

NOTES ON THEME FOR 1982 WORLD CONGRESS OF INSURANCE

INSURANCE AND THE LIABILITIES
OF THE PROVIDERS OF SERVICES

Much has been written in recent years on liability for products and product liability insurance. The present theme concerns the liabilities of those who provide services as distinct from products and the extent to which insurance may be provided to indemnify them against claims for loss or damage arising out of either defects in the services provided (malfeasance) or failures to provide services that should have been provided (non-feasance).

It is hoped that national reports will supply answers to the following questions :

1. What is the civil liability of providers of services such as medical practitioners, architects and airport operators, for personal injury or damage to physical property arising out of the services provided?
2. How, if at all, does their liability differ to :
 - (a) persons with whom they have contracted for the services, and
 - (b) other persons?
3. Are any special defences open to them? (For example, can they plead):
 - (i) that the services were provided without obligation on their part;
 - (ii) that the contract for services expressly provided that they would not be liable;
 - (iii) volenti non fit injuria;
 - (iv) that they enjoy some special protection;
 - (v) that the loss was not foreseeable or too remote in law;
 - (vi) 'the state of the art'?
4. At what point does a claim become time-barred?
5. What is the civil liability of providers of services for financial loss unaccompanied by personal injury or damage to physical property for example, through bad financial advice, failure of a director to perform his duties, or consequential loss arising from the failure to supply electricity or postal services?

6. What special defences are available in respect of claims under 5. above.
7. How far is insurance (a) permissible, (b) available against the risks cited in 1 and 5 above? (Any special features of such insurances could be noted.)
8. Where a public authority is under a general legal duty to provide a service yet fails to provide it, how, if at all, may the duty be enforced by a private citizen who is aggrieved by the failure?

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