208
IV. External and Visible Means	208
V. Wilful Exposure to Needless Peril	209
Chapter 3. Private Health Insurance	210
§1. SCOPE OF PRIVATE HEALTH INSURANCE	210
§2. EXCLUSIONS	210
Chapter 4. Life Insurance	211
§1. REGULATORY FRAMEWORK	211
§2. CATEGORIES OF LIFE INSURANCE	211
§3. FORMALITIES AND CANCELLATION RIGHTS	212
§4. ASSIGNMENT OF LIFE POLICIES	213
I. Assignment as Mortgage	214
II. Statutory Assignment	215
§5. TRUST OF LIFE POLICIES	216
I. Family Arrangements	216
II. Group Insurance	219
Chapter 5. Pensions	221
Part VI. Social Security	223
§1. PERMANENT HEALTH INSURANCE	223
§2. CRITICAL ILLNESS INSURANCE	224
§3. PERSONAL ACCIDENT AND SICKNESS INSURANCE	224
Part VII. Insurance Intermediaries	227
Chapter 1. Law of Establishment and Supervision	227
Chapter 2. Insurance Intermediaries and the Insurance Contract	229

Table of Contents

§1. RELATIONS BETWEEN THE PRINCIPAL AND THIRD PARTY	229
I. Actual Authority	229
II. Apparent Authority	230
III. Ratification	230
§2. IMPUTING THE AGENT'S KNOWLEDGE	231
§3. RELATIONSHIP BETWEEN PRINCIPAL AND AGENT	231
I. Fiduciary Duties	232
II. Duties of Care and Skill	233
§4. WHOSE AGENT, IN LAW, IS THE AGENT?	236
Part VIII. Reinsurance	239
§1. DEFINITION AND NATURE OF REINSURANCE	239
§2. REINSURANCE CATEGORIES AND TERMINOLOGY	240
§3. FORMATION OF THE CONTRACT OF REINSURANCE	241
I. The Slip	241
II. Disclosure	242
III. Misrepresentation	243
IV. Illegality	243
§4. CONSTRUCTION OF REINSURANCE CONTRACTS	244
§5. THE PROPER LAW OF INSURANCE AND REINSURANCE CONTRACTS	245
Part IX. Taxation of Insurance	247
§1. INCOME TAX	247
I. Life Insurance	247
II. Private Health Insurance	248
III. Personal Accident Insurance	248
IV. Pensions	248
§2. CAPITAL GAINS TAX	249
I. Disposal of Rights under a Policy of Insurance	249
II. Loss or Destruction of an Asset	250
§3. INHERITANCE TAX	250
I. 'Asset-Freezing' Arrangements	251
A. Inheritance Trusts	251
B. PETA Plans	251
II. Modern Arrangements	252

Table of Contents

§4. INSURANCE PREMIUM TAX 252

Part X. Risk Management and Prevention 253

§1. SELF-INSURANCE 253

§2. RISK TRANSFER 253

§3. THE INSURER’S HANDLING OF RISK 254

Selected Bibliography 257

Index 259

Insurance Law in the United Kingdom

Third Edition

John Birds

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Insurance Law.

General Editors: Roger Blanpain, Frank Hendrickx
Volume Editor: Herman Cousy



Wolters Kluwer