

BRITISH INSURANCE LAW ASSOCIATION

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EDITORIAL

This Bulletin contains the fruits of the European Study Group and a detailed report of Contract and Insurance Law in Europe is included. This is a valuable and informative paper.

There is also an Editorial from Professor H.A.L. Cockerell, O.B.E., and we take this opportunity of congratulating Professor Cockerell on his recent elevation to his Professorship.

The Working Party's paper on the Law Commission's Working Paper No. 66 on Interest provides a good solid foundation for future work in this area.

CURRENT LEGAL CHANGES

Since the October Bulletin there have been some further interesting legal developments and it is also possible to clarify items formerly reported in the light of new information. It is a feature of modern legislation that its import is not always readily apparent; perhaps we are all becoming a little "punch-drunk" with the sheer volume emerging.

According to the Office of Fair Trading a number of registrations of potentially restrictive agreements under the Restrictive Trade Practices (Services) Order 1976 have related to leases. In particular whether a clause concerning the provision of maintenance to the property of a lessor would cause the lease to be registered. This area is highly relevant for Insurance Companies' Estates Departments. In the recent case of Ravenseft Properties Limited's Application, in the Restrictive Practices Court, it was argued that the Order did not apply to leases since leases are not primarily "agreements relating to services" because the provision of housing is not a service. The Court decided that residential leases generally should be excluded from registration as there would be no trading connection between lessor and lessee and that business leases should be excluded unless the lessee was carrying on the business of supplying services of a kind covered by the maintenance clause in the lease. An example might be a lease of a petrol station tied to an oil company. This is a welcome decision of the Court.

Following the Law Commission's paper on injuries to unborn children, the Congenital Disabilities Act 1976 has reached the Statute Book. This Act is an example of legislation referred to in the opening paragraph and the Insurance Industry is currently discussing a number of its provisions. Broadly, the Act enables a child born with a disability to sue the person who caused the injury which resulted in the disability; provided, of course, medical evidence can prove this point. The injury will normally be a physical injury caused to the child's mother. In line with the Law Commission's recommendations a mother cannot be sued by her child except in the case of injuries caused in a car accident where compulsory insurance will cover her liability. A child can, however, sue its father in certain circumstances. Clearly, one of the principal "factors" giving rise to the legislation was the "Thalidomide case". The Insurance Industry will be giving considerable thought as to when liability will arise under the Act, and it will be important to ascertain in each case whether insurance is in force to cover liability either at the time of the alleged injury (if that can be clearly established) or at the time the child is born. Individual policy wordings will need to be clear in this area.

The Office of Fair Trading has recently negotiated a "Voluntary" agreement with the Insurance Industry and Building Societies on the subject of life assurances and house purchase mortgages, just as a measure of agreement was reached in 1975 concerning household insurances. The effect of the new agreement should be to allow the consumer a greater degree of choice as to the Life Company he wishes to issue the policy, and will prevent a Building Society from refusing to accept a pre-existing life policy, provided that the policy itself is suitable and the company writing it is "acceptable". However, much will continue to depend on the availability of mortgage funds and the attitude adopted by

individual Building Society Managers. Hopefully the new arrangements will help in drawing distinctions between professional brokers acting for their clients and the "mortgage broker" who is active in the field.

On the whole topic of "insurance intermediaries", there is now of course the new D. of T. Consultative Document, and a first glance reveals a growing distinction between professional brokers and other types of insurance agents. A detailed study of the Draft is now taking place within the Industry and future issues of this Bulletin will refer to progress made. In addition the Insurance Brokers (Registration) Bill, introduced by Mr. John Page, M.P. has now received its Second Reading in the House of Commons. This is a developing area.

R.A. Deacon