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The Principle of Indemnity in Marine Insurance and an Analysis of Its Status in Iranian Law

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ABSTRACT

Marine insurance constitutes one of the most significant institutions and mechanisms within maritime transportation law. The purpose of marine insurance is to ensure the safest possible maritime voyages and to guarantee compensation for recoverable losses incurred during maritime transportation. In marine insurance, whenever a risk covered by the insurance contract materializes, it generally causes damage to the subject matter of the insurance contract. The objective of marine insurance is to restore the insured party, as far as possible, to the position they occupied prior to the occurrence of the insured risk. On the other hand, the possibility of abuse and misuse of marine insurance and related insurance policies has always existed. Accordingly, it is necessary to establish legislative and legal regulatory frameworks governing marine insurance and marine insurance policies. In this regard, the most important principle governing marine insurance and marine insurance policies is the principle of indemnity. In fact, this principle is aligned with the principal and fundamental objective pursued by insurance contracts. The legal system of Iran has introduced certain mechanisms to ensure and guarantee the implementation of the principle of indemnity in maritime transportation law through marine insurance and marine insurance policies. Furthermore, this principle also serves as the basis for the formulation of legal rules governing marine insurance and marine insurance policies in several other jurisdictions and legal systems. England represents a prominent example of such jurisdictions and legal systems. In England, noteworthy legal rules have likewise been enacted in this respect. Moreover, the judicial approaches adopted in both countries regarding this matter may also be examined. In the present study, while analyzing the nature of marine insurance and the concept, functions, and characteristics of marine insurance policies, we investigate the status and functions of the principle of indemnity in marine insurance and marine insurance policies and examine the approaches adopted by the legal systems of Iran and England toward these issues.

Keywords: *Marine insurance, marine insurance policy, principle of indemnity, Iranian law, English law.*

Introduction

The maritime transportation industry is today one of the most important and, at the same time, most cost-effective modes of transportation compared with other methods, especially air transportation. In some reports, the volume of maritime transportation worldwide has even been stated to reach up to 83 percent, which alone demonstrates the significance, status, and important and useful functions of this mode of transportation.

At the same time, in maritime transportation, as in any other mode of transport, collisions and accidents involving maritime means of transport, especially ships and oil tankers, are unavoidable. There is also the possibility of deterioration of goods and cargoes or their seizure by pirates. It is in such cases that the necessity of compensating the beneficiary or beneficiaries of maritime transportation arises, and, as an important and foundational legal principle, attention turns to the obligations borne by the carrier in the general sense, as well as by other obligors in maritime transportation contracts, with respect to their duty to compensate the beneficiaries of such contracts for losses. A principal and common method of compensating these losses is the use of marine insurance contracts. In any event, from ancient times, the most important function of the institution of insurance has been indemnification. In maritime transportation contracts as well, insurance and insurance contracts are among the principal mechanisms of compensation in the contemporary era. Therefore, it is not an exaggeration to state that contracts and the maritime transportation industry in today's world are clearly influenced by the issue of compensation and by the role and function of transport insurance in light of the central principle of indemnity in marine insurance.

In the field of international trade, various activities are carried out, the most fundamental of which are the purchase, sale, and exchange of goods and services. The importance of this matter is evident, and it is clear that the process of exchange, particularly at the international level, is wholly dependent on transportation.

The transportation of goods around the world is carried out through various routes: by land, sea, and air. This process has always been associated with numerous risks. These risks may have a natural origin, such as storms, tornadoes, floods, and the like, or they may be created by human beings, the most prominent example of which is robbery. Such risks may cause the capital that a merchant has put into circulation in international trade to be lost without yielding any profit to the merchant. For this reason, unless a solution is devised for such a problem, few merchants will remain willing to place their capital at risk in this way, and international trade will consequently decline significantly or disappear altogether. From ancient times until the present, human beings have devised various measures to address this problem, such as taking armed guards along with caravans and merchant ships in order to counter risks arising from attacks by robbers. The carriage of goods by sea has always been much cheaper and more economical than other methods of transportation; however, this method of transportation has involved greater risks than other methods, and the nature of those risks, especially natural risks, is such that in many cases it lies beyond human capacity to confront them. Merchants, who have always sought ways to reduce the final cost of goods and have considered the use of the sea as a transportation medium necessary, have adopted various solutions at different times to resolve this problem.

One of the most important of these solutions has been the invention of insurance, which, due to the urgent necessity of international trade by sea, first originated from maritime transportation and, over the years, extended to other sectors of transportation as well. The main purpose of inventing insurance was that, if a risk affected the capital of a merchant active in the field of international trade, this risk would be distributed among a larger number of persons and the pressure of the resulting damage would not fall upon a single person. On the other hand, in order to prevent persons from attempting to misuse this mechanism, the damage incurred must be compensated only where the person receiving compensation has actually sustained a loss, and such person must not receive more compensation than the loss sustained. In fact, their position should, as far as possible, be restored after the occurrence of the loss to the condition they were in prior to the loss. This rule is the principle of indemnity, which is the basis and pillar of indemnity insurance, including property insurance and liability insurance.

The principle of indemnity runs through all dimensions of marine insurance, and almost all rules established in the field of marine insurance have been shaped on the basis of this principle and are aimed at ensuring its implementation. Compensation in marine insurance is naturally also carried out on the basis of this principle. Therefore, a merchant who purchases marine insurance to cover their property against maritime risks must be aware of their rights and duties at the time of contract formation and after the possible occurrence of damage. For this reason, there is a need for a scholarly source that has carefully examined these rules and placed the results at the disposal of interested persons in this field. Another point that must be mentioned and analyzed in this regard concerns the specific effects that arise from observing the principle of indemnity, or the principle of payment of compensation, in marine insurance. At present, these effects may be identified in four specific instances: the principle of the necessity of observing utmost good faith in the performance of obligations, the principle of subrogation in obligations relating to compensation, the principle of deductible or franchise, and the principle of transferability of the marine insurance policy. Under the first principle, the obligated party in a marine insurance policy must exercise the highest level of good faith in the performance of obligations relating to compensation for damage incurred by the injured party. According to the second principle, in marine insurance, an insurer who has indemnified the beneficiary of the insurance for a loss arising from risks covered by the insurance contract within the framework of the agreements contained in the insurance policy is subrogated to all the rights of the beneficiary with respect to the insured subject matter. Subrogation to all rights means that the insurer will be entitled to benefit from all rights of the beneficiary in relation to the lost subject matter; that is, the insurer may bring an action and pursue judicial proceedings against all persons who have in any way been involved in or responsible for the occurrence of the risk, in order to recover the losses incurred, and may claim and receive any recoverable compensation from liable third parties in the name of the beneficiary. If the beneficiary, as a result of particular circumstances, becomes entitled to receive a contribution in general average, the insurer may claim and receive it in the beneficiary's place. In insurance law, this right of the insurer to be substituted in rights in place of the beneficiary is called the right of subrogation. For this reason, in marine insurance law, the principle of subrogation in the performance of obligations is also referred to as the principle permitting subrogation. With respect to the third principle, it may be stated that a deductible, in insurance usage, means that part of the loss that is paid by the insured; it is also called the insured's share or self-payment. In other words, the deductible refers to that part of each loss borne by the insured, the amount of which is specified in the insurance policy. In most cases, the deductible is a fixed and definite amount specified in the policy and deducted from the amount of compensation payable.

Finally, in explaining the fourth principle, it should also be stated that in international trade it often happens that a merchant who has purchased goods and obtained insurance for those goods for an upcoming maritime voyage sells those goods to another merchant while they are still being carried at sea, before the transport process is completed and the goods reach their destination. Similar circumstances may also be imagined in relation to the owner of a ship who sells the ship before the end of the maritime voyage or the period during which the ship is covered by insurance. Likewise, if a carrier has concluded a contract of carriage and insured its freight, and for some reason, such as a technical defect in the ship, transfers the carriage of the goods to another carrier, similar conditions arise from the perspective of the insurance contract and the relationship between the insurer and the insured. This principle was first recognized in the English Marine Insurance Act 1906. Under that Act, where the subject matter of the insurance contract is assigned to another person, the policy is not transferred merely by the

assignment of the insured subject matter. Nevertheless, the same provision also accepts the assignment of the insurance contract to another person following the assignment of the subject matter covered by the insurance contract, provided that the parties to the assignment have expressly or impliedly agreed to this. Therefore, from the legal perspective, the assignment of the insurance contract to another person is, in principle, permissible. If the parties to the assignment of the subject matter of the insurance contract have not agreed at the time of assignment to transfer the insurance contract, the transferee will obviously have no right to receive compensation in the event of damaging incidents covered by the insurance contract under the policy held by the transferor. However, the transferor, too, will have no right to receive compensation based on the policy purchased if the transferor has assigned the subject matter of the insurance contract but has not assigned the insurance policy, and the insured subject matter is later destroyed.

The reason is the principle that a person who concludes an insurance contract must have an interest in the subject matter of the insurance contract at the time of conclusion or must have acquired such an interest at the time when the loss occurs. In the case described, the transferor no longer has any interest in the subject matter of the insurance contract that would allow compensation to be received under the insurance policy. Therefore, if the subject matter of the insurance contract is assigned but the related policy is not assigned, the policy will in practice become ineffective and unenforceable, unless the insured subject matter somehow returns to the transferor after the assignment. Where both the subject matter of the insurance contract and the insurance policy are assigned together, all rights arising from the policy, in the same manner and form in which the transferor could have benefited from them, belong to the transferee, and the transferor will no longer have any right under the policy. Despite the importance of the principle of indemnity, or the principle of compensation payment, and the principles arising from reliance upon it in contemporary maritime law generally and in marine insurance law specifically, these principles have not been recognized in Iranian maritime law and marine insurance law as fully as they should have been, which naturally gives rise to many difficulties and problems. On the other hand, these issues have received little attention in the legal literature of Iran, and this important gap must be filled through research in this field.

In view of the importance of maritime transportation, the damage that may arise from this type of transportation, and the necessity of compensating losses occurring in such transportation, the principle of indemnity by the insurer in marine insurance is today recognized as a foundational and central principle in insurance law on the one hand and maritime law on the other. Naturally, the purpose of this recognition is nothing other than facilitating and accelerating the process of compensation in maritime accidents. In many other countries with advanced legal systems in the fields of insurance and compensation, this principle forms the basis of the insurer's obligation toward the insured in marine insurance. England is a prominent example of such countries and has thus far been able to create positive and useful developments in marine insurance law on the basis of the principle of indemnity in marine insurance. These developments may be traced both in legislation and regulations and in the practice of courts in that country. Among the legislation, the Compensation in Maritime Transportation Act of 2003 and the Transportation Insurance Policies Act of 2005, and in case law the three well-known decisions issued in *Katir v. Simpson* in 2004, *Rogers and Arsin Company v. Simon Insurance Company* in 2005, and *Brightling Company v. Salgers Insurance Company* in 2007, are important examples of the recognition and implementation of the principle of indemnity by the insurer in marine insurance under English law.

On the other hand, in Iran, no specific and special statute enacted by Parliament concerning marine insurance has yet been adopted, and what has been or is said about marine insurance in the country's legal literature is based

on general principles and foundations or on laws related to maritime law. Because of this important defect and shortcoming, it may perhaps not be possible to speak with certainty of the complete recognition of the aforementioned principle in Iranian law. Moreover, court practice in this area is not very clear due to the legislative gap, and this also indicates that the approach of Iranian law toward the principle of indemnity by the insurer in marine insurance is not a clear and settled approach.

Based on the foregoing explanations, the main problem in the present study is this: what are the approaches of Iranian and English law toward the principle of indemnity by the insurer in marine insurance?

Identification of Types of Marine Insurance Policies

In marine insurance, the insurance policy is in fact the contractual document under which, and by reference to which, the beneficiary of the insurance may claim compensation from the insurer for losses arising from maritime risks covered by the insurance contract. In fact, the insurance contract is embodied in a document called the insurance policy, and the terms contained in a given policy indicate how the losses incurred by the insurance beneficiary are to be compensated and delineate the contractual relationship between the parties to the insurance contract.

Insurance policies are generally classified on the basis of two fundamental criteria: the first criterion is the manner in which the scope of the insurer's obligation to compensate damage to the subject matter of the contract is limited on the basis of time and voyage covered by the insurance contract; the second criterion is the manner in which the value of the subject matter of the contract is determined. These matters will be examined in the following discussions.

Classification of Policies Based on the Temporal and Geographical Scope of Coverage

In principle, under a single insurance contract, the subject matter of the contract cannot be covered forever or everywhere; otherwise, the premium required for the conclusion of such a contract would be extremely high and economically unjustifiable and inefficient. Therefore, insurers usually define limits for one of the factors of time or place, or both, in marine insurance contracts, and undertake that if, within the temporal or geographical limits defined in the contract, a risk affects the subject matter of the insurance contract, they will be liable for compensation within the scope of the contractual agreements.

For this reason, in this classification of marine insurance policies, attention is given to the period of time or the geographical area within which the subject matter of the insurance contract is covered by insurance. From the perspective of temporal and geographical scope of coverage, marine insurance policies are divided into two general categories: time policies and voyage policies.

Time Policies

Under section 25 of the English Marine Insurance Act 1906, a time policy is a policy under which the subject matter of the insurance contract is covered by insurance for a specified period of time. For such a contract to be concluded and valid, a specific date must be stated as the commencement date and another specified date as the termination date of the contract in the text of the relevant insurance contract. To remove any ambiguity, the parties may also agree upon and state in the contract specific hours of the commencement and termination days as the beginning and end of the contract. However, if the parties have not determined an hour as the beginning and ending

time of the insurance coverage period, the insurance coverage begins at dawn on the first day of the contract, meaning zero minutes after midnight, and ends at midnight, meaning 24:00, on the final day of the contract (1).

If the parties have stated only two specific days in the insurance contract as the beginning and end of the contract, then, as was also held by Rowlatt J. in *Scottish Metropolitan Assurance Co. v. Steward* in 1923, those two days themselves are included within the temporal scope of the insurance contract, unless the parties have expressly stipulated otherwise in the contract or unless another inference may be drawn on the basis of mercantile custom or the circumstances of the case (2).

In principle, under English law, no statutory limitation has been imposed on the selection of the time zone serving as the basis for the commencement and termination of the contract. However, if the contract has been drafted and concluded in England and the parties have not specified a particular time zone for the commencement and termination of the contract, the standard for the beginning and end of the contract is Greenwich Mean Time (3).

Therefore, it may be concluded that, in principle, if the parties have not expressly specified the official time of a particular time zone in their contract, the time zone of the place where the contract was concluded will determine the time standard for the beginning and end of the contract.

A policy may be drawn up to cover the subject matter of the insurance contract for a specified period of time and may also contain a clause determining that the insurer will be obligated to indemnify only insofar as the incidents and resulting losses occur within a specified geographical area. In this case, such a policy will also be regarded as a policy with a time limitation (4).

However, an important question arises: should the subject matter of the insurance contract be covered regardless of where it is located or along which route it travels, or must the insured agree upon a specific route with the insurer for the insurance coverage to apply to the subject matter of the contract? The answer to this question depends on the fact that the insured, by law, custom, and contract, is obligated to fulfill warranties that are expressly or impliedly imposed upon them.

One of these implied warranties may be the selection of the maritime route from among known routes with ordinary international safety. Of course, if the insurer relies upon such an implied warranty, the insurer will be required to prove the existence of such a warranty as a custom among merchants; if the existence of such custom is proven, the insurer will not be required to indemnify in cases where that custom has been violated. Nevertheless, the best solution in such cases is for the parties to expressly include, as an implied contractual term, the requirement to sail in safe waters in the time policy.

Voyage Policies

Today, merchants generally insure ships under policies with time-limited coverage or mixed policies that combine temporal and spatial limitations, while cargo carried by ships is usually insured for the duration of a specific voyage. However, this approach is adopted only due to practical necessities in commerce, and there is no legal restriction on concluding insurance contracts for ships with coverage based on a maritime voyage. Every merchant may obtain insurance coverage for their ship during a particular voyage, and the merchant who owns the goods may also obtain a policy for their goods for a specific maritime voyage.

It should also be added that, in practice, policies with a time-limited scope of coverage are generally very clear and free from various ambiguities because the beginning and end dates of the covered period are specified in the contract itself, and problems such as change of voyage, deviation from route, and the like do not arise in them (5).

A. Types of Voyage Policies

Based on section 25 of the English Marine Insurance Act 1906, a policy with a scope of coverage based on a specified maritime voyage is a policy under which the subject matter of the insurance contract is covered at and from a specified place, or from a specified place to another specified place or other places (1).

1. A Policy Establishing Insurance Coverage from a Specified Place to Another Place or Other Places

In this form of insurance, where the subject matter of the insurance contract is insured from a specified place to another place or other places, the insurance coverage begins from the moment when the insured ship or goods start moving from that specified place, which is almost always a port or wharf, toward the destination. In fact, the subject matter is insured only during the voyage covered by the policy.

The moment of commencement of movement is a factual matter, and its determination is based on shipping custom. Its timing may differ in different cases; sometimes it is determined by the release of the ship's mooring lines from the wharf, the weighing of anchor, and the ship's movement, and sometimes by other indicators. What is certain, however, is that the mere movement of the ship within the port does not indicate and determine the commencement of the voyage, since in many cases the ship must load cargo at different wharves within one port, and movement from one wharf to another becomes necessary. Likewise, if the ship loads the goods at the port of origin and moves, but the movement is not intended to commence the voyage covered by the insurance contract and is instead for another purpose, such as obtaining supplies, the voyage is not considered to have begun and insurance coverage does not apply to it (6).

In voyage policies concluded from a specified place to another place or places, under section 43 of the English Marine Insurance Act 1906, if the port from which the maritime voyage covered by the insurance contract was supposed to begin is changed, the insurance coverage does not apply to that voyage (1). For example, suppose an Iranian merchant's goods are loaded onto a ship at port A, and the ship is supposed to go to port B to load other goods belonging to other merchants, and the Iranian merchant, knowing this, purchases a policy for the voyage to commence from port B. If, due to the cancellation of the loading of the goods that were supposed to be loaded at port B, the ship does not go to port B at all and begins its voyage from port A, the policy obtained by the Iranian merchant will not cover that voyage.

2. A Policy Establishing Insurance Coverage at a Specified Place and from That Place to Another Place or Other Places

Under the third rule of the rules for construction and completion of policies, contained in the First Schedule to the English Marine Insurance Act 1906, if a ship is insured at a specified place and then from that place to another destination or destinations, two different situations may arise under subparagraphs (a) and (b) of that rule.

Under subparagraph (a), the first situation is where the ship is at the relevant place in good safety at the time of conclusion of the contract. In this case, the insurance coverage attaches immediately upon conclusion of the contract (1). Under subparagraph (b), the other situation is where the ship is not at the place specified in the contract for coverage at the time the insurance contract is concluded. In this case, as soon as the ship arrives at that place in good safety, the insurance coverage attaches (1).

The important point in both of the above situations is that the time of conclusion of the insurance contract has special significance and must be determined. Under section 21 of the English Marine Insurance Act 1906, which lays down a rule on the time of contract formation, an insurance contract is deemed to be concluded when the

insured's proposal is accepted by the insurer, regardless of whether the policy has been issued at that time or not (1).

B. Characteristics of Voyage Policies

Policies with coverage based on a specified voyage have particular characteristics in comparison with policies with coverage based on a specified time period, and these characteristics affect how insurance coverage attaches in these two types of policies. These characteristics are as follows.

1. The Implied Condition That the Voyage Must Commence Within a Reasonable Time

In all cases where a ship is insured at a specified place and to another specified place or places under a marine insurance contract, there is in principle an implied statutory condition that the voyage for which the ship has been insured must commence within a reasonable time and must not be delayed. The longer the ship remains in the port agreed upon by the parties, the greater the likelihood of risks arising. In this regard, section 42 of the English Marine Insurance Act 1906 provides that, if the voyage covered by insurance does not commence, the insurer may avoid the contract (1).

In some sources, this requirement has been described as the prohibition of delay in voyage. In explaining this matter, it may be added that, under section 48 of the English Marine Insurance Act 1906, where a ship has been insured for a specified voyage, that maritime voyage must be prosecuted and completed within a reasonable time; if, without lawful excuse, there is delay in the voyage, the insurer is discharged from liability for compensation from the time when the delay in reaching the destination becomes unreasonable (1).

2. Prohibition of Change of Voyage

After insurance coverage has attached under a policy that insures the ship or goods from a specified origin to a specified destination, meaning that the maritime voyage has begun, if an intentional change is made in the destination of the voyage and the parties had not previously agreed upon it, then under section 45(2) of the English Marine Insurance Act 1906, the insurer is discharged from liability for any potential losses incurred in that voyage from the time of the change of destination and, consequently, the change of voyage. The change of voyage and its legal consequence are realized when the intention to change the voyage has been manifested, even if the ship has not departed from the original route (1).

3. Impossibility of Route Change or Deviation

Under section 46 of the English Marine Insurance Act 1906, whenever a ship is covered by a policy that insures that ship for a specified maritime voyage, and that ship, without lawful excuse, deviates from the route specified in the policy or from the route customarily followed in maritime practice for the voyage from the contractual origin to the contractual destination, the insurer is discharged from liability for potential losses arising on the route specified in the contract from the time of deviation, regardless of whether the ship returns to the original route without sustaining any damage after the deviation (1).

The important point is that, in the case of deviation, if the deviation occurs without lawful excuse, it discharges the insurer from liability; but if the deviation occurs in emergency conditions or for assistance, aid, or rescue, this rule will not apply.

Another point requiring attention is that, under section 46(3) of the aforementioned Act, the intention to deviate is not effective for the application of this rule; there must in fact be a deviation for the rule to apply. Otherwise, even if the intention to deviate from the route is manifested but the ship does not actually deviate from the route, the rule will not be applied (1).

Classification of Marine Insurance Policies Based on the Manner of Determining the Value of the Subject Matter of the Contract

Another method by which marine insurance policies are distinguished from one another is the manner of determining the value of the subject matter of the marine insurance contract. An insurer who provides insurance coverage for the subject matter of the contract against maritime risks must somehow determine and limit the scope of its liability for payment of indemnity. In other words, the value of the subject matter of the insurance contract must in some way be specified and determined so that, when compensation is paid, the insurer knows what amount must be paid as indemnity to the beneficiary of the insurance. In marine insurance contracts, either the parties agree at the time of contract formation on a specific amount as the value of the subject matter of the insurance contract, or they defer the determination of the value of the subject matter of the contract until after the occurrence of the damaging event and the resulting loss. Each of these situations will be examined below.

Valued Policies

Section 27 of the English Marine Insurance Act 1906 determines and explains the conditions of valued policies. Under subsection 2 of that section, a valued policy is a policy in which the value agreed upon by the parties, namely the insured and the insurer, for the subject matter of the marine insurance contract is determined and stated (1).

The fact that the value of the subject matter of the insurance contract is determined in the policy means that the parties, through an agreement on the value of the subject matter of the insurance contract, have agreed in advance on the amount that the insurer will be obligated to pay as compensation if a damaging event occurs. If an event affecting the subject matter of the insurance contract causes damage, the extent of the insurer's obligation will be determined by reference to what proportion of the value of the subject matter of the insurance contract has been specified in the policy as the insurer's indemnity obligation, or up to what monetary ceiling of the subject matter's value the insurer has undertaken to compensate.

In principle, the purpose of determining the value of the subject matter of the insurance contract, and consequently the extent of the insurer's obligation to indemnify, is to avoid future disputes in the event of damage arising from events covered by the contract and also to avoid the sometimes heavy costs of assessing the value of the subject matter of the contract after the occurrence of loss by an expert or experts.

However, regarding the parties' agreement, it must be noted that if the parties' agreed value for the subject matter of the insurance contract is lower than the actual value, no problem arises in relation to the principle of indemnity, provided there is no fraud and the insured has knowingly and intentionally accepted it, especially since the insured will pay the premium on that same basis. But if the parties agree upon a value higher than the actual value of the subject matter of the insurance contract, two general situations may arise. One situation is that the value of the subject matter of the contract is intentionally determined far beyond the actual amount. In this case, such valuation of the subject matter of the contract is contrary to the principle of indemnity, under which the beneficiary of the insurance contract must not receive more than the loss actually sustained. In fact, compensation for the loss incurred by the beneficiary must not become a means of unjust enrichment. Such an agreement cannot be approved or enforced by the judiciary, and if the parties dispute this issue, the court will not regard such an agreement as valid and may ultimately order the disputed value to be assessed by an expert. However, if the parties themselves implement such an agreement without any dispute, no problem will arise.

The other situation is that the value of the subject matter of the insurance contract is agreed, without intention and merely as a result of an innocent error, at an amount slightly and tolerably higher than its actual value, or that the insurer accepts the agreement while knowing that the value of the subject matter of the insurance contract is lower than the agreed amount. In this case, since the permissibility of concluding valued marine insurance contracts is intended to facilitate assessment of the parties' obligations, namely the obligation of one party to pay the premium and the obligation of the other to indemnify, and since the principle of indemnity is not applicable in an absolute, rigid, and inflexible manner in relation to tolerable amounts, such an agreement is respected and is not considered contrary to the principle of indemnity. Therefore, under section 27(3) of the English Marine Insurance Act, provided that there is no fraud by either party and within the framework of the provisions of that Act, the value agreed upon by the parties is conclusive and final and binding between them (1, 7).

Unvalued Policies

Under section 28 of the English Marine Insurance Act 1906, an unvalued policy is a policy in which the value of the subject matter of the insurance contract has not been specified by prior agreement of the parties, and the parties have agreed that, in the event of damage arising from events covered by the insurance contract, the amount of loss will subsequently be determined (1).

In this type of policy, the value of the subject matter of the insurance contract, referred to as the insurable value, is determined under the rules set out in section 16 of the English Marine Insurance Act 1906. The important point, however, is that today marine insurance contracts for insuring ships and goods are generally concluded as valued policies, and the conclusion of unvalued policies is very rare (8).

The Status of the Principle of Indemnity in Marine Insurance Policies

The principle of indemnity may be considered the most important principle governing marine insurance policies. Marine insurance policies, or marine insurance contracts, are generally governed by the general rules of contract law in each country. In the conclusion of all contracts, conditions such as the parties' intention and consent, capacity and authority, the subject matter of the transaction, the legality of the cause of the transaction, and similar requirements are provided by the legislature of each country for the validity and enforceability of any contract, and these conditions are more or less similar in different legal systems.

From the perspective of the essential conditions for the validity of transactions, insurance contracts are also subject to the same conditions. However, insurance contracts are a form of nominate contracts that have their own special conditions. In order for these contracts to be validly concluded, and in order for the insured or beneficiary of the insurance to be able to claim compensation for losses arising from risks covered by the insurance contract, they must specifically possess these conditions as well.

Every time a marine insurance contract is concluded, a bilateral contractual relationship consisting of various rights and obligations of the parties toward each other is created. From the perspective of contract law, marine insurance contracts are one of the various forms of general insurance contracts; however, because these contracts have an international nature, they also possess unique characteristics.

In principle, goods carried by sea are, by their nature, exchanged in the field of international trade. For this reason, the prominent characteristic of cargo insurance is the international scope of this type of insurance, because it covers risks affecting goods that may arise during maritime carriage and because the major part of the process

of maritime carriage of goods takes place in an international environment. Similarly, in hull insurance contracts, because risks affecting the ship usually arise beyond the maritime borders of the country, hull insurance contracts generally acquire an international nature (9). The principle of indemnity is the most important principle recognized and applied in marine insurance policies. Every marine insurance contract is concluded between the insured and the insurer in order to compensate the insured for damage in the event of a harmful occurrence.

In English law, the Marine Insurance Act 1906 defines a marine insurance contract as a contract under which the insurer undertakes to indemnify the assured, in the manner and to the extent agreed upon in the contract, against marine losses, that is, losses incident to marine adventure (1).

Article 1 of the Iranian Insurance Act of 1937 also defines an insurance contract as follows: “Insurance is a contract under which one party undertakes, in consideration of the payment of a sum or sums by the other party, to compensate that party for damage incurred or to pay a specified amount in the event of the occurrence or emergence of an incident.”

In light of the foregoing statutory provisions, it may be concluded that a marine insurance contract is, in principle, a contract for the compensation of losses incurred by the insured’s property as a result of hazardous events that have a maritime nature and origin, and that the contract is concluded on the basis of indemnity. Therefore, marine insurance contracts are, at their foundation, indemnity contracts. Indemnity is a fundamental principle upon which the insurance contract is established, and any right to claim compensation based on an insurance policy also originates from this same principle (10).

The meaning of the principle of indemnity in insurance contracts is that the insured’s loss must be fully compensated, of course within the limits of the agreements contained in each contract, in such a way that the insured is restored, as far as possible, to a position similar to the one existing before the damaging event occurred. At the same time, the insured must never receive more than the amount of loss sustained. The main effort of marine insurance law is directed toward ensuring that receipt of compensation by the beneficiary under the insurance contract does not result in unlawful use of another’s property and unjust enrichment (9).

Many fundamental legal principles governing insurance contracts, such as insurable interest, gaming and wagering contracts, overvaluation of the subject matter of the insurance contract, double insurance, abandonment, and subrogation, all originate from this foundational principle, which forms the basis and foundation of property insurance contracts (11).

The only instance in insurance contracts in which the principle of indemnity is disregarded is valued policies. In this type of contract, the parties estimate and determine a fixed amount of loss in the policy, and if damage occurs, regardless of the actual amount of the loss incurred, the loss estimated by the parties at the time of conclusion of the contract is final and conclusive, and the insurer is obligated to pay it. As a result, indemnity may be based on a pre-agreed sum of money, which may be greater or less than the value of the insured goods (9).

What is certain is that such a possibility is consistent with section 1 of the English Marine Insurance Act, which was mentioned earlier. The phrase “in the manner and to the extent agreed upon in the contract” in that statutory provision gives the parties to the contract authority to determine the amount of compensation within the contract, and in this respect no legal problem arises. In Iranian law, Article 1 of the Insurance Act of 1937 also provides: “in the event of the occurrence or emergence of an incident, to compensate the damage incurred or to pay a specified amount.”

However, one must ask how much freedom the parties have in estimating and determining the value of the insured property. In response to this question, two different situations may be imagined. The first situation is that the parties agree on an amount lower than the value of the insured property. In this case, no problem will arise, and if a damaging event occurs, the insured will receive the amount that they themselves accepted from the beginning. But the extent to which the parties have freedom to estimate the value of the subject matter of the insurance contract above its actual market value has been left to the parties themselves, on the assumption that each party agrees on the estimated amount only to the extent that their interests are not jeopardized. Therefore, from the legislature's perspective, it will normally never happen that the parties agree on an amount exceeding the actual value of the insured property, because this would be contrary to the insurer's interests.

What is certain, however, is that human conduct is not predictable so simply and absolutely. This freedom in estimating loss may lead to misuse of the insurance contract and transform it into a contract based on gambling and wagering. For this reason, in insurance laws, including the two aforementioned statutes, payment of compensation is made conditional upon the occurrence of the damaging event specified in the contract and the actual emergence of loss. With such a condition, the fictitious occurrence of a damaging event becomes possible only through collusion between the parties. This condition is a tool for preventing insurance contracts from deviating from their correct path and initial purpose.

Therefore, under section 1 of the English Marine Insurance Act, a loss caused by a damaging event is compensable under the insurance contract subject to the following conditions.

First, an actual loss must have occurred, and its occurrence and emergence must be established and proven.

Second, the losses must have arisen from maritime events (9).

Careful attention to the above conditions leads to the conclusion that, from the perspective of the English legislature, first, an event must have actually occurred in reality and its occurrence must also be proven; second, the event must have a maritime nature, and the losses incurred must have arisen from an event of maritime nature in order for the relevant losses to be compensable under a marine insurance contract. Therefore, if an event of non-maritime nature causes loss to the property forming the subject matter of the insurance contract, such as an explosion in a ship's boiler in the engine room that destroys the ship and its cargo, the loss incurred will not be compensable under the marine insurance contract.

The occurrence of the event, the emergence of the resulting loss, and the maritime nature of the event require proof, and the burden of proving them rests on the person who alleges such an occurrence. In marine insurance contracts, this is the insured or the insurance beneficiary who claims to have sustained a loss arising from events covered by the contract, and the burden of proving such a claim also rests upon that person.

In principle, if the parties have not estimated a fixed amount as the value of the property forming the subject matter of the insurance contract and have concluded the contract as an unvalued policy, compensation, for example in relation to a ship, will be limited to the value of the ship at the time of the damaging event and the emergence of loss. However, when the parties estimate a value for the property forming the subject matter of the contract and conclude the contract on that basis, their intention and purpose is to meet the need for assessing and appraising losses to the insured property before the occurrence of the event, so as to prevent future disputes.

If the legislature seeks to limit the ceiling of loss estimation to the true value of the insured property, several problems may arise. For example, the value of the insured property at the time of conclusion of the contract may differ from the value of that same property at the time of the occurrence of the event. The insured's purpose in

concluding the contract in this manner may be to preserve the value of their property at the level on the basis of which the premium has been paid. If the legislature limits the determination of the fixed amount payable upon the occurrence of loss to the value of the goods, then at the time of contract only the value of the property at that moment can be estimated, whereas in the future the value may be expected to increase or decrease. Consequently, if an event occurs and loss arises, the insured's loss may not be properly compensated.

Ultimately, it may be argued that the same approach adopted by the legislature, based on the needs of merchants, is correct and logical. The only point is that, where a dispute arises between the parties after the occurrence of loss regarding the estimation and determination of the value of the insured property in valued policies, the court, after examining the matter, should order adjustment of the contract or, where appropriate, its annulment if it determines that the amount of compensation has been set unreasonably and far beyond the value of the insured subject matter.

From a theoretical perspective, the purpose of every property insurance contract, whether marine or non-marine, is to restore whatever has been lost as a result of a damaging event to its original form and place, so that the insured is not placed in a worse position than the one existing before the harmful event, while also not benefiting from the occurrence of such an event. In practice, however, compensation for the loss incurred is made by payment of a sum of money.

Therefore, before any form of indemnification takes place, the occurrence of loss must be established, and the losses incurred must be assessed and converted into an amount in the currency of the relevant country. In the process of assessing and valuing the losses incurred, there is always a percentage of error, and it can never be certain that the injured party's position will be completely restored to its prior state. After assessment of the losses, one of the parties may always claim either that the losses were not properly identified and assessed or that they do not fall within the framework of the contractual agreements. For this reason, insurance contracts have never been perfect contracts fully consistent in every respect with the principle of indemnity. Nevertheless, the principle of indemnity has always formed the basis of insurance contracts (9).

Characteristics of Marine Insurance Policies in Relation to the Principle of Indemnity

If the insurance beneficiary wishes to rely on the policy in their possession in order to receive compensation, the policy must possess specific formal conditions determined by the law governing the issuance of the policy. On the other hand, all marine insurance policies are concluded to cover damage caused by maritime risks to the subject matters covered by them. The subject matters covered under marine insurance policies are generally and principally matters that, due to the special requirements, nature, and conditions of maritime voyages, are not insurable under non-marine property insurance contracts. In fact, marine insurance contracts are a specialized form of insurance devised to cover particular subject matters and possess their own special conditions. At the same time, every insurance contract that covers subject matters specific to marine insurance is deemed marine insurance and is subject to marine insurance rules. Therefore, what may be covered under a marine insurance contract constitutes one of the distinctive characteristics of these contracts.

Formal Characteristics of the Policy

The English Marine Insurance Act 1906 does not prescribe a particular form of policy, but it determines conditions for the validity of the policy. Under section 22 of that Act, the policy must be issued in writing and must be drafted

in such a way as to contain the insurance contract. Under section 23 of the same Act, the policy must include the name of the insurance beneficiary or the name of the person who concludes the insurance contract on that beneficiary's behalf and in their place. Under section 24 of that Act, the policy must be signed by the insurer or the insurer's agent. Under section 26(1), the subject matter of the marine insurance contract must be identified in the policy in a reasonable and certain manner, meaning that no ambiguity or doubt must remain regarding the subject matter of the contract. Under section 26(3), if the subject matter of the insurance contract is identified in general terms, it will be deemed that the intention in issuing the policy was to cover the interests contemplated by the insured. Under section 31 of that Act, if the premium is not determined in the contract and determination of the premium is postponed to the future, what the insured must pay in the future will be a reasonable premium (1).

Subject Matters Capable of Coverage Under Marine Insurance Policies

Section 3(2) of the English Marine Insurance Act 1906 specifies the matters that are insurable, which may generally be divided into the following three broad categories.

First, the ship and the goods carried on it and other movable property, which the Act refers to as insurable property.

Second, any money or revenue obtainable from the maritime carriage of goods, the acquisition of which becomes impossible in the event of a maritime occurrence causing damage to the ship or the property and goods carried on it; this mainly includes the freight for carrying goods by ship.

Third, any liability toward third parties arising from a damaging maritime event (1).

The Ship

Under rule 15 of the Rules for Construction of Policy, which constitutes part of the First Schedule to the English Marine Insurance Act, insurance coverage in relation to a ship may in principle include the hull, materials within the ship, ship's stores, the ship's crew, and, where the ship belongs to the beneficiary of the insurance contract, the engine, engine room, machinery and equipment of the ship, as well as the ship's fuel stores (1).

Property, Goods, and Movables on Board the Ship

Property in general includes cargo carried by the ship for which freight has been received by the possessor of the ship, as well as other property on board the ship, including the property of the crew, equipment, provisions, and the like. Each category of property has its own specific rules, which will be examined below.

A. Cargo Carried by the Ship

Under rule 17 of the Rules for Construction of Policy, the term "goods" includes only those goods that have a commercial nature; in other words, goods placed on the ship for carriage to a specified destination for sale or any commercial activity. It does not include personal effects, food supplies, or provisions prepared for consumption by the ship's crew (1).

A noteworthy point is that, under the same rules, goods carried on the ship's deck as well as live animals must be insured under a separate policy and are not covered as goods under a general marine insurance contract, unless commercial custom provides otherwise.

The reason for this rule is that live animals, regardless of whether they are carried inside the ship's hold or on the deck, as well as goods carried on deck, are generally more exposed to maritime risks. The insurer must therefore

be aware in advance of the possible risks affecting such goods and proceed to conclude the insurance contract and receive the appropriate premium with sufficient knowledge and information (12).

Another important point requiring attention is that marine insurance is not invoked only to compensate losses arising from physical damage to goods covered by the policy. Rather, wherever goods have been insured from the port of origin to the port of destination and, due to the occurrence of a damaging event covered by the insurance contract, do not reach the agreed destination, the policy may be invoked against the insurer, even if the insured goods remain safe and intact in another location. In such cases, the insurer will be required to fully compensate the loss incurred, which is the value of the goods covered by the policy (13).

B. Movables

Movables include every type of real and tangible movable property other than the ship itself, including any tangible property such as money, securities, and documents. With respect to this property, it should be noted that it is insurable only if it is certainly and actually exposed to maritime risks or is expected or likely to be exposed to such risks (14).

To explain, insurance is possible in relation to property that may be destroyed if a risk occurs and cannot be restored. For example, if a person has bearer shares, money, or traveler's checks on board the ship, and if they are destroyed the documents representing those assets cannot be renewed, the person may insure the money, shares, or any such assets. However, in the case of registered shares, checks issued by persons, or other documents and securities registered in national registry offices, banks, or other public or private offices, whose records exist and can be extracted and matched with the person claiming ownership, and which can be renewed upon loss by presenting identification documents, insuring those documents would have no meaning. If they are destroyed, in practice no substantial damage has occurred that the insurer must compensate.

C. Freight

Freight, which becomes payable to the owner or charterer of the ship upon delivery of goods at the designated place, is by nature a form of intangible property and cannot directly be exposed to the maritime risks forming the subject matter of the insurance contract. Rather, if any of the risks covered by the policy affects the cargo carried by the ship for which the ship had been chartered, and the extent of damage is such that, according to commercial custom, the freight is no longer payable to the shipowner or carrier, then if the ship's freight for the relevant voyage has been insured, it may be claimed from the insurer.

In ordinary circumstances, freight becomes payable after the goods are carried by the ship to the contractual destination and delivered. The shipowner, or the charterer who uses the ship by chartering it for carriage of other merchants' goods, purchases insurance in each maritime voyage or charter-party contract for the freight relating to that voyage or contract.

However, where freight has been paid in advance, the person who owns the goods and has chartered all or part of the ship for carriage of goods and has prepaid the freight must insure the freight paid for the relevant voyage (15).

D. Profit

Under the second part of section 3(2) of the English Marine Insurance Act 1906, profit may include any type of freight, meaning in this context any freight paid or payable to bring the goods or ship to the position for commencement of the maritime voyage, and also any freight paid by the owner of the goods to the carrier, excluding the freight of the ship in the voyage whose risks are covered by the insurance contract. This is because the ship's

freight is insurable under a separate heading by the shipowner or the carrier who has been promised receipt of freight, as explained above. It may also include passage money, commission, or any financial benefit, any security for advances made, any loan, and any type of expense that is endangered or lost as a result of the exposure of the insured property to damaging maritime incidents (16).

For example, every merchant's purpose in purchasing and carrying goods is to obtain profit from the sale of goods at the destination port. If the goods do not reach the destination, that profit is lost. Even if the goods reach the destination late, market fluctuations may alter the value of the goods and the expected profit may not be realized. Therefore, loss of profit arising from the exposure of goods to such risks may be covered under a marine insurance contract.

Profit, even if it has no tangible physical existence at the time of conclusion of the insurance contract, is insurable under a marine insurance contract. The only point that must be considered is that the profit for which compensation is claimed under a marine insurance contract due to its loss must necessarily have been lost or diminished as a result of the exposure of the subject matter of the insurance contract to maritime risks covered by the marine insurance contract; otherwise, it is not compensable under the marine insurance contract (16).

E. Commission

Whenever, in the conclusion of any contract relating to the procurement and carriage of goods, the chartering of a ship, or any other contract connected with the subject matter of the marine insurance contract in the voyage covered by the contract, any commission has been paid or is to be paid, the person who has paid the commission or the broker entitled to receive the commission may have that commission covered under the marine insurance contract if, as a result of maritime risks affecting the property forming the subject matter of the insurance contract, that property does not reach the destination or, as a result of its failure to reach the destination, the person is deprived of the commission. Compensation for that commission may then be claimed from the insurer on the basis of the marine insurance contract.

However, the important point requiring attention is that, although commission is dependent on the property forming the subject matter of the marine insurance contract, it cannot be insured under a policy prepared to insure the goods or property. It must be covered separately under an independent contract (17).

F. Expenses

Expenses mean any costs incurred by any person interested in the marine insurance contract in connection with the subject matter covered by the insurance contract. For example, a merchant who insures their goods has incurred, in addition to the nominal value of the goods, various costs for preparing and procuring the goods, carrying them to the loading port, and loading them onto the ship, such as the fees of brokers for purchasing, transporting, and insuring the goods, the carrier's fees, and similar expenses. Likewise, the shipowner or maritime carrier has incurred various costs for preparing the ship, such as repairs and preparation, fuel, equipment, provisions, port charges, and similar expenses. All these types of expenses may be covered under the marine insurance contract under this heading.

Liability Toward Third Parties

Navigation entails risks that, in some cases, result in damage to third parties. In such cases, the owner or possessor of the ship may be liable toward third parties for losses imposed upon them by reason of ownership or possession of the ship and as a result of the use of the ship, whether proper or improper. For example, the ship's

crew, who suffer death or bodily injury as a result of storms, lightning, or other maritime risks, may bring an action against the owner or possessor of the ship and claim compensation. In cases where, as a result of the sinking of a ship and leakage of polluting substances from the ship into the sea, the marine environment adjacent to countries becomes polluted, causing destruction or damage to fishable animal resources in the sea, or where pollution reaches the coasts of countries and causes environmental damage, an action may be brought against the shipowner. Ultimately, in light of international civil liability standards established by various conventions, the shipowner may be held liable and required to compensate the losses incurred.

It should be added that, in principle, bodily injury to persons, including the ship's own crew, property damage to property and other ships, for example in the case of collision, environmental damage caused by leakage of polluting substances from ships into the sea, and similar losses fall within this category of losses.

Usually, losses incurred by third parties, due to their financial scale and territorial scope, fall outside the scope of marine insurance policies issued by insurers active in the field of marine insurance. Such losses are covered by liability insurance provided by Mutual Protection and Indemnity Associations, known as P&I clubs (18).

One of the most prominent cases relating to liability toward third parties is collision at sea. When ships collide at sea, heavy losses arise, leading to the issue of collision liability and to the bringing of claims before competent judicial authorities. One of the parties, or both, may be at fault; alternatively, because of particular and unforeseen circumstances such as storms, fog, and similar conditions, both may be free from fault.

Because, under the English Marine Insurance Act 1906, collision between ships at sea is a peril arising from navigation and is considered a maritime peril, the owner of each ship, if the ship has been insured, will be entitled to receive from their insurer, up to the ceiling specified in the policy, the losses incurred by their ship as a result of collision, whether or not the owner was at fault in the collision.

However, if the shipowner was at fault in the collision, the owner must pay the compensation determined by the court to the opposing party, and in this respect the owner's insurer will have no liability unless the owner or possessor of the ship has obtained a policy with broader coverage that also covers liability arising from collision. In that case, the provisions of that policy will apply.

If the owner was not at fault in the collision, the opposing party must compensate the losses incurred by that owner. Where the owner of the non-fault ship has already received compensation from their insurer, the compensation, up to the amount paid by the insurer, will be repaid to that insurer, and any excess will be paid to the owner of the non-fault ship (19).

All cases of liability toward third parties, whether arising from ship collision or from the other cases described above, are among matters usually covered by insurance provided by P&I clubs. In this regard, the rules of these clubs are such that, as long as the insured has not yet paid the compensation owed to the third party, the insured cannot receive indemnity from their club (18).

An important rule in liability insurance for compensation payable to third parties as a result of ship collision is that an insurer who insures the ship against collision is liable only for three-fourths of the compensation that the insurance beneficiary must pay to the third party, while one-fourth remains the responsibility of the insurance beneficiary. Today, however, the remaining one-fourth is also compensated by P&I clubs. The inclusion of such a rule in policies is intended to encourage the shipowner or possessor to exercise due care and caution in using the ship at sea (15).

Conditions of Compensation in Marine Insurance Under Iranian and English Law

The possibility of obtaining compensation by relying on a policy in the possession of a person depends on certain prerequisites whose requirements must already have been fulfilled; otherwise, compensation will not be possible. Many of these conditions are generally common to all indemnity insurance contracts, while some are specific to marine insurance contracts.

In the following discussions, the conditions of compensation will be examined.

The Insured's Interest in the Subject Matter of the Contract

As previously mentioned, the insured's position after compensation must, as far as possible, be the same as the position prior to the occurrence of the damaging event. This very point leads us to conclude that the person who insures property must necessarily have an interest in the subject matter of the insurance. Without a person's interest in insuring the property, no change will occur in that person's position before and after the occurrence of the event that would require the effects of such change to be removed or the losses arising from that change to be compensated. Therefore, the conclusion of any insurance contract based on the principle of indemnity without an interest in the subject matter of insurance appears meaningless (1).

The requirement that the person who concludes the insurance contract and insures goods or an interest must have an interest in that property or interest is wholly connected with the principle that the insurance contract is based on the concept of compensation. In other words, unless the occurrence of loss to a person is possible, or unless the person has property or interests exposed to risk, no loss can occur to that person such that, upon the occurrence of any damaging event affecting any property or interest, the loss incurred by that person could be compensated.

Section 5(2) of the English Marine Insurance Act 1906 defines interest in an insurance contract as follows: a person is particularly interested in a marine adventure when the person stands in a legal or equitable relation to that adventure or to any insurable property at risk in it, as a result of which the person may benefit from the safety or due arrival of the insurable property or may be prejudiced by its loss, damage, or detention, or may incur liability in respect of it (1).

Article 4 of the Iranian Insurance Act of 1937 also provides: "The subject matter of insurance may be property, whether an object, a benefit, any financial right, or any type of legal liability, provided that the insured has an interest in the preservation of what is insured. Insurance may also concern an incident or risk whose occurrence causes loss to the insured."

In the above statutory provisions, having an interest is defined broadly to include having an interest in the preservation or arrival of the insured property at the destination, sustaining loss as a result of damage to the property or its failure to arrive properly at the destination, and incurring liability in the occurrence of any of the aforementioned situations. Therefore, anyone who may suffer property loss as a result of possible maritime events, or who may suffer loss from the delayed arrival or non-arrival of that property, or who may be required to bear liability due to the delayed arrival, non-arrival, or damage to property, is considered interested and may insure that property. Likewise, if several different persons have various interests and risks in one property from different perspectives, each may insure that property against the risk affecting them.

Section 4 of the English Marine Insurance Act expressly declares insurance contracts based on gaming and wagering void, providing in subsection 1 that every marine insurance contract made by way of gaming or wagering is void (1).

Subsection 2 of that section also defines the conditions under which marine insurance contracts are deemed to be gaming or wagering contracts. It provides that a marine insurance contract is deemed to be a gaming or wagering contract where the assured has no insurable interest as defined by the Act and has entered into the contract with no expectation of acquiring such an interest (1).

Accordingly, based on the aforementioned statutory provision, in every insurance contract in which the insured has no interest in the subject matter of the contract and has no expectation of acquiring an interest in the future in that subject matter, the insured will not be able to prove that they have sustained a loss. Consequently, the insurance contract concluded on this basis is considered a wagering or gaming contract and is declared void (1).

The important point, however, is that although the English Marine Insurance Act 1906 declares gaming and wagering contracts void, it does not prohibit the conclusion of such contracts. Merely declaring such contracts void under English law means that they have no legal effect and are not legally protected. Nevertheless, after the enactment of that statute in 1906, such contracts continued to be concluded among merchants in England in the form of honor policies and by including a policy-proof-of-interest clause, and they are still concluded. These policies are binding only morally and have no legal sanction; they are concluded on the basis of merchants' trust in one another. If a dispute arises between the parties concerning them, the court will not give effect to such a contract (9).

Any contract drafted with a policy-proof-of-interest clause is generally void and ineffective. The inclusion of such a clause, because it is contrary to the essence of a property insurance contract, namely the principle of indemnity, renders the entire contract void from its foundation. If such a contract is written between the parties and a dispute later arises in relation to it, the court cannot disregard the clause on the ground that the invalidity of the clause is independent of the validity or invalidity of the contract and then issue a ruling on the remainder of the contract.

In principle, in relation to such contracts, severing the clause from the contract by the parties after conclusion of the contract and after the emergence of dispute has no effect on the invalidity of the contract. The judge should not, by adjudicating such disputes, approve persons who have concluded a void contract (1).

The only factor that causes honor policies to be respected by the insurer that has concluded them is that, if such an insurer includes a policy-proof-of-interest clause in the insurance contract and then refuses to perform the contract on the ground of invalidity, the insurer will lose reputation and credibility among merchants. In some respects, this sanction is even stronger than a legal sanction. Of course, it must also be noted that the insured or beneficiary of honor insurance contracts will not be entirely immune from the risk of non-performance of the contract. If the insurer that has concluded such a contract becomes insolvent and, after its insolvency, a maritime risk occurs and damage is caused to the insured property, such a contract will have no enforceable value, and the insurer's other creditors will be able to prevent performance of such a contract (1, 9).

Insurable Interest

As stated earlier, every person who obtains an insurance policy must have an interest in the subject matter of the insurance that is covered by the insurance contract against maritime risks, whether the person is the owner of the insured subject matter or derives a benefit from its preservation, or whether the person suffers a loss as a result of its destruction or damage, or has any other material or legal relationship from which such meaning may be

inferred. Therefore, for a person intending to obtain an insurance policy, there must be an insurable interest, and this interest constitutes the fundamental basis of every marine insurance contract.

In order for the person who has obtained the insurance policy to be able to claim compensation for their loss based on that policy after the occurrence of a damaging event and the resulting loss, the person must first have an insurable interest in the subject matter of the insurance contract at the time of conclusion of the contract, or it must be expected that such an interest will exist at the time of the event; second, the person must still have that interest at the time the loss occurs (9).

Section 5(1) of the English Marine Insurance Act 1906 expressly refers to insurable interest and provides that every person has an insurable interest who is interested in a marine adventure (1).

The definition of insurable interest was first provided in *Lucena v. Craufurd* in 1806. In that case, the beneficiaries of the insurance were officers of the English Navy whose duty was to safeguard Dutch ships and goods that had been captured and brought to English ports. In the mission in which the subject matter of the dispute arose, the officers had insured the ships and goods that were to be under their protection. When those ships sank during the maritime voyage before reaching English ports, the officers claimed compensation, and the insurer refused to pay on the ground that the claimants had no interest, because their duty was to protect the ships and property in English ports, not outside those ports. The court accepted the insurer's reasoning (1).

In that case, Lord Eldon defined insurable interest as any right in the property or any right arising from a contract concerning that property that, in either case, may be lost upon some contingency affecting the possession or enjoyment of the property (9).

The Iranian legislature also provides in Article 4 of the Insurance Act of 1937 that the subject matter of insurance may be property, whether an object, a benefit, or any financial right, provided that the insured has an interest in the preservation of the subject matter of insurance, or any risk whose occurrence causes loss to the insured.

In light of the foregoing, a person may prove the existence of an insurable interest for themselves where they have such a legal relationship and financial interest in the subject matter of the insurance that they benefit from the subject matter remaining safe or suffer loss if it is endangered. If the insured has no interest in the subject matter of insurance in any way, no loss can be imagined for them in its destruction, and no right arises for them under the insurance policy. Consequently, because the insurer's obligation under the policy and based on the principle of indemnity is to compensate the injured party and restore that party's position to the state existing before the loss arising from the damaging event, the insurer has no obligation to pay any amount to a person who has sustained no loss as a result of an event affecting the subject matter of the insurance and damage to it.

In light of section 5(2) of the English Marine Insurance Act 1906, a person involved in an adventure must, in order to be able to use insurance to compensate losses arising from that adventure, have a definite and established right in the subject matter of that adventure or expect to acquire such a right.

Persons who may, in each case, have an insurable interest in a subject matter are generally divided into three broad categories.

First, the owner of the property forming the subject matter of the insurance contract, whether that property is the ship, the goods carried by it, or the freight or hire of the ship in a maritime voyage.

Second, persons who have granted loans to relevant persons on the security of the value of the ship or the goods carried on it.

Third, the insurer who has insured the ship or the goods carried on it. To distribute risk as widely as possible, insurers usually insure the obligations they have undertaken with another insurer under the heading of reinsurance, so that, if they are required to pay very large compensation at once as a result of multiple simultaneous events, they will not face financial difficulty.

Of course, persons who may be considered interested in any property present in any maritime voyage are not limited to the above cases. Rather, anyone who can in any way prove the existence of any interest in any property present in the maritime voyage and potentially exposed to risk may become a party to an insurance contract in relation to that property or interests connected with that property (1).

Regarding the necessity of the existence of insurable interest, the case of *Macaura v. Northern Assurance Co. Ltd.* in 1925 is noteworthy. In that case, the claimant, as a shareholder of a company to which he had sold property but had not yet received the full price, sought compensation under a policy he had obtained before selling the property to the company to cover the property against fire. The insurer refused to pay on the ground that the claimant was no longer the owner of the property, even though he held shares in the company that now owned the property and the value of his shares in that company had decreased due to the burning of the company's property. Since the company is legally considered a separate and independent person with personality distinct from that of its shareholders, the insurer refused to compensate the claimant. When the matter reached the House of Lords, the House also accepted the insurer's reasoning. In this case, in addition to emphasizing the principle of the existence of insurable interest, an important point of company law, namely the separate legal personality of the company from the personality of its shareholders, was also confirmed and emphasized (9).

When it is said that a person must either have a definite interest in the subject matter of insurance or expect to acquire such an interest, and given that interest means that the person may benefit from the preservation of the insured subject matter or suffer loss from its destruction or damage, expecting to acquire an interest in the subject matter of insurance in the future means that, at the time of purchasing the policy, the person is in a position in which, although they do not currently have a definite legal right in the subject matter of insurance, if the subject matter is damaged in the future they too will suffer loss from that damage, or if it remains safe they will benefit from its preservation. For example, a carrier who insures their liability for safely delivering the carried goods to the destination has no right or interest in the property and goods themselves. However, if the goods forming the subject matter of the contract are damaged, the carrier will be required to pay compensation, and in that case the compensation received from the insurance will in practice be for indemnifying that loss.

Nevertheless, in English law, under certain special conditions, an insurable interest is sometimes recognized for persons even without the existence of a definite and established legal right in the subject matter of the insurance. A prominent example is *Sharp v. Sphere Drake Insurance plc*, in which the claimant, by reason of having a full power of attorney to manage and dispose of a pleasure boat, was held to have an insurable interest in that boat (9).

It may be said that a carrier, although not the owner of the goods forming the subject matter of the contract of carriage, may also insure the goods. However, this point must be considered carefully. The carrier is legally responsible for delivering the goods forming the subject matter of the contract of carriage safely to the destination. If the carrier insures those goods, the carrier is in fact insuring their liability for safely delivering those goods to the destination, not the goods themselves. The insurance contract that the carrier concludes with the insurer is a liability insurance contract, not property insurance; the insured under this contract is the carrier, and the beneficiary of this contract is the owner of the goods or, as the case may require, the consignee. Therefore, if an event occurs to the

goods forming the subject matter of the carriage contract that have been insured by the carrier with the insurer and that event causes damage to the goods, the insurer will not pay the compensation to the carrier but to the owner of the goods, unless the carrier has already compensated the owner of the goods.

Of course, in cargo insurance contracts, the existence of an insurable interest depends on how the insurance contract concluded between the parties is interpreted. For example, in *Anderson v. Morice* in 1876, the buyer had purchased a cargo of rice and insured the cargo at Rangoon and from Rangoon to England. When most of the goods had been loaded and only a small part remained unloaded, the ship carrying the cargo suddenly sank at the loading wharf. The buyer claimed compensation from the insurance company for the lost part, but the claim was refused. The reason for the refusal was that, in the contract of sale of the rice, the risk of loss of the cargo had not been placed upon the buyer. The House of Lords also held that, because the buyer of the goods did not have an insurable interest at the time of the occurrence of the event and the loss, the buyer was not entitled to receive compensation (1).

At the time of conclusion of the insurance contract, there must either be a real and valid insurable interest for the insured, or there must be a near-certain expectation of its creation in the future. Mere hope or possibility of the emergence of such an interest in the future is not sufficient for concluding the insurance contract.

The existence of an insurable interest for the insurance beneficiary at the time of loss is necessary and is a condition of the validity of the contract. It is not necessary that an insurable interest exist at the time of conclusion of the contract. A certain expectation of the emergence of an insurable interest at the time of contract formation is sufficient for concluding the insurance contract (1).

In *Buchanan & Co. v. Faber*, the mere expectation and anticipation of continued employment as the ship's manager was not considered sufficient to create an insurable interest in the brokerage or commission for insuring the ship.

Under section 6(1) of the English Marine Insurance Act 1906, the insured must be interested in the subject matter of the insurance at the time of loss, although the insured need not be interested when the insurance is effected (1). In *Anderson v. Morice* as well, because the claimant had no insurable interest in the lost goods at the time of the loss, he was not recognized as entitled to receive compensation for the losses incurred.

There are only two exceptional cases in which the insured may receive compensation for losses arising from the occurrence of the damaging event even if the insured had not yet acquired the right to an insurable interest at the time of loss or at the time of conclusion of the insurance contract.

The first case is where the insurance contract has been concluded on a lost-or-not-lost basis. At a time when communications did not exist in their present form, a shipowner did not know the condition of the ship while it was on a voyage until the ship entered its home port or another port where the owner could somehow learn of the ship's status. Similarly, a merchant might purchase goods still on a maritime voyage from another merchant, while the goods might in fact have already been destroyed by maritime events at the time of the sale. Therefore, if such a person wished to insure the goods, or if the shipowner wished to insure the ship, the person did not actually know whether the ship still existed. For this reason, the lost-or-not-lost clause was inserted into the contract, under which, even if the ship had been destroyed before or during the conclusion of the insurance contract, the insurer would be obligated to indemnify. Of course, if it were proven that the insured truly knew of the destruction of the property forming the subject matter of the insurance contract and concluded the contract with such knowledge while the insurer was unaware of the true state of affairs, the insurer would have no obligation (9).

In this case, the insured under such a policy may receive compensation even if their right in the subject matter of the insurance contract was not created until after the occurrence of the damaging event. The only condition that prevents the insured from receiving compensation is that, at the time of the damaging event and the loss, the insured was aware of it while the insurer had no possibility of becoming aware of it (9).

A lost-or-not-lost policy is one type of policy in marine insurance in which the date from which the contract becomes operative is set before the date of its conclusion, even if the insured ship or goods had been destroyed at the time of conclusion of the contract. However, the validity of an insurance contract concluded in this manner is subject to the condition that neither party knew, or had the means of knowing, at the time of conclusion of the contract that the subject matter of the contract had been damaged (9).

The second case is where the policy has been assigned by the insured to another person. This transfer may occur before or after the occurrence of the damaging event and the resulting loss. In such a case, the transferee is the successor to the transferring insured and, based on the policy in their possession, has no greater right than the transferor themselves had (9). This means that, for a transferee who receives the policy after the occurrence of the damaging event and the resulting loss to be able to receive compensation under the policy, the transferor must have had an insurable interest in the transferred subject matter of the insurance contract at the time of the loss.

Another related issue is that, in order for an insured to transfer a policy to another person after the occurrence of an event covered by the policy, the insured must have had an insurable interest in the subject matter of the insurance contract at the time of the damaging event. If the insurance contract contains terms prohibiting transfer of the policy to another person, the insured cannot transfer that policy to another person, and in this respect the transfer of the policy before and after the event is, in principle, impossible (9).

Another condition concerning the transfer of a policy to another person after the occurrence of the damaging event and the loss is that the policy is transferable both before and after the occurrence of loss caused by risks covered by the policy, provided that the insured has not, before transferring the policy, abandoned their rights and interests in the subject matter of the insurance contract or lost their interests in the subject matter of the contract in any way. In *North of England Pure Oil Cake Co. v. Archangel Maritime Bank & Insurance Co. Ltd.*, a cargo of linseed was insured with the defendant. The relevant policy covered the risks arising from the maritime carriage process from the port of Istanbul to the port of London in England, as well as potential risks during unloading by lighter from the carrying ship at the port of London, for the benefit of the insured and any subsequent transferee. While the ship carrying the goods was on the Istanbul–London route, the original insured sold the goods to the claimant. The goods sold were unloaded at the port of London by lighters hired by the claimant, one of which sank during unloading. After this loss occurred, the original insured transferred the policy to the claimant, and the claimant claimed compensation from the defendant under the assigned policy. In adjudicating the case, the court held that, because the policy had not been transferred to the claimant under the contract of sale of the cargo, the seller had lost their interests in the subject matter of the policy by selling and delivering it to the buyer. Therefore, the subsequent transfer of the policy after the event of the sinking of the lighter during unloading and the loss of part of the goods was void, and the defendants had no obligation under that policy to compensate the claimant (9).

The transferee of a policy has only the same right to compensation for losses incurred by the transferred subject matter of the insurance contract as the transferor had under that policy. Likewise, the transferee of a policy may bring an action for compensation against the insurer solely and in their own name only where all interests under the

policy have been transferred to them by the insured; otherwise, the transferee must bring the action jointly with the owner of the other part of the interests (9).

Performance of Warranties by the Insured

Under section 33(1) of the English Marine Insurance Act 1906, warranties in marine insurance mean promises given expressly or impliedly by the insured or the beneficiary of the insurance, whereby the person undertakes that a particular thing shall or shall not be done, that a particular condition shall be fulfilled in a specified manner, or that a particular state of facts exists or does not exist (1).

Under this rule, the insured undertakes specific obligations toward the insurer. These obligations must be performed within a specified time frame, and the continuation of the insurer's liability for compensation depends on the full performance of these obligations (1).

Under subsection 2 of the same section, a warranty may be express and included in the contract, or it may be implied in such a way that it may be inferred implicitly from statutory provisions, mercantile custom, or the circumstances governing the contract.

Based on subsection 3 of the aforementioned section, whether the warranty is express or implied, and whether or not it affects the degree of risk affecting the subject matter of the insurance contract, it is binding upon the obligated party. If such a warranty is breached, then, provided that an express clause in this regard has been included in the policy, the insurer is discharged from liability for losses incurred by the subject matter of the insurance contract as a result of events covered by the insurance contract from the time when the breach of warranty by the beneficiary occurs. However, until the date of breach of warranty, the insurer's liability remains as before (1).

Express Warranties

Under section 35(2) of the English Marine Insurance Act 1906, an express warranty is a warranty that is included in writing in the contract or written in a document connected with the contract and incorporated into the contract by reference (1). Under subsection 3 of that section, no express warranty negates implied warranties unless it is inconsistent with them. Likewise, under subsection 1 of the same section, a warranty may be created by any form of words or sentences, and no particular order or form is required for its creation.

Express warranties included in marine insurance contracts are diverse and differ from one contract to another, and they are created by the parties' agreement. Among the common express warranties in marine insurance contracts is the warranty of good safety, under which the insured undertakes that the subject matter of the insurance contract is in a safe and sound condition and that no defect or damage has affected it before conclusion of the contract (1). Another express warranty determined in some marine insurance contracts is that the owner or possessor of the ship undertakes to use the ship only within the specific geographical limits determined by the contract and not to navigate the insured ship in other waters (1).

Implied Warranties

Implied warranties in a marine insurance contract are warranties that, from the legal perspective, clearly and plainly have a fundamental nature in the contract, and the parties to the contract are regarded as having considered them automatically. Such a warranty is so obvious and certain that the parties, consciously or unconsciously, have not felt the need to include it in the contract (1).

The Marine Insurance Act 1906 determines a total of four implied warranties in sections 39, 40, and 41.

Section 39 of that Act determines the implied warranties of port-worthiness and seaworthiness for the ship forming the subject matter of the insurance contract.

The warranty of port-worthiness means that the insurance beneficiary impliedly undertakes that the ship forming the subject matter of the marine insurance contract is in such a condition of soundness and fitness that it can be present in the port and face the ordinary risks of the port without difficulty (1).

The warranty of seaworthiness is a warranty under which the insurance beneficiary undertakes that the ship forming the subject matter of the insurance contract is in such a condition of soundness and fitness that it can face all ordinary and usual risks of the sea during the maritime voyage covered by the policy without difficulty (1).

Under section 40 of that Act, the ship must not only be seaworthy but must also be cargo-worthy at sea for the destination specified in the contract of carriage and the insurance policy (1).

Section 41 of that Act also determines another condition as an implied condition of every marine insurance contract, referred to as the warranty of legality, under which the maritime voyage forming the subject matter of the marine insurance contract must be lawful and not contrary to legal rules and regulations, and must also, to the extent within the control of the insurance beneficiary, be carried out and managed lawfully (1).

However, under section 39(5) of that Act, in time policies, there is no implied warranty that the ship forming the subject matter of the marine insurance contract is seaworthy at the time of conclusion of the contract. The ship must only be seaworthy at the commencement of each maritime voyage on which it is sent to sea during the period covered by the insurance contract; otherwise, in the event of loss, the insurer will not be liable (1).

The Necessity of Giving Notice of Claim and Tenders

Today, marine insurance contracts include a clause under which, whenever any damage is caused to the subject matter of the contract as a result of events covered by the insurance contract, whether the damage is an actual total loss, constructive total loss, or partial loss, the insurance beneficiary or their agents or employees must, immediately after the date on which they became aware or should have become aware of the occurrence of loss or damage, and before conducting an inspection, give the insurer notice of the claim so that, if the insurers deem it necessary, a person may be appointed to conduct the inspection (1).

Under clause 46 of the International Hull Clauses proposed by the International Underwriting Association and published in November 2003, upon the occurrence of any event covered by the policy, the insured, in order to make any claim of loss, must first give the leading insurer notice of the event and the occurrence of damage. The phrase “leading insurer” is used where, due to the high value of the property forming the subject matter of the insurance contract, several insurers jointly insure the property so that, if the property is destroyed as a result of risks covered by the policy, a very large compensation obligation does not suddenly fall upon one insurer and possibly lead to its insolvency. If only one insurer has insured the subject matter of the contract, under the proposed standard contractual clauses, notice need be given only to that insurer (9). Also, under the amendment of June 12, 2012, that notice must be given by the insured or the insured’s representative to the leading insurer of the contract as soon as possible after the event, and it must contain details concerning the time and place of the event, the location of the ship forming the subject matter of the insurance contract, and the insured’s claim for compensation from the insurer. The notice must be given to the insurer whenever the insurance beneficiary concludes that there are strong grounds for making a claim (9).

The immediacy of notice is a factual matter and differs in each case depending on the conditions and circumstances of the event and according to the custom of insurance commerce. Ordinarily, however, such notice must be given to the insurer at the earliest reasonably possible time before any inspection is conducted by the insured themselves (1).

Conclusion

The purpose of employing the measure known as insurance has been to compensate potential losses arising from risks facing trade among nations. The provision of protective coverage against natural risks for the carriage of goods in maritime voyages has evolved over time and reached its present form. In fact, the rules of marine insurance that today govern marine insurance in the form of custom and law originally have their roots in the same simple and rudimentary rules devised by ancient human beings in the past.

In marine insurance contracts, as in other property insurance contracts, the insurer determines the amount of premium received for covering the subject matter of the insurance contract by statistically studying risks and their return and recurrence periods at different times and places on the basis of the laws of probability. Therefore, the scope of the insurer's liability to compensate losses incurred cannot be unlimited and cannot, under a single insurance contract, be extended to all times and places and to any amount of loss that may possibly affect the subject matter of the insurance contract. For this reason, in marine insurance policies, the scope of the insurer's liability is determined on the basis of how the temporal and spatial scope is limited and how the subject matter of the insurance contract is valued. Accordingly, from the perspective of temporal and spatial coverage, marine insurance policies are classified into two general categories: policies for a specified time and policies for a specified voyage. In the first category, coverage exists from the beginning to the end of the period agreed upon by the parties in the policy. In the second category, the parties usually agree to cover the subject matter of the insurance contract along the route of one or more maritime voyages. Proving the moment of commencement of the voyage and consequently the attachment of insurance coverage rests upon the insurance beneficiary, and this issue itself causes disputes between insurer and insured. In this type of policy, the insured ship or goods must also not deviate from the route covered by insurance or change the destination of the voyage. It is because of this rule that this type of policy is rarely used in international trade today. The reason is that, in many cases, a merchant who has purchased goods finds it necessary to sell those goods to another person while they are still being carried at sea, and consequently the goods must be directed to another route midway through the voyage.

Within the framework of this same criterion for classifying policies, a floating policy may also be identified. It was devised to facilitate the preparation of collective insurance coverage during a specified period for a large number or quantity of properties. In this type of coverage, it is not necessary for the property forming the subject matter of the contract or the maritime voyage forming the subject matter of the contract to be identified from the beginning. Rather, a ceiling of compensable loss is determined for the contract, and in each voyage the insurance beneficiary is required to declare to the insurer the property being sent on a voyage within the framework of that contract and its value. The insurance coverage remains in place until the expiry of the period or the exhaustion of the financial ceiling of compensable losses under the contract.

From the perspective of the financial value ceiling, policies are also classified, based on the manner of valuing the subject matter of the insurance contract, into valued policies and unvalued policies. In other words, they are either agreed upon and concluded as policies with the value of the subject matter agreed in advance, or the parties

conclude the contract with the value of the subject matter not agreed in advance and defer assessment of the losses incurred until after the occurrence of loss. In the latter type of policy, several problems arise after the occurrence of loss, including the need for the parties to agree on the appointment of an expert and to pay the expert's fee, which itself becomes a source of many disputes. This is why policies of the latter type are rarely used. However, where goods are subject to major price fluctuations in the market and their market value constantly undergoes significant change, the use of this type of policy better protects the insured's interests.

Marine insurance contracts are also governed by principles whose non-observance leads to the invalidity of the contract or to the discharge of the insurer from liability for compensation of the loss affecting the subject matter of the insurance contract.

The most important and foundational principle governing marine insurance contracts is the principle of indemnity. Under the principle of indemnity, where a person has insured property and obtained a policy to cover that property against risks, if any of the risks covered by the contract occurs and causes damage to that property, the person will be entitled to receive compensation from the insurer within the framework of the insurance contract in such a way that, as far as possible, their position is restored to the position they had before the occurrence of the loss, while at the same time they do not receive anything more than what they have lost; in other words, they must not derive profit from the insurance contract.

Another foundational principle governing insurance contracts, especially marine insurance, is the principle that marine insurance contracts are based on utmost good faith. On this basis, the parties must, with utmost good faith, inform one another of existing facts relating to the contract. What causes the legislature in marine insurance law, as in other types of insurance, to require the parties to observe utmost good faith and to prescribe the possibility of avoiding the contract as the sanction for non-observance of this principle is that, if either party concludes a contract with unreal terms through fraud and fraudulent methods, indemnity under such a contract would conflict with the principle of indemnity. In the case of the insured, it could lead to receipt of compensation greater than what was actually sustained after the occurrence of the risk covered by the insurance contract, and in the case of the insurer, it could lead to receipt of a higher premium or the sale of insurance coverage beyond the insured's true needs.

In marine insurance, the ship, the property and goods carried by it, the ship's freight, any interest that may be diminished or lost due to the non-arrival or unsafe arrival of the subject matter of the insurance contract at the destination, such as commission and expenses incurred by the owner of the ship or goods for equipping the ship or procuring the goods, as well as the liability of the owner or possessor of the ship or goods toward third parties, may be insured within the framework of marine insurance.

Marine insurance is, in principle, a form of property and liability insurance, and the principle of indemnity applies only to property and liability insurance. Other types of insurance include personal insurance, in which the principle of indemnity has no meaning. This is because, where a person sustains bodily injury, no criterion can measure the financial extent of the injury in money. Liability toward third parties is generally not covered by marine insurers under marine insurance and must be covered through liability insurance provided by P&I clubs. However, in relation to liability arising from collision, if the relevant insurance coverage has been purchased by the insured, marine insurers, provided that certified documents of the judgment requiring payment of compensation and proof of payment of the adjudicated compensation by the insurance beneficiary are presented, will pay three-fourths of the compensation paid by the insurance beneficiary under the rule of three-fourths liability. The reason for this is to prevent the insurance beneficiary from acting negligently in using the ship at sea.

From the perspective of marine insurance law, marine insurance policies are transferable to another person. If the insured property is transferred to another person and the parties have agreed upon the transfer of the policy within the transferring contract, the transferee becomes the new beneficiary of the policy and has the right to claim compensation under the policy. If no agreement has been reached on transfer of the policy, the policy is practically extinguished, because the transferor no longer has any interest in the transferred property and is not considered a beneficiary, while the transferee is not the owner of the policy. In the event of loss, neither will have the right to claim compensation.

Loss means an unwanted injury that is caused to the subject matter of the insurance contract by an external factor, which in marine insurance contracts is maritime risk, in an unforeseeable and unavoidable manner, resulting in destruction of or reduction in the value of that subject matter.

Risks causing loss are divided into two categories: maritime risks and risks arising from war, strikes, riots, and similar events. Maritime risks are covered within the framework of marine insurance contracts, while risks arising from war and riot are covered through marine insurance by P&I clubs.

There must be a proximate and direct causal relationship between the occurrence of loss and the risk causing it, and the insurer will not be liable for losses indirectly arising from covered risks.

Losses in marine insurance are divided into two categories: total loss and partial loss. Total loss itself is divided into actual total loss and constructive total loss. In actual total loss, the subject matter of the marine insurance contract is completely destroyed, undergoes a fundamental change in nature, or is placed, for example by sinking, beyond the reach and possession of its owner or possessor.

Freight is lost where, due to risks covered by the insurance contract, the cargo carried by the ship does not reach the destination, whether the ship has been damaged or the goods have been destroyed. If the goods reach the destination but are damaged, freight is payable and no loss has occurred in relation to it.

Constructive total loss is a concept specific to marine insurance and has no equivalent in other types of insurance. Such a loss occurs when the subject matter of the insurance contract has been damaged to such an extent that the cost of repairing and restoring it exceeds its market value after repair. In such cases, repairing the damaged property is futile and would be detrimental to the insurer. Consequently, in such cases, the insurance beneficiary abandons ownership of the property and transfers it to the insurer, and the insurer in return pays compensation for total loss to the insurance beneficiary within the framework of the contract.

Partial loss includes every type of damage incurred by the subject matter of the marine insurance contract or by the insurance beneficiary that does not fall, according to statutory definitions, within the category of total loss, whether actual or constructive. These losses consist of partial damage to the subject matter of the contract, expenses incurred by the insurance beneficiary to prevent the expansion of damage arising from a risk covered by the contract, general average losses, and expenses of recovery and salvage of the subject matter of the insurance contract after the occurrence of the risk.

In relation to the ship's freight, partial loss of freight cannot be imagined in a single contract of carriage involving one maritime voyage. If the ship's cargo reaches the destination in damaged condition, the losses incurred may be claimed, depending on the circumstances, from the insurer who insured the goods or from the carrier responsible for delivering the goods to the destination, and this has no relation to the ship's freight. The freight must be paid.

In marine insurance, some losses incurred by the subject matter of the insurance contract are excluded from the scope of the insurer's liability to indemnify. These losses either arise from a conscious act or omission based on

intention or recklessness by the insurance beneficiary, or directly from delay in the arrival of the subject matter of the contract at the destination, or from ordinary wear and tear, ordinary leakage and breakage, or inherent vice and nature of the subject matter of the insurance contract. In all of the excluded cases mentioned above, the parties may exclude the matter from the exception by inserting a contractual clause, except where the loss arises from the conscious and voluntary act of the insurance beneficiary.

If a risk affects the subject matter of the insurance contract and loss is incurred, the insurance beneficiary has the right, based on the policy that covers the subject matter of the contract against the risks causing the loss, to claim compensation from the insurer. However, in order for compensation to be paid, several general and specific conditions must first be fulfilled so that the loss becomes compensable.

The first condition for compensation is that the person claiming compensation based on the policy must have an interest in the subject matter of the insurance contract. This condition has a foundational basis in the principle of indemnity, because if a person has no interest in something, damage to it causes no loss to that person that could be claimed. If a person has no interest in the subject matter of the insurance contract and enters into the process of concluding the insurance contract without such interest, the contract is considered a gaming or wagering contract and is void. Likewise, a person who insures property must have an insurable interest in that property.

The existence of an interest in the subject matter of the insurance contract is not required at the time of conclusion of the insurance contract. It is sufficient that there be certainty that such an interest in the subject matter of the contract will arise in the future. In any event, however, for the loss to be claimable by the person, that person must have an interest in the subject matter of the contract at the time the loss occurs.

In marine insurance, as in other contracts, the parties accept obligations toward each other and must remain bound by those obligations. However, the obligations intended in this discussion are specific to the insured. Part of these obligations are expressly stipulated in the insurance contract as contractual terms and are referred to as express warranties. Another part is inferred implicitly from the circumstances of the parties at the time of contract formation or by operation of law and is referred to as implied warranties. A similar concept exists in Iranian law, where it is known as a foundational or constructive condition inferred from the parties' presumed basis of contract. The implied warranties enumerated by law are port-worthiness, seaworthiness, cargo-worthiness, and, finally, legality. Failure by the insured to perform any express or implied warranty results in the insurer being discharged from liability for compensation.

Under common marine insurance contracts, a clause is inserted in the contract requiring the insured to notify the insurer of the occurrence of loss as soon as possible in the event of damage. Such a clause is among the express warranties included in marine insurance contracts. Its function is to make it possible to examine the circumstances and assess the amount of loss incurred before the conditions giving rise to the loss are completely eliminated.

A special condition for compensation arises in relation to constructive total loss. Under this condition, if the insured considers the loss incurred to be a constructive total loss, the insured must, by giving notice to the insurer, abandon ownership of the property forming the subject matter of the insurance contract and transfer it to the insurer so that the insurer can adopt measures as quickly as possible to recover as much of the remnants of the subject matter as possible and reduce its own loss as far as possible. This notice must be given to the insurer within a reasonable time.

In assessing the loss incurred, the criterion of assessment is to restore the injured person's position, as far as possible, to the position they would have been in if they had not suffered the loss. However, practical necessities

require that the person's position be restored, as far as possible, to the position existing before the damaging event occurred.

In valued policies, the amount of compensation is determined on the basis of the agreement reached between the parties. In unvalued policies, however, the amount of compensation is determined on the basis of the insurable value of the subject matter of the insurance contract, meaning the market value of the property at the commencement of the risk.

If the parties to the contract, without fraud and by mutual agreement, have determined a value for the subject matter of the insurance contract, this agreement is conclusive between them. However, if the value of the subject matter of the contract is estimated, intentionally or mistakenly, at more than the actual amount and the matter becomes disputed, the decision regarding the value of the subject matter of the contract will be for the court hearing the case and will not cause the claim for compensation to fail.

In relation to floating policies, the insurance beneficiary is required to declare to the insurer the value of the property sent on each maritime voyage before or during dispatch. If this declaration is made to the insurer before the occurrence of risk, assessment of compensation in relation to that property will be carried out in the same manner as valued policies. If the declaration is made after the occurrence of loss, that property will be treated, for assessment of the amount of loss, as property insured under an unvalued policy.

In compensation for total loss, the insurance beneficiary receives the full value of the subject matter of the contract. In partial loss, however, the beneficiary may receive a proportion of the value of the subject matter of the contract. Where the insurance beneficiary relies on total loss but the loss that actually occurred is found to be partial, the beneficiary will be entitled to receive the partial loss sustained, provided that partial losses have not been excluded in the contract.

In relation to general average, if a person who has lost their goods as a result of this process has obtained insurance coverage for those goods, that person will receive compensation from their insurer, and the insurer, as that person's subrogee, will have the right to recourse against the other persons who had interests in the ship and the goods carried on it in proportion to their shares.

If a person who has purchased marine insurance coverage for their goods is required, due to the occurrence of a risk covered by the contract affecting the ship carrying the goods and the jettisoning of others' goods to save the ship, to pay a share of general average losses, that person's insurer will pay their share.

Where the insurance beneficiary incurs reasonable expenses at the time of the occurrence of loss and thereby reduces the extent of loss arising from the risk, the insurer is obligated to compensate those expenses. Likewise, if, after the occurrence of the risk and the loss, the insurance beneficiary spends a reasonable amount to recover or salvage the subject matter of the contract and thereby reduces the losses incurred, the beneficiary will be entitled to receive the expenses spent from the insurer.

Where the insurance beneficiary obtains more than one policy for a single subject matter at the same time and place and against the same risk from two or more insurers, and does so by mistake and without bad faith, the beneficiary will have the right to receive compensation only once from all insurers. All insurers will contribute to the payment of compensation in proportion to the amount of loss they have undertaken to compensate. In return, the insurance beneficiary will have the right to recover from each insurer, in proportion to that insurer's share, the portion of the premium overpaid. This rule is called return of premium.

After the insurer pays the loss incurred by the insurance beneficiary, the insurer becomes subrogated to that beneficiary in pursuing all rights concerning the subject matter of the insurance contract and has the right to take appropriate action against all persons who were involved in or responsible for causing the loss to the subject matter of the contract. This right is a direct consequence of the principle of indemnity, under which a person who has suffered loss must not receive under the insurance contract anything more than the loss sustained.

The insurer may acquire ownership of the remnants of the property forming the subject matter of the insurance contract through subrogation only where the insurer has paid compensation for total loss. In the case of partial loss, acquisition of ownership of the subject matter of the contract after payment of compensation by the insurer is not conceivable, and the insurer only has the right to claim, by subrogation or substitution in place of the insurance beneficiary, the beneficiary's rights from the persons responsible for the occurrence of the loss. The insurance beneficiary is also obligated, if they have received compensation from the insurer, to give the insurer any property received from other persons in relation to the loss incurred by the subject matter of the contract.

Indemnity is the basis and main purpose of marine insurance contracts, and all marine insurance rules and regulations have been established in order to regulate and facilitate the application and implementation of the principle of indemnity for the purpose of compensating losses arising from unforeseen maritime events. The purpose of indemnity, however, is to allow merchants active in trade, especially international trade, to rely on a support mechanism called insurance and thereby be protected against losses arising from unforeseen events, so that the flow of work and activity is facilitated and economic prosperity and growth are secured.

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