

Book Review – *Insurance Claims**

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Insurance Claims covers the procedural features of dealing with an insurance claim and the principles of insurance contract law that will resolve such claims in substance. They are discussed from both the assured and insurer's points of view. The book also includes a detailed analysis of 'claims against insurance brokers', from the perspectives of the insurer, assured and brokers.

Insurance Claims is written in admirably clear and accessible language. Detailed references are provided in footnotes. The significant points are explained in an informed way in texts with facts and ratios of the relevant case law authorities where necessary. The footnotes are also enriched with brief notes about the ratio of the cases referred to.

The book has seventeen chapters in total. Chapter 1 starts with 'the basics' such as the descriptions of the words 'indemnity' and 'non-indemnity'. The London insurance market is introduced, and a thorough review of the documentation used in forming insurance contracts is presented.

Chapter 2 explains a number of different persons who can be a claimant in an insurance dispute. Those include, e.g. an assignee, subrogated insurer and third parties to an insurance contract. In this context the chapter explains the principles applicable in insurable interest and includes a comparative overview of the Third Parties (Rights Against Insurers) Acts 1930 and 2010.

A description of cover notes is found in Chapter 3 which also explains rules applicable to contractual construction, and rectification. Classification of policy terms are also included in Chapter 3. Proof of what caused the loss claimed by the assured is explored in Chapter 4 which also explains the meaning of a number of different phrases that the parties might choose to express the required causal link between the loss and the insured risk. Those are including 'in respect of', 'on account of', 'directly and indirectly', and 'independent', 'exclusive', and 'sole' cause. The chapter also covers the implications of the efforts taken by the assured to either prevent or minimise the insured loss. Connected to that, the chapter includes the possible consequences of the assured's negligence in bringing about the loss.

Chapter 5 explains 'proof of loss' including the stipulation of the burden to be satisfied, the standard of proof, and the meaning of 'proof satisfactory to insurer'. Measurement of loss is covered in Chapter 6. The author embraces 'aggregation' in this chapter as well as exploring the measurement of loss in indemnity insurance, the meaning of

* *Insurance Claims*. Alison Padfield QC. Bloomsbury Professional (5th ed., 2021), 454 pages. ISBN: 9781526511911. Hardback £165.

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excess and deductibles, reinstatement, average and under insurance, salvage and the significance of having a limited interest in property.

The title of Chapter 7 is 'Presentation of claims' which covers the procedural conditions and in particular notification clauses. The chapter starts with the classification of such obligations in insurance contracts, and then moves to the evaluation of what must be notified, who must satisfy the burden of notification required by the contract, difference in the meaning of notice and notification, and how waiver and estoppel (by the insurer who discovered the breach of such terms) can be argued and proven by the assured.

The insurer's handling of claims is analysed separately in Chapter 8 which assesses the expectation of the insurer by the regulators in handling a claim under the insurance contract. Both assured and insurer would find very useful points here especially with respect to the implications of the insurers' conduct and words that might be regarded as a waiver by the insurers of their rights to exercise a remedy. In this respect, a particular attention is drawn to the significance of reservation of rights by the insurer and the operation of claims control and claims co-operation clauses. Moreover, the chapter evaluates fraudulent claims by the assured, insurers' interim payments, privilege, recovery of payments made to settle claims and the Human Rights Act 1998.

Chapter 9 continues to cover some further procedural details of an insurance litigation such as the pre-action protocols, identifying the appropriate court, legal professional privilege, evidence for trial, costs against non-parties and application for joinder to existing proceedings involving insured. Alternative dispute resolution and Financial Ombudsman Service were explored in Chapter 10 under the title of 'Alternatives to litigation'. Defences arguable by the insurer is covered in Chapter 11 including breach of policy terms -warranties and conditions precedents-, the duty of fair presentation of the risk, fraudulent claims, lack of insurable interest, supervening illegality and frustration. The chapter refers to the pre- and post- Insurance Act 2015 principles applicable to insurers' defences. The reader will find also detailed references to how limitations of actions will operate. Insurers' waiver of rights to exercise remedies here is covered more extensively than in Chapter 8 as Chapter 11 includes more generally waiver of breach of the duty of fair presentation of the risk as well as waiver of breach of contract.

Subrogation is covered in Chapter 12 which summarises neatly the different doctrines clarifying the legal basis for insurer's subrogation and clarifies how the doctrine is to be distinguished from contribution. The chapter also covers the operation of s 14A of the Limitation Act 1980 in an action by the subrogated insurer. Chapter 13 describes double insurance and contribution. In this chapter the reader will find information about excess clauses, calculation of contribution, contribution where one insurer is entitled to reject the claim, rateable proportion clause, clauses prohibiting other insurances, the significance of Civil Liability (Contribution) Act 1978, the separation of contribution from subrogation and special circumstances which arose with regards to employers' liability insurance and the Fairchild Enclave.

Reinsurance is referred to in Chapter 14. This is not a detailed chapter analysing reinsurance generally. However, the chapter explains the meaning of the follow the settlements clause, the role of the claims co-operation and claims control clauses and limitation of actions. It touches briefly on the 'as original' clauses and construction of policy of insurance in light of reinsurance.

Chapter 15 refers to the applicable law, jurisdiction under Regulation 1215/2012 (the Brussels I Regulation) (recast), jurisdiction were Brussels I Regulation (recast) does not apply and Jurisdiction following the end of the transitional period after the United Kingdom's exit from the European Union.

The duties and liabilities of insurance brokers are analysed extensively in Chapter 16. This chapter especially is a very useful guide for every party that involves in an insurance or reinsurance transaction (assured, insurer, reinsurer, brokers). The author explains in greater clarity the nature of the broker's duties both in contract and in tort, in what circumstances brokers are regarded as to have breached their duties, and the consequences of their breach. The chapter questions several different circumstances where insurance brokers might be held liable, the required elements of such liabilities and who bears the burden of proving what, and the defences available to the broker. The chapter includes an extensive list of case law authorities that discussed assessing damages that the broker will be liable to their client. Moreover, the chapter refers to whether to join the broker to an action against the insurer and costs of civil proceedings brought against broker and insurer.

Some specific types of insurance are covered in Chapter 17 which, concisely refers to the meaning and scope of some specific clauses in the types of insurance included in the chapter: accident, business interruption, (including extension clauses) directors and officers' insurance, legal expenses, permanent health, product liability, professional indemnity, property and public liability insurance.

More specifically, Insurance Conduct of Business Sourcebook (ICOBS) has been referred to extensively throughout the book and especially in Chapters 1, 3, 7, 8 and 16. Section 13A of the Insurance Act 2015 is dealt with succinctly in Chapter 8. In Chapters 3, 5 and 14 the (re)insurer's duty of good faith in handling the claims are touched upon. As the author notes in Preface, the Supreme Court's judgment in *The Financial Conduct Authority v Arch Insurance (UK) Ltd* (the 'FCA Test Case') [2021] UKSC 1 was handed down when the book was at proof stage. The author nevertheless managed to include comprehensively the implications of the FCA Test Case in Chapters 3, 4 and 17.

The book takes the reader from the basics of an insurance contract such as how they are formed, the actors involved in this formation, the features of the market where all these activities take place. It then moves step by step into the detailed and complex nature of the operation of and the interaction between several different principles of insurance contract law. Additionally, procedurally how an insurance claim is expected to be dealt with at different stages of the contractual relationship, and the consequences of actions or non-actions of the parties involved at those relevant points of their relationship are explored. The book will not disappoint the reader whether a student who needs a clear introduction to the insurance law market and a comprehensive and concise overview of the contractual and procedural principles applicable in insurance law; or whether a practitioner who needs guidance on how and where to start understanding the balances and disputes between the insurer and assured; and how to move on thereafter, or an insurance academic who is interested in reading about the operation of insurance law principles and the procedural matters available to enforce them.