Paradigm Academic Press
Law and Economy
ISSN 2788-7049
FEB. 2025 VOL.4, NO.2

The Evolution of Insurable Interest in Law and Practice: A Comparative Analysis of Marine and Life Insurance

Shuo Cao[1]

[1] Independent Researcher, Henan 466000, China

Correspondence: Shuo Cao, Independent Researcher, Henan 466000, China.

doi:10.56397/LE.2025.02.06

Abstract

Practically, it is widely believed that before the 18th century, the law was silent on the relationship between the insured and the subject matter insured. This results in the insured, who has nothing to do with the subject matter insured, gambling in the name of insurance for profit. It was common for the people who seemingly did not have any interests in the property likes of ship or cargo to try to obtain the proceeds of insurance by way of the insurance. In life insurance, it was even possible for people to insure the lives of public high-profile figures. If they succeed, they can make a lot of money. If it fails, it's just a loss of premium. Such behavior violates the original purpose of insurance contracts, which is to transfer risk. This article discusses the position of insurable interest in marine insurance and life insurance. Comparing and analyzing related cases and the classification theory of insurable interest demonstrates the importance of adopting a more dynamic and open definition of insurable interest to the insurance market.

Keywords: insurable interest, legal definition, marine insurance, life insurance, insurance contract

1. Introduction

Insurable interest plays an essential role in insurance law. To resist gambling by insurance and maintain the stability of the market, the provisions on insurable interests have been initially improved in the Marine Insurance Act 1745 and the Life Assurance Act 1774. Insurable interest is discussed in many cases, and the classification of insurable interest is also mentioned. This article will analyze the historical background and development of insurable interest, and discuss how insurable interest can adapt to the actual needs of the insurance market by comparing relevant cases and scholars' views on the classification of insurable interest.

2. Historic Development of Insurable Interest

Insurable interest did not appear until 1745. The requirement that the insurer must have insurable interest first appeared in the Marine Insurance Act 1745 (MI 1745)[1]. The requirement to have an insurable interest in the subject matter insured continues thereafter. The emergence of insurable interests makes the distinction between insurance and gambling clear.

The Marine Insurance Act 1745 stipulates that a contract of marine insurance which has no insurable interest, or which has no proof of insurable interest other than an insurance policy, or which is concluded by way of gambling is invalid. The requirement to gamble with insurance, criticized by the Marine Insurance Act 1745, also existed in life insurance, followed by the Life Assurance Act 1774, which explicitly prohibited gambling with insurance contracts and required the insurer to have an insurable interest, and a contract without an

[1] Marine Insurance Act 1745

insurable interest was invalid and illegal.[1]

Since then, other areas of insurance law also began to follow suit, and the principle of insurable interest gradually formed. However, it is worth mentioning that none of the acts mentioned above clearly define insurable interest. This raises the question of the practice and application. The Marine Insurance Act 1906 makes specific provisions of insurable interests.[2] Before that, statute law did not attempt to define insurable interest, leaving the issue to the courts.

3. Insurable Interest in Case Law

Lord Waller LJ made this point clear by stating that "it is difficult to define insurable interest in words which will apply in all situations".[3] The Marine Insurance Act 1906 section 5(2) defines Insurable Interest as "where he stands in any legal or equitable relation to the adventure or any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or maybe prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof."[4]

It was derived from the *Lucena v Craufurd*[5] case in which several Dutch ships were captured in a port in the South Atlantic. The Dutch ships and their cargo were escorted back to English ports by the British Royal Commissioners under the authority of the British government. The ship and cargo were insured to reach English ports. During the voyage, the cargo was hit by a storm some of which were lost and others severely damaged. At the same time England declared war with the Netherlands and the cargo became royal booty. The insurer considers that the goods were lost before delivery, so there is no insurable interest and therefore refuses to pay compensation. In this case, the two judges presented different views on insurable interests. Lord Eldon's view was eventually adopted. Although it has been criticized for being too narrow. The House of Lords ruled against the insurer for having no insurable interest. Unfortunately, section 5(2) has been proved of little help in the practice so it is imperative to see what the court defined it through the case.

It was not until the decision of the courts in *Lucena v Craufurd* in 1806 that an insurable interest was first defined by Lord Eldon as "A right in the property, or a right derivable out of some contract about the property, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party."[6] This is Lord Eldon's view, "That in addition to such a financial relationship, the insured must also stand in a recognised legal or equitable relationship to the subject matter."[7] Lawrence J, in the same case, on the other hand, offered a more expansive view of the concept of insurable interest.

He proposed a broader understanding of what constitutes an insurable interest, that extends beyond strict legal or property rights. It was stated as "to have a moral certainty of advantage or benefit, but for those risks or dangers, he may be said to be interested in the safety of the thing. To be interested in the preservation of a thing is to be so circumstanced concerning it as to have benefit from its existence, prejudice from its destruction."[8] In other words, as long as there is some connection between the insured and the subject matter, and because of this connection, the insured may suffer losses or lose benefits when the insured event occurs, then the standard of insurable interest is met.

Legal relation theory and actually expected interest theory are derived from this case, which is regarded as the basis of the definition of insurable interest and is of great significance.

Lucena v Caufurd led to "a gentle trickle of cases exploring the boundaries of legal relationships between insured persons and the vessels, property, and people that they wished to insure. Difficult cases have often arisen where a financial relationship is identifiable on which to base a claim for indemnification, but there is an absence of a legally recognised relationship. This places the courts under considerable pressure". (James Davey, 2006)

4. The Different Classification Methods of Insurable Interest

In *Feasey v Sun Life Assurance Co of Canada*[9], Waller LJ discussed the concept of insurable interest, the

[1] Life Assurance Act 1774

[2] Marine Insurance Act 1906

[3] Feasey v Sun Life Assurance Co of Canada [2003] 2 All ER 587

[4] Marine Insurance Act 1906

[5] Lucena v Craufurd (1806) 2 Bos & PNR 269

[6] Ibid

[7] Ibid

[8] Ibid

[9] Feasey v Sun Life Assurance Co of Canada [2003] 2 All ER 587

categories suggested by Waller LJ are involved in the division of insurance interests not only in property insurance but also in life insurance. Waller LJ believes that it is very important to determine the appropriate subject matter of insurance. Based on this, he puts forward the classification form of insurable interest.

The first is straightforward insurance of an item of property, "the insured having to show a recognised interest in the property in order to show insurable interest."[1] The interest can be legal or equitable. In the case of *Macaura*[2] emphasize the importance of a legally recognized connection between the insured and the subject matter, in this case, the owner of an estate sold timber to a company, of which Macaura was the majority shareholder. In this instance, the owner of a life estate sold timber to a company, and Macaura was the majority shareholder. Macaura insured the timber against fire under his name instead of the company's name. As a result, when the timber was destroyed by fire, the insurance company refused his claim. The House of Lords, in its ruling, held that for an insurable interest to exist, the person is required to have a legal or equitable interest in the property they are insuring. "Even if he holds all the shares is not the corporation […] neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation."[3]

In other words, shareholders cannot directly insure the company's property because they have no direct insurable interest in it. Shareholders should clearly state their specific rights and interests in the company, and insurance risk can be defined as the risk related to their stocks or dividends, not the company property itself. The Malta court's decision in the case of *Elmo Insurance*[4] also confirms this point. Whereby the court held that Zammit Tabona lacked insurable interest in his capacity as a shareholder of the company. The insured must show an actual or equitable relationship to the subject matter insured (John Birds, 2019).

The second category involves cases where the subject matter is a defined life of a particular person. In cases where the insurance policy covers a specific individual's life, the law strictly requires a financial loss resulting from a legally binding duty, which arises due to the death of the person insured. In Life Assurance Act 1774, it states that "From and after the passing of this Act no insurance shall be made by any person or persons, bodies politick or corporate, on the life or lives of any person, or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever."[5] "And in all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount of value of the interest of the insured in such life or lives, or other event or events".[6] The third category involves cases that which the subject matter is considered an adventure rather than merely a specific item of property. In these instances, while the policy may initially seem to cover a particular property, its actual scope is broader. Fourthly "are policies in which the court has recognised interests which are not even strictly pecuniary".[7]

The classification proposed by Waller LJ tends to recognize the narrowly defined requirement that the determination of insurable interest requires the insured to have a legal or equitable interest in the subject matter insured. On this basis, the classification shows a tendency to expand the definition of insurable interest. He defines insurable interests by enumerating them one by one and puts forward the classification of insurable interests. Although it is very clear, it is not sufficient and perfect. With the development of the market, all types of insurance may not be covered, and it is difficult to meet the needs of the insurer and the insured in practice. Moreover, it is very important that he put forward the situation when the life of a particular person is taken as the standard of insurance in his classification of insurable interests.

On the other hand, the classification proposed by Waller LJ can actually be summed up in the broader interpretation of insurable interests proposed by Lawrence J in Lucena v Craufurd. In other words, the concept of insurable interest can be reduced into a single unified definition. That is the broad definition of insurable interest. For example, the first category which is the interest (legal or equitable) in the property falls into the factual expectation. The interest usually denotes the ownership or the relationship between the property and the person. In case of legal interest, it is regarded as an absolute right for the property. On the other hand, the equitable

[1] Feasey v Sun Life Assurance Co of Canada [2003] 2 All ER 587

[2] Macaura vs Northern Assurance Co Ltd (1925) AC 619

[3] Ibid

[4] Elmo Insurance Services Ltd Noe Et vs Edwin Pace Et 122/1998/1

[5] Life Assurance Act 1774

[6] Ibid

[7] ROYAL AND SUN ALLIANCE INSURANCE LTD AND OTHERS v TUGHANS [2023] EWCA Civ 999 657

interest is considered to be related to the court's discretion. The equitable interest does not usually have the same absolute right that the legal interest enjoys but it is also an enforceable right before the court. It can be simply argued that the factual expectation should encompass the concept that the assured is rightly expected to recover the loss that on the property in which he has legally or equitably enforceable rights. Regardless of whether the interest is legal or equitable, it is a factual right that cannot be dismissed. Therefore, it will not be an exaggeration to argue that the assured who has a legal or equitable interest in the property should be covered by the definition of the factual expectation. The so-called "factual expectations" test focuses on the expectations of the real world, rather than being limited to ownership of the property. Based on the factual expectations test, an insurable interest can be established by the loss of expected economic gain from certain other interests arising from the insured property.

Harnett & Thornton mentioned the "four main heads" of insurable interest in his article (Harnett & Thornton, 1948). The first category includes property rights. The author explored the more subtle and detailed field of property interests and argued that "insurable interest contains a distinct in rem connotation in the sense that the insured is required to have an enforceable interest in the res, the destruction of which constitutes the insured event." That is "an interest that would be recognized and protected by the courts". (Harnett & Thornton, 1948) In addition to a simple title, an interest such as that of a life lessee is sufficient to be an insurable interest and is accepted by the court, noting that the security instrument provides the creditor with an enforceable right, (Harnett & Thornton, 1948) and therefore the mortgagor, pledgor, etc., also has an insurable interest. The second category is the interest reflected in the rights in the contract.

It suggests that contractual rights may be insurable interests, even if they are not specific to the insured property. This classification of contractual rights is often considered to be included in the first class of property rights because they are similar and enforceable by the courts. But the authors argue that "it is with relationship of economic disadvantage flowing from the insured event, with such relationship originating ex contractu" (Harnett & Thornton, 1948) The third part involves the possibility of assuming legal liability due to the insured event. "In liability insurance, an individual has unlimited insurable interest in his own personal liability." (Harnett & Thornton, 1948)

The policy of liability insurance is different from legal liability as an insurable interest in property. The fourth category is "factual expectation of damage". (Harnett & Thornton, 1948) This category covers a very broad spectrum, it refers to "the insured's expectation of economic benefits", and the author says, "In reality, the factual expectation concept is the true definition of insurable interest." (Harnett & Thornton, 1948) By analyzing the contents of these definitions, the definition of Harnett & Thornton in this paper adopts the method of incomplete enumeration, that is, it does not list all types of insurable interests, but lists four main types.

And these four categories do not cover life insurance. So it is very limited, and this is mentioned by Waller L in *Feasey*[1] that its classification of insurable interests. However, this approach has the advantage of leaving room for the future without limiting the growth of insurance markets. The first two types of the definition reflect Lord Eldon's strict definition, and the third type reflects the insurable interest that an individual has in his or her liability, while an insurance policy protects the insured against the liability that may arise. For example, a builder is under a contractual obligation to complete a construction project in which he has an insurable interest. If the building is destroyed during construction, the builder is responsible to the owner for the completion of the contract, and he can have an insurable interest in the situation. This classification does not entirely depend on the damage or loss of the physical property but emphasizes the responsibility of the individual, which is undoubtedly the subdivision and expansion of insurance interests, but also a good supplement to the first two categories. The fourth type is the broadest "factual expectation", which refers to the insured's expectation of financial benefit.

It reflects Lawewnce's opinion in *Lucena v Craufurd*[2], which is called "factual expectancy text". By adopting such a definition, some factual circumstances that are excluded by strict definitions can be identified to some extent as having insurable interests. Weakening the role of property rights in determining whether the insured has an insurable interest. Help to meet the needs of the market and economic development. Lawrence argued that a moral certainty of profit or loss is enough to constitute an insurable interest. But Lord Eldon took exception to that definition. "That expectation though founded on the highest probability was not interest."[3]

Although Lord Eldon's strict definition is accepted in many cases. For example, *Macaura*[4] mentioned above. A broad definition would seem to create confusion and uncertainty. But the following justifies this broad definition,

[1] Feasey v Sun Life Assurance Co of Canada [2003] 2 All ER 587

[2] Lucena v Craufurd (1806) 2 Bos & PNR 269

[3] Ibid

[4] Macaura vs Northern Assurance Co Ltd (1925) AC 619

Harnett & Thornton's article also expresses the affirmation of the factual expectation concept is, if applied, "It is apparent that the factual expectation concept is, if applied, inclusive of all the concepts of insurable interest. In reality, the factual expectation concept is the true definition of insurable interest, phrasing insurable interest strictly in terms of a relationship to property such that the destruction of the property results in economic disadvantage, and recognizing technical property interests as merely particular types of this relationship." (Harnett & Thornton, 1948)

It is meaningful to introduce moral certainty of profit or loss into the evaluation and definition of insurable interest. It can be justified by combining several policies that form the basis of insurable interest proposed by Harnett & Thornton in the article. First, whether the expansion and uncertainty of the concept of insurable interest will lead to a large increase in the number of insurance. Lord Eldon has raised this concern. "If moral certainty be a ground of insurable interest, there are hundreds, perhaps thousands, who would be entitled to insure. First the dock company, then the dock-master, then the warehousekeeper, then the porter, then every other person who to a moral certainty would have any thing to do with the property, and of course get something by it."[1]

Undoubtedly, this explanation will lead to a certain increase in the number of insurance, but it is worth mentioning that insurance companies have their autonomy and can make corresponding adjustments according to changes in the market. For example, insurance companies can practically limit their liability by frustrating the assured as a way of raising premiums or adding clauses to insurance contracts to avoid excessive risks. "An effective curb on excessive insurance is the general ability of insurance carriers to decline risks, or insert protective clauses". (Harnett & Thornton, 1948)

It is not appropriate to restrict the definition of insurable benefits to select suitable policy holders to reduce the number of insurance policies or the types of insurance policies, because insurance companies have sufficient expertise and market judgment, and are themselves exposed to constant changes in the market.

Second, the consideration of the anti-gambling policy. Anti-gambling policies have been regarded as an important factor and have been extended to some extent to Insurance laws such as the Marine Insurance Act 1745 and the Life Assurance Act (1774). This reflects the English courts' ongoing concern that insurance contracts might be abused as a means of gambling meaning that the strict consequences imposed on such contractual devices are necessary not just to frustrate gambling but the general public interest. All this seems to be reasonable, but it is worth mentioning that at the pre-contractual stage, the insured has the obligation for the full disclosure of the relevant fact based on which the insurer decides whether to enter into a contract on the specific matters or avoid the insurance policy which contains feature or form of gambling.

If the insurer does not inform or choose to hide important matters. By attempting to gamble in the form of an insurance contract, the insurer can claim that the insurance contract is invalid under certain circumstances on the grounds of breach of the duty of good faith and avoid taking the insurance liability. "While some form of valuable relationship to the occurrence is necessary to avoid the wagering aspect, the policy against wagering is satisfied by any valuable relationship which equals the pecuniary value of the insurance, regardless of the legal nature of that relationship." (Harnett & Thornton, 1948) Therefore, anti-gambling policy need not be achieved through the limitation of the scope of insurable interest.

From the point of indemnity of loss, it does not make sense to limit the indemnity of loss. The Canadian case made it clear by stating that "the public policy restricting the insured to full indemnity for his loss is not consistent with the restrictive definition of insurable interest set out in Macaura."[2] It can be seen clearly from the Canadian court's argument that the result of restricting the indemnity inevitably produces the absurd outcome just like in the case of Macaura.

A similar inadequacy can be found in Zimmerman. the shareholder of the company was not able to recover his loss as it was found that there was no insurable interest in the company though the company had ceased to operate long ago and had the registry stuck out due to financial non-compliance.

The focal point of both cases lies in corporate personality. It was established in the case called *Salomon and Salomon*. Although there was a rare exception in which the court allowed the piercing of the corporate veil, the separate entity of the company has been upheld by the court. The basis of the corporate entity might be simple. It may expedite the business by providing a safety net for the entrepreneur. In other words, the owner of the incorporated company is not liable for the debt of the company. On the other side of the coin, however, it also means that the owner cannot take the capital and the profit of the company as he pleases to do so.

[1] Lucena v Craufurd (1806) 2 Bos & PNR 269

[2] Kosmopoulos v. Constitution Insurance Co. [1987] 1 SCR 2

5. Trend of Development of Insurable Interest

The relationship between the corporate entity and insurable interest has been seen as one of the most difficult issues that can be dealt with by the operation of the law. Firstly, the purpose of the corporate entity is initially to provide the owners with protection and ultimately expedite business transactions. This purpose is equally applicable to the insurance business. By allowing the wide and insurance, the assured can be encouraged to engage with his own business without any fear that might happen in case the business is not going as it meant.

Therefore, it is clear that the underlying principle of both corporate entity (personality) and insurance is made based on commercial common sense to promote the business as a whole. However, as discussed above, when these principles are put into a single mold, it would produce undesirable results.

In practice, the loosen criteria have been adopted in the judgment of substantial cases, without causing the so-called uncertainty. In *Wilson v Jones* Two shareholders of a company that had laid a transatlantic cable filed a claim against the insurance company for damage to the cable. The insurance company argued that the shareholders had no legal or equitable interest in the cable, but the court allowed the two shareholders to receive compensation. This kind of broad interpretation of insurable interest also exists in American insurance law. According to the New York Insurance Law, "insurable interest" is defined as including "any lawful or substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage".[1] The "any lawful or substantial economic interest" formulation was acknowledged by many other states.[2] It can prove that adopting a broader definition does not have confusing effects in practice.

Whether it is necessary to adopt the American definition in interpreting insurance interest in the UK insurance policy. the Canadian case. Though it was Canadian jurisdiction, it has some bearing on UK law and can draw some meaningful interpretation regarding the interpretation of the insurable interest.

It is obvious that the principle reflected in Macaura v. Northern Assurance Co. Ltd (1925) mentioned above has been somewhat backward and difficult to keep up with the development of the market at present, and has been given up and rejected by many countries. This is the case in both Australia and Canada, where, in short, the provision of insurable interests tends to recognize the economic benefits of insurable interests rather than the benefits provided for in law.

From the perspective of the provisions and requirements of insurable interests in the insurance laws of various countries, there is a softening trend. The concept of a more inclusive and open insurance interest is gradually being accepted by many countries. Due to the development of the economy, the insurance market is also diversified, so it is necessary to expand and improve the requirements of insurance interests. It can also meet the needs of the insurer and the insured.

6. Conclusion

The definition of insurable interest has always been debated, and historical judicial decisions have varied in favor of a broad or narrow definition. By analyzing the policies behind the definition of insurable interest, we can find that restricting and narrowing the definition of insurable interest is not beneficial to the promotion of public policy.

In practice, judging from the current judicial situation in the United States and Canada, it seems that the definition of insurable interest is more inclined to adopt a broader interpretation. Judging from the impact of the judgment, it did not lead to confusion. The development and needs of the market may be better served by adopting a broader definition of insurable interest rather than limiting insurable interest to a narrow scope. Through analysis, the broader definition serves the purpose of the insurance policy better than when we adopt a narrow approach.

According to Harnett & Thornton mentioned the "four main heads" of insurable interest in the article and the four categories of insurable interest discussed by Waller LJ in Feasey v Sun Life Assurance Co of Canada, a broader definition of insurable interest seems to be more appropriate, and perhaps it should be left to the court to judge according to specific facts. But these classifications are very meaningful, they can complement each other and be applied in practical cases. They make people think about whether there are more types of insurable interests to adapt to future development.

As for a single definition of what constitutes an insurable interest, it needs to be a concept that can develop continuously with the changes of time and market, and strict boundaries may cause problems when applied. As long as there is some connection between the insured and the subject matter, and because of this connection, the insured may suffer losses or lose benefits when the insurance event occurs, it is enough to constitute insurable

[1] New York Insurance Law Art. 34

[2] California Insurance Code [281], Louisiana Insurance Code, R.S. 22:614 [614B]

interest.

References

James Davey, (2006). The reform of gambling and the future of insurance law. *Legal Studies*, *24*(4), p. 512.

John Birds, (2019). *Modern Insurance Law.* 11th edn, Sweet & Maxwell, p. 163.

Harnett and Thornton, (1948). A Socio-Economic Re-evaluation of a Legal Concept. *Columbia Law Review*, *48*, pp. 1162, 1175.

Copyrights