

Marine Insurance

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Overview

- Historical notes
- Legal framework
- Contracting
- Insurable interest and amount
- Cover and causation
 - Exclusions
- Individual insurances
- Duties of the assured

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Historical notes

- The law of Hammurabi
 - Origins from 2050 BC
 - Text from 1760 BC
 - No 102-104 risk sharing
- *Lex Rhodia de Jactu*
 - Digest 14.2.1
 - Today General Average
- *Foneaus Nauticum*
 - Shipowner borrows to carry out a maritime adventure against interest
 - Interest was banned 1230
- Marine Insurance
 - Premium, instead of interest, on covered risk
 - From the Lombards, via Portugal, England, the Netherlands, Hansa to Scandinavia

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Different insurances

- Ship owner's insurances
 - Hull insurance
 - Marine and War Perils
 - Interest insurances
 - Hull interest (total loss and collision)
 - Freight interest (total loss)
 - Loss of hire
 - Protection and Indemnity (P&I) Insurance
 - Liability
- Cargo Insurance
 - Marine perils
 - War perils

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Legal framework

- Maritime Code until 1930
- Insurance Contract Act from 1930
 - Some rudimentary rules
 - Current Norwegian Act from 1989
 - Partly mandatory
 - Not registered vessels
 - Not international carriage

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Plans, Rules and Conditions

- Marine Insurance Plan 1996
 - Commentaries
 - Agreed documents
 - Deviations from ICA
- Cargo Plan 1995
 - Commentaries (mini plan)
 - Agreed document
 - Follows ICA
- P&I-Rules (Gard, Skuld and Swedish Club)
 - International rules (national law to apply?)
 - Not agreed
- Conditions of various kind
 - ICC A, B & C

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The contract of insurance

- Contracting
 - General contract law
 - Broker NMIP § 1-3
 - The impact of passivity NMIP § 1-2
- Documentation
 - Policy
 - Document issued as evidence on insurance
 - Certificate and policy
- The parties
 - The party effecting the insurance
 - The Policy holder
 - The party whose interest is covered
 - The Assured
 - The insurer or the underwriter
- Jurisdiction and choice of law

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Interest: what value?

- Interest
 - Subject matter insured
- Insurable value
 - Objective value of the object before the casualty
 - At the inception of the insurance NMIP § 2-2,
 - Cargo costs and profit CISG § 29
- Amount insured
 - The policy holders valuation of the interest
 - Form bases for the calculation of the premium
 - Limit of the insurers responsibility NMIP § 4-18, CICC § 32
- Assessed or Agreed value
 - Fixed value
 - Can only be set aside if information is misleading

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Interest insured at what value?

- Over insurance
 - Amount insured greater than insurable value
- Under insurance
 - Amount insured lesser than the insurable value

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Cover and causation

- All risk versus named peril
 - All risk NMIP § 2-8
 - NBI Exclusions: War, intervention of states, insolvency and release of nuclear energy
 - Named peril
 - Limited cover in cargo insurance
 - P&I-insurance
- Causation
 - Peril struck principle
 - NMIP § 2-11, CICC § 7
 - Combination of causes
 - Distribution over different causes
 - NMIP § 2-3, CICC § 20
 - War or marine peril
 - Dominant cause NMIP § 2-14
 - Many insurance periods NMIP 2-11

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Duties of the insured

- Duty to disclosure
 - Disclosure
 - Alteration of risk
- Duty of care
 - Safety regulations
 - Forbear from causing the damage
 - Duty to avert and minimise loss

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Disclosure

- When concluding: Active and passive duty
 - Passive CISG § 12, cf. ICA § 4-1
 - Answer questions
 - Active only when understands significance to insurer
 - Active NMIP § 3-1
 - Material circumstances
 - During insurance period (second para.)
 - Duty to notify on becoming aware of
 - Incorrect
 - Incomplete
 - Sanctions
 - Level of blame
 - Fraud, reduced responsibility and without liability
 - Not to apply if the insurer should have known

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Alteration of risk

- The general rule
 - Change in circumstances that form the base of the contract and alter the risks
 - NMIP § 3-8 to § 3-21, ICA § 4-5 and § 4-6
 - NB! Change of manager
- Special rules Hull
 - Loss or change of class NMIP § 3-14
 - Trading area NMIP § 3-15
 - Illegal purpose NMIP § 3-16
- Sanctions
 - Free of liability or other terms
 - Termination

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Forebear from causing the damage

- NMIP § 3-32 to § 3-34, ICA § 4-9
- Intent
 - No responsibility
- Gross negligence
 - Reduced responsibility
- Negligence
 - Full responsibility

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Safety regulation

- Rules or orders concerning measures for the prevention of loss
 - NMIP § 3-22 to 3-27
 - Public authority
 - Insurance contract or
 - Classification society
 - Periodic surveys
 - CIG § 21 to § 24
 - Domestic trade
 - Insurance contract
 - International trade
 - Also rules imposed by public authority
- Reaction
 - Not responsible unless not consequential

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Duty to notify and avert or minimise loss

- If a casualty threatens or has occurred
 - Notify insurer
 - NMIP § 3-29, CIG § 25
 - Reasonable measures to avert or minimise
 - NMIP § 3-30, CIG § 26
- Sanctions
 - Intention or gross negligence
 - Only responsible as if the duty was fulfilled

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Identification

- Problem
 - Representatives for the association
 - Helpers
- Different relations
 - Policy holder and helpers
 - Brokers
 - Assured and helpers
 - Not fault master and crew, NMIP § 3-36
 - Safety regulation in policy
 - Delegation of material functions
 - Assured and policy holder NMIP § 3-38, CIG § 10
 - Different insured
 - Decision making power at co-insured

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Costs for avert and minimise loss

- General Average
 - Common safety v. common benefit
 - Contribution covered NMIP § 4-8, CIG § 40
 - Peril covered
- Particular measures
 - Cover NMIP § 4-7 and § 4-12, CIG § 39
 - Circumstances: casualty or threatened casualty
 - Extraordinary measures
 - Aim at avoiding loss or damage
 - All costs
 - Not economical or consequential loss and damage to third party

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Hull insurance cover

- **Total loss**
 - Actual § 11-1, constructive § 11-3, § 11-7 presumed and compromised
- **Physical damage**
 - Repair costs NMIP § 12-1
- **Collision and striking**
 - Liability



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Hull damage exclusions

- **Inadequate maintenance, NMIP § 12-3**
- **Error in design and faulty material, NMIP § 12-4**
- **Losses not covered**
 - Economical loss and delay, NMIP § 4-2
 - Other losses not covered NMIP § 12-5
 - a. crew's wages and maintenance and other ordinary expenses connected with the running of the ship during the period of repair, unless this is specially agreed,
 - b. expenses of shifting, storing and removal of cargo,
 - c. accommodation of passengers,
 - d. objects which must normally be replaced several times during the expected life of the ship and which have been used for mooring, towing and the like, unless the loss is a consequence of the ship having sunk, or is attributable to collision, fire or theft. The same applies to tarpaulins,
 - e. zinc slabs, magnesium slabs and the like fitted for protection against corrosion,
 - f. loss due to lubricating oil, cooling water or feed water becoming contaminated, unless proper measures were taken as soon as possible after the assured, the master or the chief engineer became, or must be deemed to have become, aware of the contamination, and in any event not later than three months after one of them should have become aware of the contamination

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Collision exclusions

- **Limitations NMIP § 13-1**
- **Group 1**
 - Towing (a)
 - Injury or loss of life (b)
 - Oil spill damages (f)
 - Apart from damages to the other ship
 - Bunker spill damages (g)
- **Group 2**
 - Other damages than loss of life on passengers and crew (c)
 - Cargo claims from insured ship (d)
 - Charterer's claims (e)
 - Removal of wreck (i)
- **Group 3**
 - No liability for recourse claims from other ship (j)

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P&I cover

- **Named perils**
 - Liability for injury and delay related to persons
 - Crew
 - Passengers
 - Pilots, travelling repairman
 - Loading or unloading personnel
 - Cargo liability
 - Loss of or damage to
 - Multimodal transport
 - Delay
 - Necessary unloading and reloading
 - Document faults not covered
 - Liability for Collision and striking
 - Liability for oil pollution
 - Other liabilities
 - Wreck removal, salvage, GA,

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Cargo insurance cover

- **Insurance may be contracted for one of the following types of cover:**
 - All risks - "A-Clauses", cf. § 3
 - Extended transport accident - "B-Clauses", cf. § 4
 - C-clause damages and
 - The goods being jettisoned or washed overboard.
 - Sea, lake or river water entering into warehouse or place of storage.
 - Loading or unloading of the insured goods, resulting in the total loss of entire packages.
 - Loading, unloading or shifting of the insured goods in a port of distress, and theft or precipitation while the goods are stored in a port of distress.
 - Transport accident - "C-Clauses", cf. § 5
 - The carrying vessel having collided, struck any object, sunk, capsized or suffered a similar serious accident
 - The land conveyance having collided, struck any object, overturned, been derailed or been driven off the road.
 - The aircraft having collided, struck any object, crashed or been driven off the runway.
 - Fire, lightning or explosion.
 - Earthquake, volcanic eruption, landslide, snowslide or similar natural disasters.

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Cargo clauses exclusions

- **Four categories**
 - General exclusion
 - Unseaworthiness and unfitness
 - War
 - Strikes
- **This counts for English clauses**
 - The Nordic countries have various patterns

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Excluded perils (apart from war and strike)

Exclusion / Condition	UK	DK	SF	N	S
Wilful misconduct of the Assured/Third party damages	4.1/7	4.1	3.1.1	\$4-9 FAL	2.1/ 7.2
Ordinary leakage, loss or wear and tear	4.2	4.3	3.1.2	\$18.2	2.2
Insufficiency or unsuitability of packing	4.3	4.4	3.1.3	\$23	13.1.1
Unseaworthiness or unfitness	5.1	4.5-8	3.1.4	\$22	13.1.2
Weapon of war nuclear fission	4.7	4.9	3.1.8	\$18.10	2.3
Radioactivity	4.7	4.9	3.1.8	\$18.10	2.4
Liability for damages	-	-	3.1.9	\$6.2	2.5
Inherent vice	4.4	4.2	3.2.1	\$18.1	3.1.1
Non maintenance of refrigeration	-	-	3.2.1	\$34	3.1.2
Indirect losses	4.5	K\$63	3.2.5	\$6.1	3.2
Carrier's insolvency	4.6	4.7	3.2.6	-	3.3
Delay	4.5	4.6	3.2.4	\$18.5	3.4-5

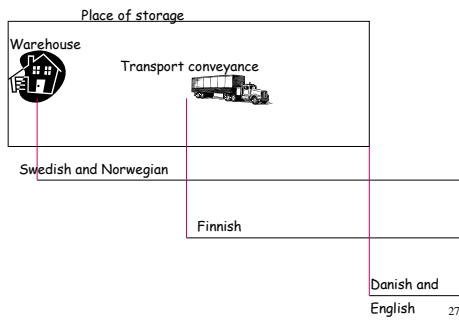
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Duration of cover

- The risk attaches
 - When the Transport starts
- It remains in force during ordinary transit and
- Terminates
 - At delivery to the consignee's warehouse at place of destination
 - At delivery to consignee or
 - Placed to his disposal

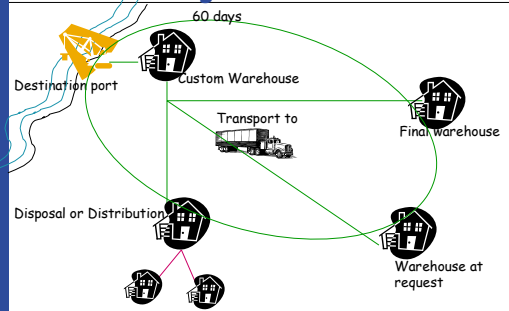
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The risk attaches



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When the risk terminates after the sea leg



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Example on interaction between liability and insurance

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