

Modern Insurance Law

John Birds



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By

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PREFACE

Several years of studying and teaching insurance law were more than enough to convince me of the need for a basic textbook on the subject for students and I was delighted when the publishers finally agreed to bear the risk. The aim of this book is thus to provide a modest textbook on a subject which, at least at the academic level, has been sadly neglected in this country. By comparison, insurance law has featured prominently for many years in the curricula of, for example, American Law Schools, and has given birth to such excellent books as those by Vance, Patterson and Keeton. This book, whatever its deficiencies, is the first English textbook of insurance law written specifically for students from an academic as well as a practical angle. I hope, therefore, that it will prove suitable as a text for the small but growing body of law students studying insurance law, in addition, perhaps, to those taking the examinations of the professional insurance institutes.

The permitted length accorded to me has in large measure dictated the scope of this book. I have attempted to describe both the general principles of non-marine insurance law, which form the bulk of the book, and some of the principles peculiar to particular types of insurance. In this latter regard, I chose life insurance and liability insurance, including motor and employers' liability insurance, as deserving of inclusion. To those who might justifiably ask, what of fire insurance, to take one vital area I have not mentioned, I would reply that I hope that I have covered all the principles relevant thereto when describing the general principles of insurance law. Marine insurance law, which has its own code, I consider sufficiently specialist as to be outside my scope, but inevitably there are occasional references to the Marine Insurance Act 1906 and authorities concerned with marine insurance. Even to discuss the general principles of non-marine insurance law is not an easy task when so much can turn on the particular wording of proposal form or policy. An example of the difficulty can be seen in Chapter 11 which attempts to deal with the rules of construction and the cover provided by insurance

policies. The fact that I consider some standard words and may have omitted others equally common or important is the result of my personal preferences, and for any glaring omissions I bear full responsibility.

It is also the case that in a book of this size, general discussion of the concept of insurance, its place as a distributor of losses and its function in the context of those aspects of the law of contract and tort which provide compensation for loss was virtually impossible. This may be regretted, but others have covered the field far better than I could have done, for example, Professor Atiyah, on the question whether liability insurance in the context at least of providing compensation for personal injury and death should be replaced by some form of first party insurance, in his excellent *Accidents, Compensation and the Law*.

One problem in writing the book has been that there is the prospect of legislative reform of certain aspects of insurance contract law, stemming from the Law Commission's Report No. 104, but the timing of that reform is uncertain. I have taken the view, with some evidence to support me, that implementation of the Law Commission's recommendations or something similar, or, indeed, of any harmonisation measure emanating from the EEC, is unlikely for some time. As a result the recommendations and prospects are noted in the appropriate chapters but do not get the detailed scrutiny which will be needed if and when legislation is imminent or exists.

Heartfelt thanks are due to a number of people. Phyllis Bateson, Michael Kemble, Robert Merkin and John Yelland read parts of my manuscript and all made invaluable comments. My wife, Margaret, and other members of my family have provided continuing support. The publishers have been unfailingly generous and have prepared the Tables. My greatest debts are to my father and to Professor Reuben Hasson. Until his untimely death a few years ago, my father was for many years a constant source of encouragement and support. It was from Reuben that I took over the teaching of the London LLM Insurance Law course at Queen Mary College, a course for whose details he was largely responsible. My teaching of what remained largely Reuben's course provided me with the basic format for this book and much of

my interest in insurance law can be attributed to his infectious enthusiasm. None of the above of course bears any responsibility for the defects in the book.

For those who wish to delve further into insurance law, I suggest that the best starting point, in addition to the American books already mentioned, is MacGillivray and Parkington, *Insurance Law*. The references to that work in the text are to the seventh edition published in 1981.

I have made every attempt to ensure that the book is up to date to July 1981.

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July 1981

CONTENTS

	<i>Page</i>
<i>Preface</i>	vii
<i>Table of Cases</i>	xiii
<i>Table of Statutes</i>	xxxv
1. Introduction: the Nature and Definition of Insurance and Insurance Law	1
2. The Parties to the Contract of Insurance	13
3. Insurable Interest	24
4. Formalities and Formation of the Insurance Contract	54
5. Void, Voidable and Illegal Policies	74
6. Fraud, Non-disclosure and Misrepresentation	80
7. Warranties and Conditions	105
8. Premiums	130
9. Assignment	138
10. Intermediaries	147
11. Construction and Causation: Risks Covered and Risks Excepted	168
12. Claims under the Policy	203
13. The Measurement of Loss	229
14. Reinstatement	244
15. Subrogation	252
16. Contribution and Double Insurance	276
17. Life Insurance	289
18. Liability Insurance in General	300
19. Motor Insurance	313
20. Employers' Liability and other Compulsory Insurances	342
<i>Index</i>	351

TABLE OF CASES

Ackbar <i>v.</i> Green (C.F.) & Co. [1975] Q.B. 582; [1975] 2 W.L.R. 773; 119 S.J. 219; [1975] 2 All E.R. 65; [1975] 1 Lloyd's Rep. 673	157
Adams <i>v.</i> Andrews [1964] 2 Lloyd's Rep. 347; [235 L.T. 692]	336
Adams <i>v.</i> Dunne [1978] R.T.R. 281; [1978] Crim. L.R. 365, D.C.	317
Adamson (T.H.) & Sons <i>v.</i> Liverpool & London & Globe Insurance Co. [1953] 2 Lloyd's Rep. 355; [104 L.J. 133]	213
Adie <i>v.</i> The Insurance Corporation (1898) 14 T.L.R. 544.....	54, 59
Albert <i>v.</i> M.I.B. [1972] A.C. 301; [1971] 3 W.L.R. 291; 115 S.J. 588; [1971] 2 All E.R. 1345; [1972] R.T.R. 230; [1971] 2 Lloyd's Rep. 229, H.L.	340
Albion Insurance Co. <i>v.</i> Government Insurance Office of New South Wales (1969) 121 C.L.R. 342	277
Alchorne <i>v.</i> Favill (1825) 4 L.J. O.S. Ch. 47	245
Alder <i>v.</i> Moore [1961] 2 Q.B. 57; [1961] 2 W.L.R. 426; 105 S.J. 208; [1961] 1 All E.R. 1; [1960] 2 Lloyd's Rep. 325; [77 L.Q.R. 300; 24 M.L.R. 637], C.A.; reversing [1959] 2 Lloyd's Rep. 487; [1959] C.L.Y. 388 ...	178
Allen <i>v.</i> Robles. Compagnie Parisienne de Garantie, Third Party [1969] 1 W.L.R. 1193; [1969] 3 All E.R. 154; [1969] 2 Lloyd's Rep. 61; <i>sub nom.</i> Allen <i>v.</i> Robles (1969) 113 S.J. 484, C.A.	223
Alliss-Chalmers Co. <i>v.</i> Fidelity & Deposit Co. of Maryland (1916) 114 L.T. 433; 32 T.L.R. 263, H.L.	55
Allobrogia Steamship Corporation, <i>Re</i> [1978] 3 All E.R. 423	301
American Surety Co. of New York <i>v.</i> Wrightson (1910) 103 L.T. 663; 27 T.L.R. 91; 16 Com. Cas. 37	282
Anctil <i>v.</i> Manufacturers' Life Insurance Co. [1899] A.C. 604; 68 L.J.C.P. 123; 81 L.T. 279, P.C.....	32, 79
Anderson <i>v.</i> Commercial Union Assurance Co. 34 W.R. 189; 1 T.L.R. 511, D.C.; affirming; (1885) 55 L.J.Q.B. 146, C.A.....	246, 247
Anderson <i>v.</i> Fitzgerald (1853) 4 H.L. Cas. 484; 21 L.T.O.S. 245; 17 Jur. 995; 10 E.R. 551, H.L.	112, 133
Anderson <i>v.</i> Norwich Union Fire Insurance Society [1977] 1 Lloyd's Rep. 253, C.A.	176
Anderson <i>v.</i> Pacific Fire & Marine Insurance Co. (1872) L.R. 7 C.P. 65; 26 L.T. 130; 20 W.R. 280; 1 Asp. M.L.C. 220	85
Andrews <i>v.</i> Patriotic Assurance Co. (1886) 18 L.R.Ir. 355	248
Anglo-African Merchants <i>v.</i> Bayley [1970] 1 Q.B. 311; [1969] 2 W.L.R. 686; 113 S.J. 281; [1969] 2 All E.R. 421; <i>sub nom.</i> Anglo-African Merchants and Exmouth Clothing Co. <i>v.</i> Bayley [1969] 1 Lloyd's Rep. 268.....	148, 151, 156
Anstey <i>v.</i> British Natural Premium Life Association Ltd. (1908) 99 L.T. 765; 24 T.L.R. 871, C.A.; affirming 99 L.T. 16; 24 T.L.R. 594	78
Arterial Caravans Ltd. <i>v.</i> Yorkshire Insurance Co. [1973] 1 Lloyd's Rep. 169	93
Aubrey (Richard) Film Productions Ltd. <i>v.</i> Graham [1960] 2 Lloyd's Rep. 101	231
Austin <i>v.</i> Drewe (1816) 6 Taint. 436; 2 Marsh. 130; 128 E.R. 1104.....	181, 197
Austin <i>v.</i> Zurich General Accident & Liability Insurance Co. [1945] K.B. 250; [1945] 1 All E.R. 316; 114 L.J.K.B. 340; 172 L.T. 174; 61 T.L.R. 214; 78 Ll.L.Rep. 185, C.A.....	276, 285

Australian Agricultural Co. v. Saunders (1875) L.R. 10 C.P. 668; 44 L.J.C.P. 391; 33 L.T. 447; 3 Asp.M.L.C. 63, Ex.Ch., affirming (1872) 28 L.T. 844	286
Australia and New Zealand Bank v. Colonial and Eagle Wharves Ltd., Boag (Third Party) [1960] 2 Lloyd's Rep. 241	87
Ayrey v. British Legal & United Provident Assurance Co. [1918] 1 K.B. 136; 87 L.J.K.B. 513; 118 L.T. 255; 34 T.L.R. 111	88, 155
B (A Minor) v. Knight [1981] R.T.R. 136	316
Babatsikos v. Car Owners' Mutual Insurance Co. [1970] 2 Lloyd's Rep. 314	91
Barnes v. London, Edinburgh & Glasgow Life Assurance Co. Ltd. [1892] 1 Q.B. 864; 8 T.L.R. 143; 36 S.J. 125, D.C.	31
Barnett, (Arthur) Ltd; v. National Insurance Co. of New Zealand [1965] N.Z.L.R. 874	263
Barrett v. London General Insurance Co. [1935] 1 K.B. 238; 104 L.J.K.B. 15; 152 L.T. 256; 51 T.L.R. 97; 78 S.J. 898; 40 Com. Cas. 125; 50 Ll.L.Rep. 99	325, 326
Barrett Bros. (Taxis) v. Davies (Lickiss and Milestone Motor Policies at Lloyd's, Third Parties) [1966] 1 W.L.R. 1334; 110 S.J. 600; <i>sub nom.</i> Lickiss v. Milestone Motor Policies at Lloyd's [1966] 2 All E.R. 972; [1966] 2 Lloyd's Rep. 1, C.A.	126, 214, 215, 220, 304
Battersby v. Lenhoco Enterprises (1980) 109 D.L.R. (3d) 330	51
Bauman v. Royal Indemnity Co. (1961) 36 N.J. 12	172
Bawden v. London, Edinburgh & Glasgow Assurance Co. [1892] 2 Q.B. 534; 61 L.J.Q.B. 722; 57 J.P. 116; 8 T.L.R. 566; 36 S.J. 502, C.A.	121, 122, 123
Bazeley v. Forder (1868) L.R. 3 Q.B. 559; 9 B. & S. 599; <i>sub nom.</i> Baseley v. Forder 37 L.J.Q.B. 237; 18 L.T. 756; 32 J.P. 550	30
Beach v. Pearl Assurance Co. Ltd. [1938] 1 A.C. Rep. 3	55
Beacon Insurance Co. v. Langdale [1939] 4 All E.R. 209; 83 S.J. 908; 65 Ll.L.Rep. 57, C.A.	305
Beauchamp v. National Mutual Indemnity Insurance Co. [1937] 3 All E.R. 19	108
Becker, Gray & Co. v. London Assurance Corporation [1918] A.C. 101; [1916-1917] All E.R. Rep. 146; 87 L.J.K.B. 69; 117 L.T. 609; 34 T.L.R. 36; 62 S.J. 35; 14 Asp.M.L.C. 156; 23 Com.Cas. 205, H.L.; affirming [1915] 3 K.B. 410; [1916] 2 K.B. 156, C.A.	197
Bell v. Lever Bros. [1932] A.C. 161; [1931] All E.R. Rep. 1; 101 L.J.K.B. 129; 146 L.T. 258; 48 T.L.R. 133; 76 S.J. 50; 37 Com. Cas. 98, H.L.; reversing S.C. <i>sub nom.</i> Lever Bros Ltd. v. Bell [1931] 1 K.B. 574, C.A.	226, 227
Beller, (Marcel) Ltd. v. Haydon [1978] Q.B. 694; [1978] 2 W.L.R. 845; (1977) 122 S.J. 279; [1978] 3 All E.R. 111; [1978] R.T.R. 344; [1978] 1 Lloyd's Rep. 472	33, 183, 184, 186, 191
Beresford v. Royal Insurance Co. [1938] A.C. 586	173, 203, 204, 205
Berger v. Pollock [1973] 2 Lloyd's Rep. 442	83, 91
Beswick v. Beswick [1968] A.C. 58; [1967] 3 W.L.R. 932; 111 S.J. 540; [1967] 2 All E.R. 1197; [83 L.Q.R. 465; 30 M.L.R. 687; 31 M.L.R. 342] H.L.; affirming [1966] Ch. 538; [1966] 3 W.L.R. 396; 110 S.J. 507; [1966] 3 All E.R. 1; [1966] C.L.Y. 1915; [27 M.L.R. 657], C.A.; reversing [1965] 3 All E.R. 858; [1965] C.L.Y. 632; [110 S.J. 641]	294, 296
Biddle v. Johnston 109 S.J. 395; [1965] 2 Lloyd's Rep. 121	318

Biggar v. Rock Life Assurance Co. [1902] 1 K.B. 516; 71 L.J.K.B. 79; 85 L.T. 636; 18 T.L.R. 119; 46 S.J. 105	121, 125
Blackley v. National Mutual Life Association of Australasia [1972] N.Z.L.R. 1038	88, 155
Blanchette v. C.I.S. Ltd. (1973) 36 D.L.R. (3d) 561	124, 125
Boardman v. Phipps [1967] 2 A.C. 46; [1966] 3 W.L.R. 1009; 110 S.J. 853; [1966] 3 All E.R. 721; [31 Conv. 63] H.L.; affirming <i>sub nom.</i> Phipps v. Boardman [1965] Ch. 992; [1965] 2 W.L.R. 839; 109 S.J. 197; [1965] 1 All E.R. 849; [29 Conv. 233; 28 M.L.R. 587], C.A.; affirming [1964] 1 W.L.R. 993; 108 S.J. 619; [1964] 2 All E.R. 187; [114 L.J. 815; 28 Conv. 310; 98 I.L.T. 275]; [1964] C.L.Y. 3345; [1965] C.L.Y. 3575	156
Boehm v. Bell (1799) 8 T.R. 154; 101 E.R. 1318	42
Bolton Partners v. Lambert (1888) 41 Ch.D. 295; 58 L.J.Ch. 425; 60 L.T. 687; on appeal (1889) 41 Ch.D. 302, C.A.	154
Bond Air Services Ltd. v. Hill [1955] 2 Q.B. 417; [1955] 2 W.L.R. 1194; 99 S.J. 370; [1955] 2 All E.R. 476; [1955] 1 Lloyd's Rep. 498	128, 129
Boss v. Kingston [1963] 1 W.L.R. 99; 106 S.J. 1053; [1963] 1 All E.R. 177; 61 L.G.R. 109; <i>sub nom.</i> Boss and Hansford v. Kingston [1962] 2 Lloyd's Rep. 431, D.C.	141, 142
Bowskill v. Dawson (No. 2) [1955] 1 Q.B. 13; [1954] 3 W.L.R. 275; 98 S.J. 523; [1954] 2 All E.R. 649; [21 Sol. 255], C.A.	298
Bradley and Essex and Suffolk Accident Indemnity Society, <i>Re</i> [1912] 1 K.B. 415; [1911–1913] All E.R.Rep. 444; 81 L.J.K.B. 523; 105 L.T. 919; 28 T.L.R. 175, C.A.	84, 127, 128, 171, 347
Braunstein v. Accidental Death Insurance Co. (1861) 1 B. & S. 782; 31 L.J.Q.B. 17; 5 L.T. 550; 8 Jur. N.S. 506; 121 E.R. 904	215
British and Foreign Marine Insurance Co. v. Gaunt [1921] 2 A.C. 41; [1921] All E.R.Rep. 447; 90 L.J.K.B. 801; 125 L.T. 491; 37 T.L.R. 632; 65 S.J. 551; 15 Asp.M.L.C. 305; 26 Com.Cas. 247; 7 Ll.L.Rep. 62, H.L.; affirming S.C. <i>sub nom.</i> Gaunt v. British and Foreign Insurance Co. Ltd. & Standard Marine Insurance Co. Ltd. [1920] 1 K.B. 903, C.A.	180
British Traders' Insurance Co. v. Monson (1964) 38 A.L.J.R. 20; 111 C.L.R. 86	38, 46, 51, 239, 250
British Workmen's & General Assurance Co. v. Cunliffe (1902) 18 T.L.R. 502, C.A.	135, 136
Britton v. Royal Insurance Co. (1866) 4 F. & F. 905; 15 L.T. 72, N.P.	173, 224
Brook v. Trafalgar Insurance Co. (1946) 79 Ll.L.Rep. 365	153, 214, 223
Brown v. Roberts [1965] 1 Q.B. 1; [1963] 3 W.L.R. 75; 107 S.J. 666; [1963] 2 All E.R. 263; <i>sub nom.</i> Brown v. Roberts and Nicholls [1963] 1 Lloyd's Rep. 314	316
Brown v. Royal Insurance Co. (1859) 1 El & El. 853; 28 L.J.Q.B. 275; 33 L.T.O.S. 134; 5 Jur.N.S. 1255; 7 W.R. 479; 120 E.R. 1131	246, 247
Brown v. Zurich General Accident & Liability Insurance Co. [1954] 2 Lloyd's Rep. 243; [99 S.J. 19]	326
Browning v. Phoenix Assurance Co. Ltd. [1960] 2 Lloyd's Rep. 360	324
Buchanan v. Motor Insurers' Bureau [1955] 1 W.L.R. 488; 119 J.P. 227; 99 S.J. 319; [1955] 1 All E.R. 607; [1954] 2 Lloyd's Rep. 519	335
Bugge v. Taylor [1941] 1 K.B. 198	315
Burnand v. Rodecanachi (1882) 7 App.Cas. 333; 51 L.J.Q.B. 548; 47 L.T. 277; 31 W.R. 65; 4 Asp.M.L.C. 576	27, 240, 253, 258

Burridge <i>v.</i> Haines (1918) 87 L.J.K.B. 641; 118 L.T. 681; 62 S.J. 521	222
Burts & Harvey Ltd. <i>v.</i> Vulcan Boiler & General Insurance Co. [1966] 1 Lloyd's Rep. 354	243
Canadian General Electric Co. <i>v.</i> Liverpool & London & Globe Insurance Co. (1980) 106 D.L.R. (3d) 750	197
Canadian Indemnity Co. <i>v.</i> Walken Machinery & Equipment Ltd. (1975) 52 D.L.R. (3d) 1	187, 190
Candler <i>v.</i> London & Lancashire Guarantee & Accident Co. of Canada (1963) 40 D.L.R. (2d) 408	184
Canning <i>v.</i> Farquhar (1886) 16 Q.B.D. 727; 55 L.J.Q.B. 225; 54 L.T. 350; 34 W.R. 423; 2 T.L.R. 386, C.A.	56, 57, 72
Carr and Sun Ins., <i>Re.</i> (1897) 13 T.L.R. 186, C.A.	225
Carreras Ltd. <i>v.</i> Cunard Steamship Co. [1918] 1 K.B. 118; 87 L.J.K.B. 824; 118 L.T. 106; 34 T.L.R. 41	241
Carter <i>v.</i> Boehm (1766) 3 Burr. 1905; 1 Wm.Bl. 593; 97 E.R. 1162.....	83, 84, 85, 88, 91
Carter Bros. <i>v.</i> Renouf (1962) 36 A.L.J.R. 67	36
Cassel <i>v.</i> Lancashire & Yorkshire Accident Insurance Co. (1885) 1 T.L.R. 495	213
Castellain <i>v.</i> Preston (1883) 11 Q.B.D. 380; 52 L.J.Q.B. 366; 49 L.J. 29; 31 W.R. 557, C.A.	140, 239, 252, 254, 255
Central Bank of India <i>v.</i> Guardian Assurance Co. (1936) 54 Ll.L.R. 247	224, 225
Chandris <i>v.</i> Argo Insurance Co. [1963] 2 Lloyd's Rep. 65; 107 S.J. 575	302
Cherry Ltd. <i>v.</i> Allied Insurance Brokers Ltd. [1978] 1 Lloyd's Rep. 274	158
Cipriani <i>v.</i> Barnett [1933] A.C. 83	339
City Tailors Ltd. <i>v.</i> Evans (1921) 91 L.J.K.B. 379; 126 L.T. 439; [1921] All E.R. Rep. 399; 38 T.L.R. 230; 9 Ll.L.Rep. 46, C.A.	44
Clark & Sons <i>v.</i> Finnamore (1973) 32 D.L.R. (3d) 236	265
Clarke <i>v.</i> National Insurance and Guarantee Corporation [1964] 1 Q.B. 199; [1963] 3 W.L.R. 710; 107 S.J. 573; [1963] 3 All E.R. 375; [1963] 2 Lloyd's Rep. 35, C.A.; reversing [1963] 2 Q.B. 790; [1963] 2 W.L.R. 1396; 107 S.J. 317; [1963] 2 All E.R. 470; [1963] 1 Lloyd's Rep. 322	326
Clarke <i>v.</i> Vedel [1979] R.T.R. 26, C.A.	341
Cleaver <i>v.</i> Mutual Reserve Fund Life Assurance [1892] 1 Q.B. 147; 61 L.J.Q.B. 128; 66 L.T. 220; 56 J.P. 180; 40 W.R. 230; 8 T.L.R. 139; 36 S.J. 106, C.A.	296
Clidero <i>v.</i> Scottish Accident Insurance Co. (1892) 19 R. 355; 29 Sc.L.R. 303	185
Clough <i>v.</i> County Livestock Insurance Association (1916) 85 L.J.K.B. 1185; 32 T.L.R. 526; 60 S.J. 642; W.C. & Ms.Rep. 373	218
Clover, Clayton & Co. Ltd. <i>v.</i> Hughes [1910] A.C. 242; [1908-1910] All E.R.Rep. 220; 79 L.J.K.B. 470; 102 L.T. 340; 26 T.L.R. 359; 3 B.W.C.C. 275; <i>sub nom.</i> Hughes <i>v.</i> Clover, Clayton & Co. 54 S.J. 374 H.L.	188
Coleman's Depositories Ltd. & Life & Health Assurance Association, <i>Re</i> [1907] 2 K.B. 798; [1904-1907] All E.R. Rep. 383; 76 L.J.K.B. 865; 97 L.T. 420; 23 T.L.R. 638, C.A.	66, 67, 68, 69
Collet <i>v.</i> Morrison (1851) 9 Hare 162; 21 L.J.Ch. 878; 68 E.R. 458	53
Collingridge <i>v.</i> Royal Exchange Assurance Corporation (1877) 3 Q.B.D. 173; 47 L.J.Q.B. 32; 37 L.T. 525; 42 J.P. 118; 26 W.R. 112	139
Commercial Union Assurance Co. <i>v.</i> Hayden [1977] Q.B. 804; [1977] 2 W.L.R. 272; [1977] 1 All E.R. 441; [1977] 1 Lloyd's Rep. 1, C.A.	281

Commercial Union Assurance Co. v. Lister (1874) L.R. 9 Ch. 483; 43 L.J.Ch. 601, L.J.J.	262
Commonwealth Construction Co. v. Imperial Oil (1976) 69 D.L.R. (3d) 558	51, 274
Compania Columbiana de Seguros v. Pacific Steam Navigation Co.; Empresa de Telefono de Bogota v. Same [1965] 1 Q.B. 101; [1964] 2 W.L.R. 484; 108 S.J. 75; [1964] 1 All E.R. 216; [1963] 2 Lloyd's Rep. 479; [28 Conv. 176]	267
Conn v. Westminster Motor Insurance Association Ltd. [1966] 1 Lloyd's Rep. 407; 116 New L.J. 894, C.A.; reversing [1966] 1 Lloyd's Rep. 123; 116 New L.J. 554	111, 327
Co-operative Fire & Casualty Co. v. Saindon (1975) 56 D.L.R. (3d) 556	208
Corfield v. Groves [1950] W.N. 116; 66 T.L.R. (Pt. 1) 627; 94 S.J. 225; [1950] 1 All E.R. 488	319
Cornish v. Accident Insurance Co. (1889) 23 Q.B.D. 453; 58 L.J.Q.B. 591; 54 J.P. 262; 38 W.R. 139; 5 T.L.R. 733; C.A.	183
Cousins v. Sun Life Assurance Society [1933] Ch. 126	294
Cousins, H. & Co. Ltd. v. D. & C. Carriers Ltd. [1971] 2 Q.B. 230; [1971] 2 W.L.R. 85; (1970) 114 S.J. 882; [1971] 1 All E.R. 55; [1970] 2 Lloyd's Rep. 397, C.A.	260, 266
Coward v. Motor Insurers' Bureau [1963] 1 Q.B. 259; [1962] 2 W.L.R. 663; 106 S.J. 34; [1962] 1 All E.R. 531; [1962] 1 Lloyd's Rep. 1; [25 M.L.R. 458], C.A.; affirming [1961] 1 Lloyd's Rep. 583; [1961] C.L.Y. 7879	340
Craine v. Colonial Mutual Fire Insurance Co. Ltd. <i>sub nom.</i> Yorkshire Insurance v. Craine (1920) 28 C.L.R. 305; [1922] 2 A.C. 541	222
Crisci v. Security Co. (1967) 66 Cal. (2d) 425; 426 P.(2d) 173	306
Cross v. British Oak Insurance Co. [1938] 2 K.B. 167; [1938] 1 All E.R. 383; 107 L.J.K.B. 577; 159 L.T. 286; 60 Ll.L.Rep. 46	311, 331
Dalby v. India and London Life Assurance Co. (1854) 15 C.B. 365; 3 C.L.R. 61; 24 L.J.C.P. 2; 24 L.T.O.S. 182; 18 Jur. 1024; 3 W.R. 116; 139 E.R. 465, Ex.Ch.	27, 28, 33
Darrell v. Tibbitts (1880) 5 Q.B.D. 560; 50 L.J.Q.B. 33; 42 L.T. 797; 44 J.P. 695; 29 W.R. 66, C.A.	255, 256, 269
Davjoyda Estates v. National Insurance Co. of New Zealand Ltd. (1967) 65 S.R. (N.S.W.) 381	38, 43, 52
Dawson v. Bankers' & Traders' Insurance Co. [1957] V.R. 491	277
Dawson v. Monarch Insurance Co. of New Zealand [1977] 1 N.Z.L.R. 372	66
Dawsons Ltd. v. Bonnin [1922] 2 A.C. 413; [1922] All E.R.Rep. 88; 91 L.J.P.C. 210; 128 L.T. 1; 38 T.L.R. 836; 11 Ll.L.Rep. 57; 12 Ll.L.Rep. 237, H.L.	108, 112, 113
De Hahn v. Hartley (1786) 1 T.R. 343; 99 E.R. 1130	106
De Maurier (Jewels) Ltd. v. Bastion Insurance and Coronet Insurance Co. [1967] 2 Lloyd's Rep. 550; <i>sub nom.</i> De Maurier Jewels v. Bastion Insurance Co. (1967) 117 New L.J. 1112	110, 115, 116, 117
Department of Trade and Industry v. St. Christopher Motorists' Association Ltd. [1974] 1 W.L.R. 99; (1973) 117 S.J. 873; [1974] 1 All E.R. 395; [1974] 1 Lloyd's Rep. 17	6, 8, 9
Derry v. Peek (1889) 14 App. Cas. 337; 58 L.J.Ch. 864; 61 L.T. 265; 54 J.P. 148; 38 W.R. 33; 5 T.L.R. 625; 1 Heg. 292, H.L.; reversing <i>sub nom.</i> Peek v. Derry (1887) 37 Ch.D. 541, C.A.	80
Dicks v. S. A. Mutual Fire & General Insurance Co. [1963] (4) S.A. 501	64

Digby <i>v.</i> General Accident Fire and Life Assurance Corporation [1942] 2 All E.R. 319; [1943] A.C. 121; 111 L.J.K.B. 628; 167 L.T. 222; 58 T.L.R. 375; 87 S.J. 29; 73 Ll.L.Rep. 175, H.L.	321
Distillers Co. <i>v.</i> Ajax Insurance Co. (1974) 48 A.L.J.R. 136, High Ct. of Australia	306, 308
Duckett <i>v.</i> Williams (1834) 2 C. & M. 348; 4 Tyr. 240; 3 L.J.Ex. 141; 149 E.R. 794	112, 133
Eagle Star Insurance Co. <i>v.</i> Spratt [1971] 2 Lloyd's Rep. 116, C.A.; reversing [1971] 1 Lloyd's Rep. 295	62, 153
Ecclesiastical Commissioners <i>v.</i> Royal Exchange Assurance Corporation (1895) 11 T.L.R. 476; 39 S.J. 623	136
Edwards (John) & Co. <i>v.</i> Motor Union Insurance Co. Ltd. [1922] 2 K.B. 249; 91 L.J.K.B. 921; 128 L.T. 276; 38 T.L.R. 690; 16 Asp.M.L.C. 89; 27 Com.Cas. 367; 11 Ll.L.Rep. 122, 170	25, 255
Eisinger <i>v.</i> General Accident Fire and Life Assurance Corporation [1955], 1 W.L.R. 869; 99 S.J. 511; [1953] 2 All E.R. 897; [1955] 2 Lloyd's Rep. 95; [18 M.L.R. 613]	193
Elcock <i>v.</i> Thomson [1949] 2 K.B. 755; 65 T.L.R. 566; 93 S.J. 562; [1949] 2 All E.R. 381; 82 Ll.L.Rep. 892; [13 M.L.R. 97]	240
Elizabeth <i>v.</i> Motor Insurers' Bureau <i>The Times</i> , March 3, 1981	339
Engelbach, <i>Re</i> ; Tibbetts <i>v.</i> Engelbach [1924] 2 Ch. 348; [1923] All E.R.Rep. 93; L.J.Ch. 616; 130 L.T. 401; 68 S.J. 208	293, 295, 296
English <i>v.</i> Western [1940] 2 K.B. 156; [1940] 2 All E.R. 515; 109 L.J.K.B. 728; 162 L.T. 370; 56 T.L.R. 680; 84 S.J. 465; 67 Ll.L.Rep. 45, C.A.	177, 179
Equitable Fire & Accident Insurance Co. <i>v.</i> Ching Wo Hong [1907] A.C. 96; 76 L.J.P.C. 31; 96 L.T. 1; 23 T.L.R. 200, P.C.	286
Evans <i>v.</i> Bignold (1869) L.R. 4 Q.B. 622; 10 B. & S. 621; 38 L.J.Q.B. 293; 20 L.T. 659; 17 W.R. 882	34
Evans <i>v.</i> Employers' Mutual Insurance Association [1936] 1 K.B. 505; 105 L.J.K.B. 141; 154 L.T. 137; [1935] All E.R. Rep. 659	806
Everett <i>v.</i> Desborough (1829) 5 Bing. 503; 3 Moo. & P. 190; 7 L.J.O.S.C.P. 223; 130 E.R. 1155	82
Everett <i>v.</i> Hogg, Robinson & Gardner Mountain (Insurance) [1973] 2 Lloyd's Rep. 217	162
Everett <i>v.</i> London Assurance Co. (1865) 19 C.B.N.S. 126; 6 New Rep. 234; 34 L.J.C.P. 299; 11 Jur.N.S. 546; 13 W.R. 862; 144 E.R. 734	182
Ewer <i>v.</i> National Employers' Mutual General Insurance Association [1937] 2 All E.R. 193; (1937) 157 L.T. 16; 53 T.L.R. 485; 57 Ll.L.Rep. 172	93, 224, 231
Facer <i>v.</i> Vehicle & General Insurance Co. [1965] 1 Lloyd's Rep. 113	122
Farmers' Mutual Insurance Co. <i>v.</i> New Holland Turnpike Road Co. (1888) 122 Pa. 37	41
Farnham <i>v.</i> Royal Insurance Co. [1976] 2 Lloyd's Rep. 437	98
Farr <i>v.</i> Motor Traders' Mutual Insurance Society [1920] 3 K.B. 669; 90 L.J.K.B. 215; 123 L.T. 765; 36 T.L.R. 711, C.A.	115
Farrell <i>v.</i> Federated Employers' Insurance Association Ltd. [1970] 1 W.L.R. 1400; 114 S.J. 719; [1970] 3 All E.R. 632; [1970] 2 Lloyd's Rep. 170; affirming [1970] 1 W.L.R. 498	221, 303, 346
Fenton <i>v.</i> Thorley & Co. Ltd. [1903] A.C. 443	188
Field <i>v.</i> Receiver of Metropolitan Police [1907] 2 K.B. 853	176

Fire, Auto & Marine Insurance Co. v. Greene [1964] 2 Q.B. 687; [1964] 3 W.L.R. 319; 108 S.J. 603; [1964] 2 All E.R. 761; [1964] 2 Lloyd's Rep. 72	340
Fire & All Risks Co. Ltd. v. Powell [1966] V.R. 513	207
Fleetwood's Policy, <i>Re</i> [1926] Ch. 48; [1925] All E.R.Rep. 262; 95 L.J.Ch. 195; 133 L.T. 374	294
Forney v. Dominion Insurance Co. Ltd. [1969] 1 W.L.R. 928; 113 S.J. 326; [1969] 3 All E.R. 831; [1969] 1 Lloyd's Rep. 502	311
Foster, <i>Re</i> [1938] 3 All E.R. 357	296
Foster, <i>Re</i> [1966] 1 W.L.R. 222; 110 S.J. 151; [1966] 1 All E.R. 432	297
Fraser v. Furman (B.N.) (Productions), Miller Smith & Co. (A Firm) Third Party [1967] 1 W.L.R. 898; [1967] 3 All E.R. 57; 2 K.I.R. 483; [1967] 2 Lloyd's Rep. 1; <i>sub nom.</i> Fraser v. Furman (B.N.) (Productions), Miller Smith & Co. (A Firm) Third Party (1967) 111 S.J. 471; [84 L.Q.R. 11] C.A.	162, 310
Freeman & Lockyer v. Buckhurst Park Properties [1964] 2 Q.B. 480; [1964] 2 W.L.R. 618; 108 S.J. 96; [1964] 1 All E.R. 630; [114 L.J. 367; 108 S.J. 722] C.A.	152
Freshwater v. Western Australian Assurance Co. [1933] 1 K.B. 515; 102 L.J.K.B. 75; 148 L.T. 275; 49 T.L.R. 131; 76 S.J. 888, C.A.	303
Gale v. Motor Union Insurance Co.; <i>Loyst v. General Accident Fire & Life Assurance Corporation Ltd.</i> [1928] 1 K.B. 359; [1926] All E.R.Rep. 170; 96 L.J.K.B. 199; 138 L.T. 712; 43 T.L.R. 15; 70 S.J. 1140; 26 Ll.L.Rep. 65	283, 284
Gedge v. Royal Exchange Assurance Corporation [1900] 2 Q.B. 214; 69 L.J.Q.B. 506; 82 L.T. 463; 16 T.L.R. 344; 9 Asp. M.L.C. 57; 5 Com.Cas. 229	36
Geismar v. Sun Alliance & London Insurance [1978] Q.B. 383; [1978] 2 W.L.R. 38; (1977) 121 S.J. 201; [1977] 3 All E.R. 570; [1977] 2 Lloyd's Rep. 62; [1977] Crim.L.R. 475	204
General Accident Insurance Corporation v. Cronk (1901) 17 T.L.R. 233; 45 S.J. 261, D.C.	55, 59, 67
General Accident, Fire and Life Assurance Corporation Ltd. and Drysdale v. Midland Bank Ltd., Scoffin & Willmott Ltd. and Plant Bros. Ltd. (in Liquidation) [1940] 2 K.B. 388; [1940] 3 All E.R. 252; 110 L.J.K.B. 177; 164 L.T. 33; 56 T.L.R. 905; 84 S.J. 548; 45 Com.Cas. 309; 67 Ll.L.Rep. 218, C.A.	225
General Assurance Society v. Chandermull Jain A.I.R. (1966) S.C. 1644	70
General Omnibus Co. Ltd. v. London General Insurance Co. Ltd. [1936] I.R. 596	308
Gerhardt v. Continental Insurance Companies and Firemen's Insurance Co. of Newark [1967] 1 Lloyd's Rep. 380	171, 180
Gladitz, <i>Re</i> , Guaranty Executor & Trustee Co. Ltd. v. Gladitz [1937] Ch. 588; [1937] 3 All E.R. 173; 106 L.J.Ch. 254; 157 L.T. 163; 53 T.L.R. 857; 81 S.J. 527	294
Glen v. Lewis (1853) 8 Ex. 607; 1 C.L.R. 187; 22 L.J.Ex. 228; 21 L.T.O.S. 115; 17 Jur. 842; 155 E.R. 1494	98
Glen Falls Insurance v. Spencer (1956) 3 D.L.R. (2d) 745	195
Glicksman v. Lancashire & General Assurance Co. [1927] A.C. 139; 136 L.T. 263; 43 T.L.R. 46; 70 S.J. 1111; 32 Com.Cas. 62; [1926] All E.R.Rep. 161; affirming [1925] 2 K.B. 593	89, 92, 93
Globe & Rutgers Fire Insurance Co. v. Truedell [1927] 2 D.L.R. 659; 60 O.L.R. 227	262

Glyn v. Scottish Union & National Insurance Co. (1963) 40 D.L.R. (2d) 929	253
Godfrey v. Britannic Assurance Co. Ltd. [1963] 107 S.J. 536; [1963] 2 Lloyd's Rep. 515; [114 L.J. 436]	86
Godsall v. Boldero (1807) 9 East 72; 103 E.R. 500	27
Goldschlager v. Royal Insurance Co. (1978) 84 D.L.R. (3d) 355, Ontario High Ct.	83
Goodbarne v. Buck [1940] 1 K.B. 771; [1940] 1 All E.R. 613; 109 L.J.K.B. 837; 162 L.T. 259; 56 T.L.R. 433; 84 S.J. 380; 31 Cox, C.C. 380; 60 Ll.L.Rep. 129, C.A.	317
Gorely, <i>ex p. Re Barker</i> (1864) 4 De G.J. & Sm. 477; 5 New Rep. 22; 34 L.J.Bcy. 1; 11 L.T. 319; 10 Jur.(n.s.) 1085; 13 W.R. 60; 46 E.R. 1003, L.C.	248
Gould v. Curtis [1913] 3 K.B. 84; 82 L.J.K.B. 802; 108 L.T. 779; 29 T.L.R. 469; 57 S.J. 461; 6 Tax Cas. 302, C.A.	7, 8
Goulstone v. Royal Insurance Co. (1858) 1 F. & F. 276	42
Gray v. Barr, Prudential Assurance Co. (Third Party) [1971] 2 Q.B. 554; [1971] 2 W.L.R. 1334; 115 S.J. 364; [1971] 2 All E.R. 949; [1971] 2 Lloyd's Rep. 1, C.A.; affirming [1970] 2 Q.B. 626; [1970] 3 W.L.R. 108; [1970] 2 All E.R. 702; <i>sub nom.</i> Gray v. Barr (1970) 114 S.J. 413; <i>sub nom.</i> Gray & Gray v. Barr, Prudential Assurance Co. (Third Party) [1970] 2 Lloyd's Rep. 69.....	184, 186, 188, 191, 202, 205, 208, 209, 210, 211
Green v. Russell, McCarthy (Third Party) [1959] 2 Q.B. 226; [1959] 3 W.L.R. 17; 103 S.J. 489; [1959] 2 All E.R. 525; [1959] C.L.J. 153; 103 S.J. 497; 22 M.L.R. 519; 23 Conv. 310, C.A.; affirming [1959] 1 Q.B. 28; [1958] 3 W.L.R. 371; 102 S.J. 684; 22 M.L.R. 97; [1958] C.L.Y. 884.....	33, 298
Griffin v. Squires [1958] 1 W.L.R. 1106; 123 J.P. 40; 102 S.J. 828; [1958] 3 All E.R. 468; 56 L.G.R. 442; 103 S.J. 5, D.C.	316
Griffiths v. Fleming [1909] 1 K.B. 805; [1908-1910] All E.R.Rep. 760; 78 L.J.K.B. 567; 100 L.T. 765; 25 T.L.R. 377; 53 S.J. 340, C.A.....	29, 32
Groom v. Crocker [1938] 2 All E.R. 394; [1939] 1 K.B. 194; 108 L.J.K.B. 296; 158 L.T. 477; 54 T.L.R. 861; 82 S.J. 374; 60 Ll.L.Rep. 393, C.A.....	305, 306, 309
Grover & Grover Ltd. v. Mathews [1910] 2 K.B. 401; 79 L.J.K.B. 1025; 102 L.T. 650; 26 T.L.R. 411; 15 Com.Cas.249	50, 154
Guardian Assurance v. Sutherland [1939] 2 All E.R. 246; 55 T.L.R. 576; 83 S.J. 398; 63 Ll.L.Rep. 220	320
Gurtner v. Circuit [1968] 2 Q.B. 587; [1968] 2 W.L.R. 668; (1967) 112 S.J. 73; [1968] 1 All E.R. 328; <i>sub nom.</i> Gurtner v. Circuit and Motor Insurers' Bureau [1968] 2 Lloyd's Rep. 171, C.A.	340
Haigh v. Lawford (1964) 114 L.J. 208	265
Hales v. Reliance Fire and Accident Insurance Co. [1960] 2 Lloyd's Rep. 391	109
Halford v. Kymer (1830) 10 B. & C. 724; 8 L.J.O.S.K.B. 311; 109 E.R. 619	31, 295
Hall D'Ath v. British Provident Association for Hospital & Additional Services (1932) 48 L.T.R. 240; 76 S.J. 111	10
Hamlyn v. Crown Accidental Insurance Co. Ltd. [1893] 1 Q.B. 750; 62 L.J.Q.B. 409; 68 L.T. 701; 57 J.P. 663; 41 W.R. 531; 9 T.L.R. 427; 4 R. 407, C.A.	183

Hampton v. Toxteth Co-operative Society [1915] 1 Ch. 721; 84 L.J.Ch. 633; 113 L.T. 62; 31 T.L.R. 314; 59 S.J. 397, C.A.....	10, 11, 12
Hansen v. Marco Engineering (Aust.) Pty. Ltd. [1948] V.L.R. 198; 2 A.L.R. 17	307
Harbutt's "Plasticine" Ltd. v. Wayne Tank and Pump Co. Ltd. [1970] 1 Q.B. 447; [1970] 2 W.L.R. 198; 114 S.J. 29; [1970] 1 All E.R. 225; [1970] 1 Lloyd's Rep. 15; [33 M.L.R. 441; 86 L.Q.R. 513], C.A. 201, 266	
Hardy v. Motor Insurers' Bureau [1964] 2 Q.B. 745; [1964] 3 W.L.R. 433; 108 S.J. 422; [1964] 2 All E.R. 742; [1964] 1 Lloyd's Rep. 397; [27 M.L.R. 717; 81 L.Q.R. 7; 1965 S.L.T. 25; 99 I.L.T. 319], C.A.; Petition for leave to appeal to House of Lords dismissed <i>sub nom.</i> Motor Insurers' Bureau v. Hardy [1964] 1 W.L.R. 1155, H.L.	206, 208, 210, 211
Harr v. Allstate Insurance Co. (1969) 54 N.J. 287	154
Harrington v. Pearl Life Assurance Co. (1914) 30 T.L.R. 613, C.A.	56
Harrington Motor Co., <i>Re</i> [1928] Ch. 105	300
Harris v. Poland [1941] 1 K.B. 462; [1941] 1 All E.R. 204; 110 L.J.K.B. 712; 164 L.T. 283; 57 T.L.R. 252; 85 S.J. 290; 46 Com.Cas. 162; 69 Ll.L.Rep. 35	181
Harse v. Pearl Life Assurance Co. [1903] 2 K.B. 92; 72 L.J.K.B. 638; 89 L.T. 94; 19 T.L.R. 474, D.C.; reversed on other grounds [1904] 1 K.B. 558, C.A.	32
Harse v. Pearl Life Assurance Co. Ltd. [1904] 1 K.B. 558; 73 L.J.K.B. 373; 90 L.T. 245; 52 W.R. 457; 20 T.L.R. 264; 48 S.J. 275, C.A.	25, 30, 36, 136, 137
Haseldine v. Hosken [1933] 1 K.B. 822; [1933] All E.R.Rep. 1; 102 L.J.K.B. 441; 148 L.T. 510; 49 T.L.R. 254; 44 Ll.L.Rep. 127, C.A.	208
Hebdon v. West (1863) 3 B. & S. 579; 1 New Rep. 431; 32 L.J.Q.B. 85; 7 L.T. 854; 9 Jur. (N.S.) 747; 11 W.R. 422; 122 E.R. 218	32, 33
Henson v. Blackwell (1845) 4 Hare 434; 14 L.J.Ch. 329; 5 L.T.O.S. 191; 9 Jur. 390; 67 E.R. 718	27
Hepburn v. Tomlinson (Hauliers). <i>See</i> Tomlinson (Hauliers) v. Hepburn	
Herbert v. Railway Passengers Assurance Co. [1938] 1 All E.R. 650; 158 L.T. 417; 60 Ll.L.Rep. 143	331
Heyman v. Darwins [1942] A.C. 356; [1942] 1 All E.R. 337; 111 L.J.K.B. 241; 166 L.T. 306; 58 T.L.R. 169, H.L.	107, 219, 220
Heywood v. Wellers [1976] Q.B. 446; [1976] 2 W.L.R. 101; (1975) 120 S.J. 9; [1976] 1 All E.R. 300; [1976] 2 Lloyd's Rep. 88, C.A.	305
Hobbs v. Marlowe [1978] A.C. 16; [1977] 2 W.L.R. 777; 121 S.J. 272; [1977] 2 All E.R. 241; [1977] R.T.R. 253, H.L.; affirming 120 S.J. 838, C.A.	242, 253, 257, 263, 271
Holmes v. Payne [1930] 2 K.B. 301; [1930] All E.R. Rep. 322; 99 L.J.K.B. 441; 143 L.T. 349; 46 T.L.R. 413; 74 S.J. 64; 35 Com.Cas. 289; 37 Ll.L.Rep. 41	192, 226
Home District Mutual Insurance Co. v. Thompson (1847) 1 E. & A. 247	246
Hooley Rubber & Chemical Man. Co., <i>Re</i> . [1920] 1 K.B. 257; 88 L.J.K.B. 1120; 121 L.T. 270; 35 T.L.R. 483; affirmed [1920] 1 K.B. 264; 89 L.J.K.B. 179; 122 L.T. 173; 36 T.L.R. 81; 25 Com.Cas. 23; 1 Ll.L.Rep. 3, 25, C.A.	154
Horne v. Poland [1922] 2 K.B. 364; [1922] All E.R.Rep. 551; 91 L.J.K.B. 718; 127 L.T. 242; 38 T.L.R. 357; 66 S.J. 368; 10 Ll.L.Rep. 175, 275	94
Horse, Carriage & General Insurance Co. v. Petch (1916) 33 T.L.R. 131	264

Houghton v. Trafalgar Insurance Co. [1954] 1 Q.B. 247; [1953] 3 W.L.R. 985; 97 S.J. 831; [1953] 2 All E.R. 1049; [1953] 2 Lloyd's Rep. 503; [103 L.J. 808], C.A.; affirming [1953] 2 Lloyd's Rep. 18.....	66, 178
Huddleston v. R.A.C.V. Insurance Pty. Ltd. [1975] V.R. 683	109
Hughes v. Liverpool Victoria Legal Friendly Society [1916] 2 K.B. 482; [1916-1917] All E.R.Rep. 18; 85 L.J.K.B. 1643; 115 L.T. 40; 32 T.L.R. 525, C.A.	136
Husak v. Imperial Life Assurance Co. of Canada (1970) 9 D.L.R. (3d) 602	204
Inglis v. Stock (1885) 10 App Cas. 263; 54 L.J.Q.B. 582; 52 L.T. 821; 33 W.R. 877; 5 Asp.M.L.C. 422, H.L.; affirming <i>sub nom.</i> Stock v. Inglis (1884) 12 Q.B.D. 564, C.A.	42
Inn. Cor. International Ltd. v. American Home Assurance Co. (1974) 42 D.L.R. (3d) 46	66
Ioakimidis Policy Trusts, <i>Re</i> , Ioakimidis v. Hartcup [1925] Ch. 403; [1925] All E.R. Rep. 164; 95 L.J.Ch. 24; 133 L.T. 796; 41 T.L.R. 486; 69 S.J. 662	294
Jaglom v. Excess Insurance Co. [1972] 2 Q.B. 250; [1971] 3 W.L.R. 594; 115 S.J. 639; [1972] 1 All E.R. 267; [1971] 2 Lloyd's Rep. 171	62
James v. British General Insurance Co. [1927] 1 K.B. 311.....	206, 208
Jason v. Batten; Jason v. British Traders' Insurance Co. [1969] 1 Lloyd's Rep. 281; <i>sub nom.</i> Jason v. British Traders' Insurance Co., 119 New L.J. 697	199, 220
Joel v. Law Union & Crown Insurance Co. [1908] 2 K.B. 863; 77 L.J.K.B. 1108; 99 L.T. 712; 24 T.L.R. 898; 52 S.J. 740, C.A.....	86, 87, 91, 113
Jones v. Birch Bros Ltd. [1933] 2 K.B. 597; 102 L.J.K.B. 746; 149 L.T. 507; 49 T.L.R. 586, C.A.	303, 330
Jones v. Lock (1865) 1 Ch.App. 25; 35 L.J.Ch. 117; 13 L.T. 514; 11 Jur.N.S. 913; 14 W.R. 149, L.C.	294
Jones v. Welsh Insurance Corporation [1937] 4 All E.R. 149; (1937) 54 T.L.R. 22; 157 L.T. 483; 81 S.J. 886; 59 Ll.L.Rep. 13.....	323, 329
Jones Construction v. Alliance Assurance Co. [1961] 1 Lloyd's Rep. 121, C.A.; affirming [1960] 1 Lloyd's Rep. 264; [1960] C.L.Y. 1563	72
Joseph v. Law Integrity Insurance Co. Ltd. [1912] 2 Ch. 581; 82 L.J.Ch. 187; 107 L.T. 538; 20 Mans. 85, C.A.	75
Jureidini v. National British and Irish Millers' Insurance Co. [1915] A.C. 499; 84 L.J.K.B. 640; 112 L.T. 531; 31 T.L.R. 132; 59 S.J. 205, H.L.	220
Keeling v. Pearl Assurance Co. (1923) 129 L.T. 573; [1923] All E.R. Rep. 307	121
Kelly v. Cornhill Insurance Co. [1964] 1 W.L.R. 158; 108 S.J. 94; [1964] 1 All E.R. 321; [1964] 1 Lloyd's Rep.1; 1964 S.C.(H.L.) 46; 1964 S.L.T. 81; [80 L.Q.R. 306], H.L., reversing 1963 113; 1963 S.L.T. 13; [1963] C.L.Y. 3072	322
Kelly v. London and Staffs Fire Insurance Co. (1883) Cab. & E. 47	153
Kelly v. Solari (1841) G.M. & W. 54; 11 L.J.Ex. 10; 6 Jur. 107; 152 E.R. 24	226
Kennedy v. Smith (1976) S.L.T. 110	108
Kettlewell v. Refuge Assurance Co. <i>See</i> Refuge Assurance Co. v. Kettlewell.	
King, <i>Re</i> Robinson v. Gray [1963] Ch. 459; [1963] 2 W.L.R. 629; 107 S.J. 134; [1963] 1 All E.R. 781; [1963] R.V.R. 245; [27 Conv. 223; 234 L.T. 200, 589; [1963] R.V.R. 707], C.A.; reversing [1962] 1 W.L.R. 632; 106 S.J. 509; [1962] 2 All E.R. 66; [1962] R.V.R. 621; [112 L.J. 470; 106 S.J. 683, 717; 26 Conv. 319]; [1962] C.L.Y. 1690	25, 38, 53, 269