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Introduction

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COMMENTS

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INTRODUCTION

Until fairly recent years, insurance was conceived of simply as a method by which an individual secured protection by way of contract against losses resulting from a variety of risks to which he was exposed. In the main these risks involved loss of interests in property, loss of life including health and physical well-being, and losses resulting from being called upon to indemnify others for harm done to them under circumstances which resulted in the imposition of legal liability on the insured. In its traditional form the latter kind of insurance afforded reimbursement within the terms and limits of the policy to the individual insured who was compelled to respond in damages to another. Within the last quarter of a century, the emphasis in liability insurance generally, and automobile liability insurance in particular, has shifted from the concept that its purpose

is to afford protection to the one who contracts for it, to the premise that it is designed to afford protection to the person who is injured or sustains damage. In this respect it is more like accident than liability insurance except that the victim of the accident does not himself contract for the protection. Legislation such as Louisiana's Direct Action Statute and the provisions of its Safety Responsibility Law, which have been applied so as to permit not only direct action against the insurer but to deprive the latter of defenses it would otherwise have in an action by the insured himself, are significant signposts. In addition, there is some indication that insurers themselves are coming around to this point of view. The modern family automobile policy undertakes in effect, with a very few exceptions, to provide protection to anyone who is harmed by the operation of the automobile covered by the insurance. Not only is this true, but the purpose underlying the policy seems to be to afford coverage to the insured against the consequences of his legal liability growing out of the use of any automobile as long as he does not seek to make one policy do the work of more than one. This protection is extended generally also to his spouse and other members of his household. Whether insurers are simply getting more liberal or are the victims of their own competition, or are trying to forestall governmental competition, the effect of this is also to provide a greater degree of protection to the public against the possibility of loss stemming from an automobile accident. A similar tendency is discernible in the field of fire insurance and the risks related thereto. That is, many thoughtful people believe that insurance on property should "follow the property. Court decisions to this effect are growing more numerous despite the fact that such a view must necessarily conflict with the fact that the fire insurer is concerned with the moral hazard to which the property is exposed as well as the physical. These views suggest that property and liability insurers are conceived of as being custodians of a fund that exists for the purpose of saving from loss anyone who may suffer by the occurrence of a risk covered by the policy. Of course this is a far cry from the concept of indemnification of the insured who buys the policy for his own protection.

Certain it is that the law in this area is not static and that more and more demands are being made upon the courts and the legislatures to render more effective the concept of insurance as a device for the distribution of risk by extending the scope of its

protective reach far beyond the one who contracts for it. The state is greatly interested in the business of insurance, as may be witnessed by the thousands upon thousands of statutory regulations which seek to safeguard those dependent upon its protection. And as a people we seem to be moving ever closer to the view that the risks to which life is subject must be reduced to a minimum as far as it may lie in our power to do so, whether the particular individual does anything about it or not. Thus it seems to follow that the more such risks are assumed by business the less the need will be for government to assume them. The extent to which they can be so assumed in our competitive society without an undue burden on the participants remains to be seen. There is no such thing as free insurance. Somebody must pay or a breakdown will be inevitable.

In any event, factors such as those suggested render any treatment of legal principles which operate in the field of insurance difficult if not impossible of analytical exactitude. This will be discernible in the accompanying student examinations of a group of subjects selected by them for study. The tendencies hereinabove mentioned are reflected in the statutory and jurisprudential treatment of warranties and representations, the concepts of waiver and estoppel, direct actions, the complex relationships resulting from group insurance, as well as the adjustment of the rights of multiple claimants and the insurer's possible right to subrogation. The views expressed herein are, of course, the views of the students. If it should be felt that in some places there is too much detail and not enough in others or too much emphasis here and not enough there, it should be remembered that choices of the kind involved are not easy. Although the reader may not find answers for which he may yearn, he will find exposed most of the problems in the areas considered. Perhaps, also, the attempt to weigh and evaluate them may be helpful.

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Some Legal Problems in Group Insurance

Group insurance covers the members of some specified group under a single master policy without the normal requirement that each insured be individually selected.[1] In these arrange-

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1. For general treatments of group insurance, see 1 APPLEMAN, INSURANCE