

BRITISH INSURANCE LAW ASSOCIATION

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CURRENT LEGAL CHANGES

Mention was made in the March Bulletin of the attention now being given to insurance intermediaries. It will be recalled that the Department of Trade initiated studies by the four principal insurance brokers; and by B.I.A. and L.O.A. on allied topics concerning "other agents". Submissions have already been made to the Department of Trade by these organisations, but, in the meantime, the Insurance Brokers (Registration) Bill introduced by Mr. John Page, M.P., has received government backing. The Bill received the Royal Assent on July 29th. There are a number of criticisms which can be levied against the legislation but it is to be hoped that it will not restrict the activities of competent agents who are not able to achieve registration as insurance brokers. Much will depend on the attitude of the proposed Registration Council and its composition. As the measure is very much a piece of "enabling legislation" a great deal will depend also on the Regulations which emerge and it will be essential that full discussion takes place between the insurance industry and the Department of Trade when draft Regulations are published.

Turning to the question of exemption clauses in contracts, flowing from the Law Commission's reports, we have seen the emergence of the Unfair Contract Terms Bill. Happily the government took heed of the insurance industry's representations and insurance contracts have been excluded from the ambit of the Bill. However, the "quid pro quo" of this exemption is the establishment of a Code of Practice applicable to non-life private policyholders which, although not mandatory, will have a strong persuasive influence within the industry. This is another measure aimed at protecting the interests of consumers. The Bill is expected to become law on 26th October. Quite how insurance practice will be directly affected is not clear but the result must be more definitive and searching questions in proposal forms, coupled with statements informing proposers of the consequences of non-disclosure. Insurers and brokers may experience some problems in assisting with the completion of proposal forms or interpreting answers given in the forms. Compliance with this voluntary Code is obviously necessary to avoid insurance contracts being reinstated in the Bill. Changes in printed documentation, such as proposal forms, can await the next stage of printing and this may be a valuable delay because we should soon see changes in our National Contract Law pursuant to the E. E. C. Directive on Contract Law.

Whilst on the subject of exemption clauses, readers will have been interested in the recent case of *Levison v. Patent Steam Cleaning Co.* which concerned carpet cleaners and a purported exemption from liability clause for loss of the carpet. The Court of Appeal held that in order for the exemption to be effective the burden of proof was on the cleaners to show what had happened and that this did not involve negligence on their part. Lord Denning went so far as to say that the Court might even strike out the exemption clause where there was an imbalance in the bargaining power of the parties.

In yet another case recently concerning exemption clauses, *J. Evans and Son (Portsmouth) Ltd. v. Andrea Merzario Ltd.* 1976, it was held that even where both parties to the agreement containing the exemption clause are businessmen the Court of Appeal may nonetheless regard such clauses as being subject to the Court's control. This is a long way from the fundamental breach point made in the *Suisse Atlantique* case.

Finally, readers will no doubt have complied with the 30th June deadline for licence applications in respect of the operation of a consumer credit business and a consumer hire business, for which categories appropriate licences are required under the Consumer Credit Act, 1974 from 1st October 1977.

R. A. DEACON