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University of Oslo

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## Marine insurance law



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## Overview

- Thursday 28 feb. 14-16 Aud. 6:
  - The main types of marine insurance
  - The legal sources in marine insurance (in general)
  - The insurance contract (NP)
- Thursday 4 feb. 14-15 Aud. 4
  - Insurable interest, insurable value and the sum insured (NP)
  - Scope of cover (NP)

## Overview

- Thursday 11 feb. 14-16 Aud. 4:
  - Duties of disclosure and due care
- Wednesday 17 feb. 14-15 Aud. 4
  - Duties of disclosure and due care

## 1. The main types of marine insurance

- Insurance related to ships
- Insurance of goods under transport
- Some other distinctions



## 1.1 Insurance related to ships

- Three main insurances:
  - Hull insurance
  - Loss of income
  - Liability
- The main difference:
  - What interests are insured
  - Calculation of compensation



### 1.1.1 Hull insurance

- Damage to/loss of property
- Element of liability
- Element of loss of income
- Divided into two:
  - Hull insurance
  - Hull interest insurance: only total loss and liability

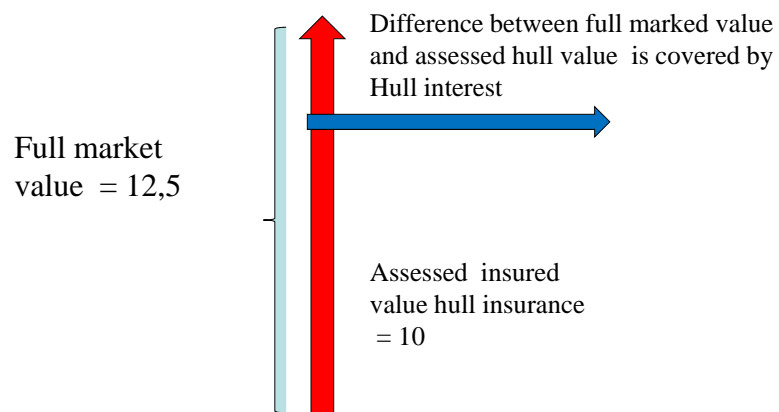


## Hull and hull interest



Insurable interest = full market value  
 Insurable value hull = assessed = potential "rest value"  
 Rest value = hull interest insurance, but max 25 %

## Hull and hull interest



## 1.1.2 Loss of income

- The covered interest: income derived from the ship:
- Different types:
  - Loss of hire: only if the ship is damaged
  - Freight interest: only if the ship is a total loss
  - Strike: only cover for expenses



## Freight interest



Hull and hull interest covers full market value, which reflects the future income of the ship.

But: not loss because

- a long term contract expires or
- Ship is taken out of predetermined form of employment

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## Freight interest

Total loss interest, hull and freight risk

Loss of long time charterparti/employment = 2,5 M, covered by freight interest

Exceding market value = 2,5 M covered by hull interest

Assessed hull value = 10 M covered by hull insurer

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## 1.1.3 Liability insurances

- Covering ship-owners' third party liability
- Main liability insurance: P&I insurance
- Hull/hull interest insurance cover part of the collision liability
  - Hull: up to the sum insured/assessed value
  - Hull interest: 25 % above
  - P&I: Above "market value"

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## Liability, hull and P&I

Collision  
Liability =  
15 Mill

Liability – full market value  
(15 M – 12,5 M = 2,5 M  
covered under P&I insurance

Exceeding market value = 2,5 M  
covered by hull interest

Hull value = 10 M  
covered by hull  
insurer

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## Question

- A grounded and sustained damage to hull. The ship had to go to repairyard where the ship were under repair for 3 three weeks. During this time the ship did not earn any income.
- Which insurance will cover the damage?
- Which insurance will cover the loss of income

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## Question

- A sunk on a voyage between NY and Lnd and became a total loss. Insurable value under hull insurance was 200 MNOK.
- Which insurance cover the total loss?
- Is there a loss of income?
- If so, is this loss covered?

## Question

- A collided with B and sunk. A was fully liable.
- A's insurable value was 400 MNOK. Liability for damage to B: 800 MNOK.
- Which insurance is liable and for what amount for
  - Total loss
  - Liability



## 1.2 Insurance of goods under transport

- Covers cargo under transport from A to B (normally seller to buyer)
- Casualty (damage and loss) insurance
- Includes owner's profit
- But not
  - Loss of income in general
  - Owner's liability

## 1.3 Some other distinctions of relevance

- Marine/civil risks vs war risks
  - Marine/civil insurance covers all risks that are not expressly excluded
  - Special exclusion for war risks
  - War insurance covers war and similar risks expressly defined (named perils)
  - Distinction used in all marine insurance
  - But concept of war risk varies

## 1.3 Some other distinctions of relevance

- Primary insurance – coverage for costs of saving acts
  - Primary insurance: coverage of casualties
    - Caused by risks insured against
    - According to the principles of indemnity in the insurance contract
  - Costs of saving acts: covers
    - Expenses incurred to avoid/minimize losses
    - According to ordinary tort principles

## 2 The legal sources

- The international legal picture
- The Norwegian legal picture



## 2.1 The international legal picture

- No international convention
- The English marine insurance market
- The Scandinavian marine insurance market

### 2.1.1 No international convention

- Contrary to many other areas of maritime law
- Attempts of harmonization
  - UNCTAD 1974-1986
  - CMI 1997-2005
- Conclusion: Harmonization difficult
- Reason: Competition on conditions
- “Wish list” for the English market
- New English Insurance law 2015

## 2.1.2 The English insurance market

- The UK Marine Insurance Act (MIA)
  - Legislative framework in common law countries
  - Built on practice before 1906
- The Insurance Act 2015
- The Institute Time Clauses Hulls (ITCH) 1983/1995
  - Used in most common law countries
  - Used in several civil law countries
- IHC

## 2.1.3 The Nordic market

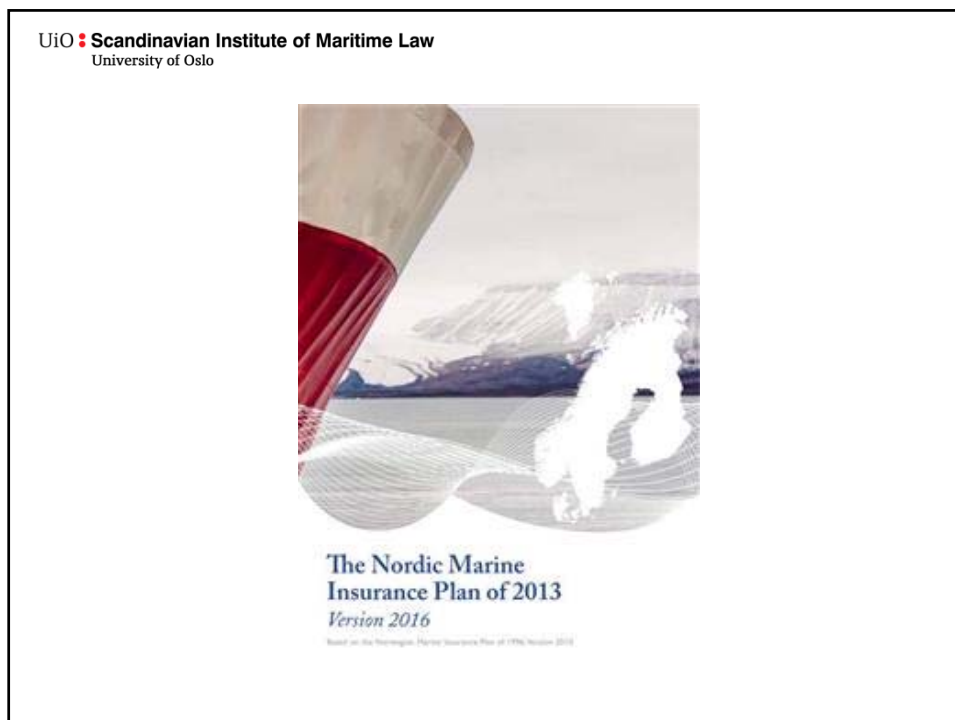
- Pre 2013: Each country had their own clauses
- But; were inspired by NMIP
  - Many similar solutions
  - Different structure and legal framework
- From 2010 most Nordic markets used NMIP
- A Nordic Marine Insurance Plan was established from 2013 (NP)

## 2.2 The Norwegian legal picture

- Insurance Contract Act (ICA) 1989
- The Nordic Marine Insurance Plan (NP) 2013
- The Norwegian Cargo Clauses (CICG) 2004
- The Gard and Skuld P&I conditions

### 2.2.1 Insurance Contract Act (ICA) 1989

- Starting point: Mandatory, § 1-3
- But:
  - Insurance of registered ships, § 1-3 (c)
  - Insurance of cargo under an international transport, § 1-3 (e)
- In practice: All cargo insurances follow the rules in ICA, with certain exceptions



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## 2.2.2 Nordic Plan 2013

- Standard contract (Agreed document)
- Developed over 135 years
- Interested parties have participated in the preparation
- An approach different from ITCH/other national conditions

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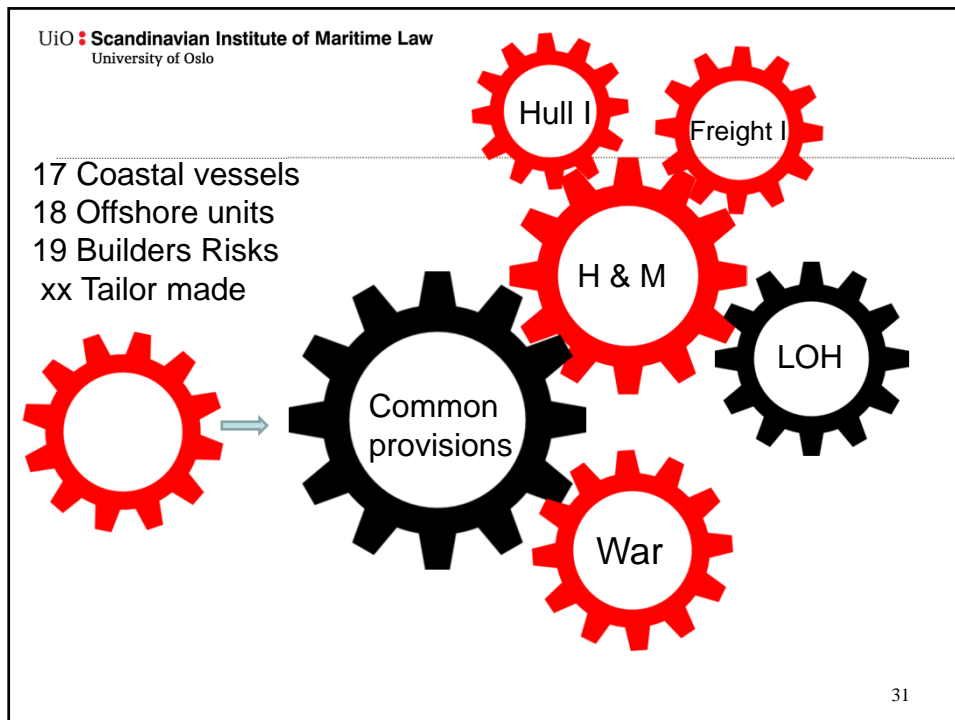
## 2.2.2 Nordic Marine Insurance Plan 2013

- Covers most of the relevant insurances for a shipowner
- But: P&I insurance
- Extensive preparatory documents (Commentary)
- Updated every third year (new versions)
- Little relationship with the ICA

## A comprehensive and total product



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### 2.2.3 Norwegian Cargo Clauses (CICG) 2004

- Conditions relating to insurance for the carriage of goods (CICG)
- Many of the same characteristics as NMIP
- But:
  - Less extensive commentaries
  - A stronger tie to the ICA

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## 2.2.4 The P&I Conditions

- Included in NMIP 1964, but not in NMIP 1996/NP 2013
- Today: Each P&I club has its own conditions (in Norway: Gard and Skuld, in Sweden: The Swedish Club)
- The most important clubs members of The International Group

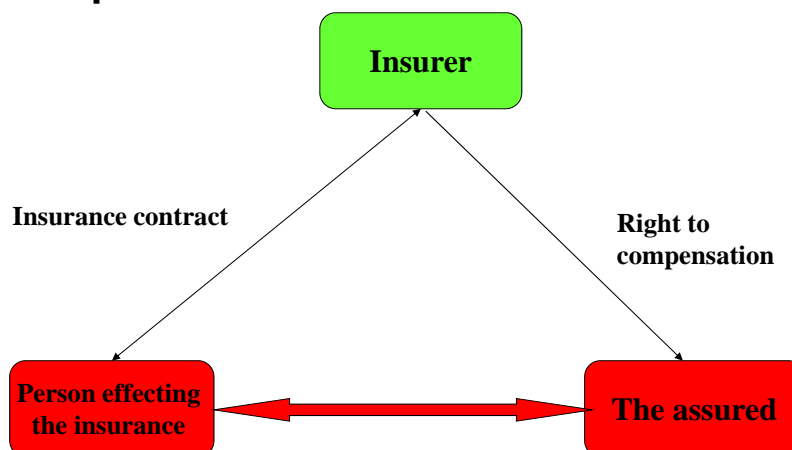
## 3 The insurance contract

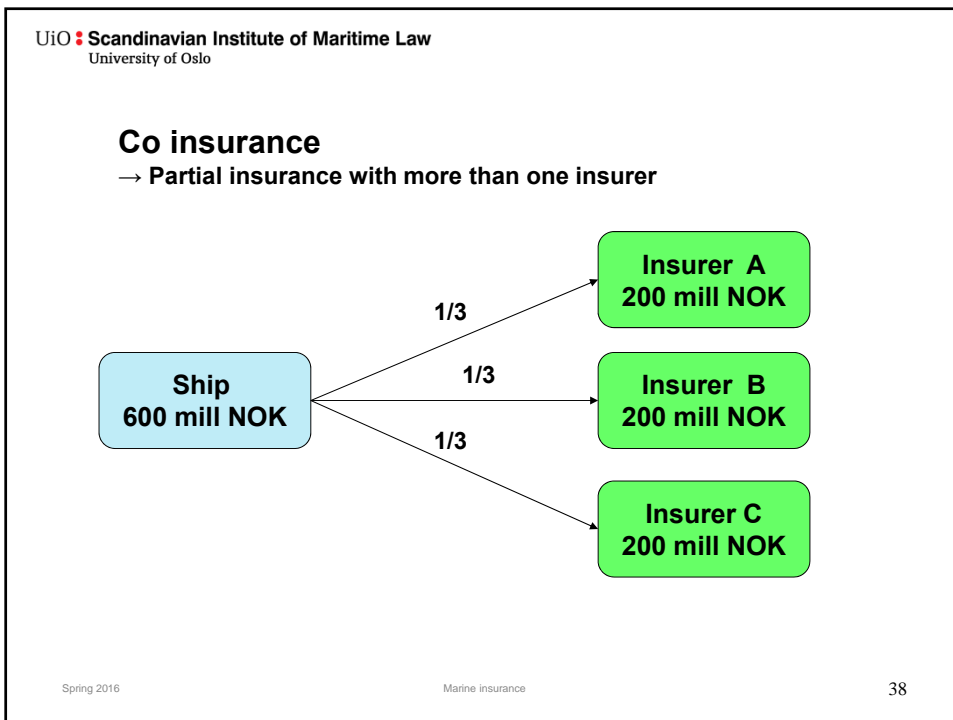
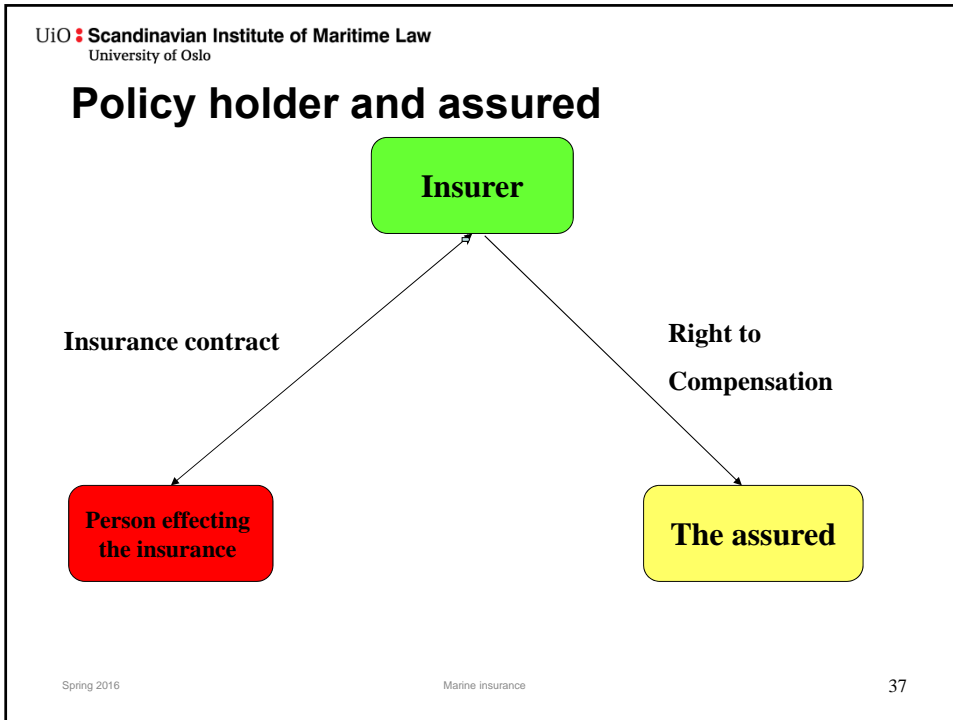
- The parties to the insurance contract
- The formation of a marine insurance contract
- Jurisdiction and choice of law

### 3.1 The parties

- Definitions, NP Cl. 1-1
  - The insurer (a)
  - The person effecting the insurance (b)
  - The assured (c)
  - **The broker (d)**
- Coinsurance /claims leader (NP ch 9)
- Reinsurance
- Insurance of third party interest

### The parties to the contract





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### Reinsurance

→ The insurer reinsures the risk undertaken under the direct insurance contract.

```

    graph TD
      Ship[Ship: 600 mill NOK] -- "Direct insurance: 100 %" --> Insurer[Insurer: 100 mill NOK]
      Insurer -- "Reinsurance: 500 mill NOK" --> Reinsurer[Reinsurer: 500 mill NOK]
  
```

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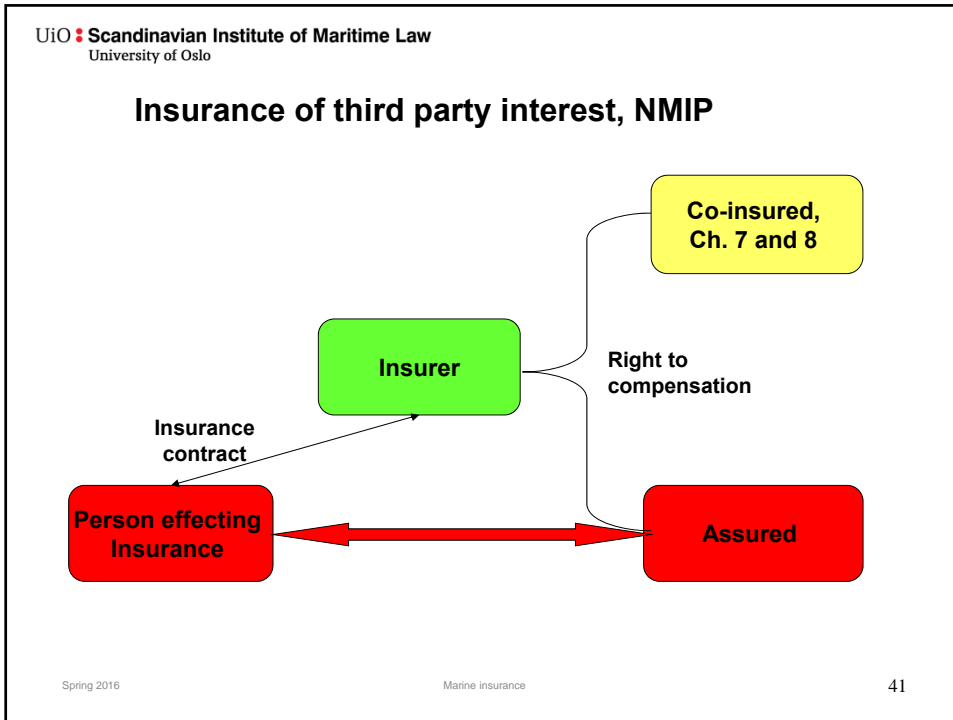
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      Ship -.->|No direct action| Reinsurer
  
```

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### Insurance of third party interest

Shipowner effects insurance and is assured

Market value: 100 MNOK

Mortgage: 90 NMOK

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## 3.2 Concluding the marine insurance contract

- Starting point: Ordinary contract law
- **The use of a broker: NP Cl. 1-3**
  - New regulation
  - Broker acting on behalf of the assured
  - Unless written authority on behalf of the insurer
- Documents:
  - Written proof of insurance = policy, CI 1-2
  - **Distinction policy – insurance contract**

## 3.3 Jurisdiction and choice of law

- **NP Cl. 1-4 – new in 2013**
  - Nordic claims leader:
    - Venue: head office of claims leader
    - This background law applies
  - Non-Nordic claims leader:
    - No regulation of jurisdiction
    - Default choice of law: Norwegian background law
  - Any changes must be made in writing