

# 概説：海上保険システムの形成

——故勝呂弘博士著、改定新版海上保険を参考にして——

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## はじめに

恩師勝呂弘博士の講義をノートし自習しという学習期間を過ごし、現在の私がある。勝呂博士はすでに西方の国に旅立ったが、「海上保険研究」、「保険学」、「海上保険」、「改訂新版海上保険」その他多くの論著を残した。私はそれらの多くを繰返し読むことで自省と安堵の糧として久しい。私ごとだが、病気のため近年入退院を繰返してきた。魔法の薬ともいわれるステロイド剤で最近はある程度苦痛が減じてきた。しかし、人は病によって様ざまなことを思考させられる。時の大切さと空しさそして一病息災を教えられる。

私は感性と共同する痴呆予防を Self-management するため「改訂新版海上保険」（現代商学全集第26巻，春秋社，昭和26年。）を病床にあるときは英訳してみようと試みてきた。2000年を迎えるとなるとそれも8年を越すが、同書の要点を私なりに整理し故勝呂博士の主張をできる限り英訳することで勉学の心を知らうと試みたいからであった。無論、下手糞な英語文であることは私自身十分に知っている。本稿はそこごく一部分に過ぎない。ただ、この作業を通じて学友光岡貞夫教授に「まだ私は元気だ」というアピールをしたい。と同時に自分自身が2000年3月末で本学を去るメモリーとしてこの「痴呆予防訳文」を甲南経営研究（第40巻3・4合併号，2000年3月）に残すことにした。この点は許されたい。なお、本稿の脚注はできる限り精査したが、

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十分とはいえないことをことわっておく。

甲南大学経営学部の一層の発展を乞うとともに甲南学園全教職員および学生諸君に心から幸あらんことを祈る。ホトトギスの花が庭に咲く季節となった。寒気も一段と増して来た。最後に光岡貞夫教授の一層のご健勝とご多幸を願っている。(1999.11.30.)

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—by late Dr. Hiroshi Suguro, *New Edition*

“*Marine Insurance.*” 1955. 1st ed. *shunjū-sha.*—

## I The transitions of marine insurance law

The major line of the insurance today are Marine, Life, Fire and Auto-mobile insurances. The function of those individual insurances varies so much according to the respective fields of the community where they are actually operated that they can not be assumed to have been originated from one and the same source.

In view of the general trend of these insurances as a whole, however, it is not too much to say that the marine insurance (*Seevericherung*) is the most original one from which all the other current insurances have come into being.

### 1. Development of *foenus nauticum*.

(*Foenus nauticum*. Maritime Loan. *Seedarlehen*. or *Bottomry* and *respondentia*. *Bodomerei*. Le prêt à la grosse aventure ou prêt à retour de voyage. to Law of Barcelona)

It is believed that the marine insurance has been transformed either from the Maritime Loan (*foenus nauticum*, *Seedarlehen* or from the

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Bottomry and respondentia (Bodomerei, Le prêt à la grosse aventure ou prêt à retour de voyage), but it is extremely difficult for us determiningly to prove so many doctrines on these fact. For example, there are the Pardessus, J.M., E.Bensa, and L.Goldschmit doctrines, all of which refer the marine insurance to the north Italian coast cities in the 14th century. On the contrary, K.F.Reats opines that the marine insurance was originated in Portugal in the 2nd half of the 14th century, while A. Schaube traces it to Italy like the other opinions but he insists on the middle of the 14th century.

Among these doctrines of this kind, Pardessus, Bensa and Goldschmit appear to be most believable, because Genoa, Florence, Pisa and Venice used to be the most prospered ports for the then Barcelonan overseas trade so as to bring forth the device of marine insurance in such areas, the oldest marine insurance laws having been put in force in Barcelona as Ordinance of Barcelona 1435 and in Florence as Ordinance

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(1) Pardessus, J.M., *Collection des Lois maritimes antérieures au XVIII<sup>e</sup> siècle*, 6 vol.1828-1845. (V. p.332.) (Ripert, G., *Droit Maritime* Tome III, 2e éd. Paris 1923. 3e éd. 1930. no.2347).

(2) Bensa, E., *Il contratto di assicurazione nel medio evo*. Genova 1884. Bensa., *Historie du contrat d'assurance au moyen âge*. Gênes.1894. traduction française de Valéry. 1897. p.18. (Ripert, G., no 2347. p.313.)

(3) Goldschmidt, L., *Zur Geschichte der Seeversicherung* (Jaristische Abhandlungen, Festgabe für Beseler 1885): *Universal geschichte des Handelsrechts*. Stuttgart. 1891. Bd. I. S.363.

(4) Reatz, K.F., *Die Geschichte des europäischen Seeversicherungsrechts*. Erster Teil. Leipzig. 1878. S.13-14.

(5) Schaube, A., *Die wahre Beschaffenheit der Versicherung in der Entstehungszeit des Versicherungswesens*. (Jahrb. f. Nationalökonomie und Statistik. Dritte Folge. Bd. V. S.40f., 473ff.)

Schaube, A., *Die Übergang vom Versicherungs darlehen zur reien Versicherung* (Jahrb. f. Statistik. Dritte Folge. Bd. VI. S. 481ff.).

of Florence 1523 as well as in Burgos as Ordinance of Burgos 1538 and in Bilbro as Ordinance of Bilbro 1560.

The basic ideas and ideals of these laws are considered to have been taken up and eventually incorporated into the other different countries' marine insurance laws of their own,<sup>(6)</sup> among which the most worthy of note would be the marine insurance clauses issued in Florence first and later developed into the standard clauses of the Lloyd's Policy Form.<sup>(7)</sup>

## 2. Development in Holland

It is also believed that the marine insurance was initiated through the discovery of the American continent by Columbus and grew up along with the shippings and shipments to the East Indies by those Portuguese who settled down in the main ports of that territory. In fact, the discovery of the new Continent and the development of their overseas trade had gradually reduced the significance of the main ports in Italy as the world's overseas trade centers in such a way that the products of the new continent were shipped by way of Lisbon to Bluze and then as far as the port of Antwerpe which became as prosperous as Venice as a result.

Consequently, in that time of the 16th century, the marine insurance device was first brought forth in Antwerp and put in use as called "Antwerp(e) Practice" (Gewohnte ende Constuymē van Antwerpen). And this "Practice" is said to have become later the basis of the

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(6) Kato, Y., *Gendai-Kaijyo-Hokenhō-no-Tityu-kaiho-kaisho-ni-kansuru-ichi-kenkyu* (Teikoku-Gakushi-in-Kiji) vol.3. No.1. 1934.

(7) Hashimoto, S., *Eikoku-shiki-kaijyohoken syoken-no-kenkyu*. Koto, Y. *ibid.* 1934., Dover, V., *Elements and Practice of Marine Insurance*. London. 1951.

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Barcelona Laws and some of the basic principles of the current German Marine Insurance Clauses (Allgemine Seeversicherungsbedingungen) as well.<sup>(8)</sup>

Some time later, the prosperous Ant-werp port which was international as such, was put under the control of the Spanish Navy due to the Religions War and in 1581, Holland come advent into Spain for some time while Portugal controlled the Portugues overseas dominions, especially the main ports in Asia made a success of their overseas trade there.

Unfortunately, however, there was one thing that threatened the sea. That was the piracy. The menaced the ships in the North Sea and their voyages were extramly endangered. Moreover, those merchants then engaged in the financial business such as “Fugger” and “Welser” were very afraid of the Religious War and took refuge to Amsterdam and Hamburg. This fact is worth our keen attention.

In fact, the menace of piracy at sea brought forth the need for the establishment of marine insurance companies in Holland in 1628 and a national marine insurance corporation set up in Hamburg in 1663 as well. Thus, due to the Religious war, the marine insurance business was introduced into Germany by way of Hamburg and naturally, although from the less informed sources, it is believed that the marine business was introduced to Great Britain finally. In this connection the writer

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(8) Kisselbach., Die wirtschafts und rechtsgeschichtliche Entwicklung der Seeversicherung in Hamburg. 1901. S.15. ss.109-110.

Kracht, F., Die Rottedamer Seeversicherungs-Böse, ihre Entwicklung und Bedingungen. Weimar. 1922. S. 8.

Manes, A., Gütersversicherung. Leipzig 1931. S. 7.

would briefly dwell upon the marine insurance in Germany.

### 3. Development in Germany

It is said that in Hamburg in 1722, there were about twenty marine underwriters of which the first one was established in Hamburg in 1765.<sup>(9)</sup> The market there was too small to compete with the Amsterdam market. Legally, in 1727, some marine insurance regulations were incorporated in “the Preusen Maritime Law” (Preussischen See Recht), and then in 1731, “the Hamburg Insuranc and Average Law” (Hamburgische Assekuranz, und Havereyorudung von 1731) was enacted.

Those laws are regarded to have been the basic ones on which the first Marine Insurance Law of Germany (Das Deutsche Seeversicherungsrecht) was established, in accordance with which the general marine insurance clauses were framed. However, in the 18th century, these clauses were diversified in their interpretation so much that they were necessitated to be standerdised and in 1794, in conformity with the provisions of the “Preussen Common Law” (Allgemeines Landrecht für die Preussischen Staaten von 1794), the “Hamburg Standard Marine Insurance Clauses” (Allgemeine Plan Hamburgischer Seeversicherungen von 1847) were established in 1847. Under this law, however, the territory of Bremen was excluded from the application, because Bremen had had since 1818 the standard clauses of their own (Versicherungs-Bedingungen der Bremischen Seeversicherungsgesellschaften von 1818)

In 1861, the Commercial Law of Germany (Allgemeines Deutsches

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(9) Manes, A., a a OS.

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Handelsgesetzbuch) was enacted and the existing marine insurance law were all incorporated therein. Along with this law, the general regulations on the Hamburg marine insurances (Allgemeine Plan Hambrugischer Seeversicherungen) were set up in 1876, in the name of General Marine Insurance Law 1876.

Early in the 20th century, the Marine Insurance Contracts Law (Reichsgesetz über Versicherungsvertrag von 1908) was enacted in 1908, by which all the marine insurance laws in the Commercial Law of Germany (D. HGB) were modified. Until then, for example, Bremen had had the marine insurance clauses special to the Bremen market, but in an attempt to standerdiser all the existing clauses in Germany, the Bremen Clauses were integrated into the said general clauses, and the German Marine Insurance Standard Clauses (Allgemeine Deutsche Seeversicherungs-Bedingungen von 1919) was set up in 1919, which is now in force.

#### 4. Development in France

That the marine insurance business was introduced also into France is easily believable because of her geographic situation in Europe. According to G. Ripert's "Droit Maritime," this fact can be traced back in the 15th century. In France, all the customary transactions of marine insurance business that then being carried out might be referred to the "Guidon de la mer."<sup>(10)</sup> This Code was made up of 20 articles to govern the costumary transactions in the time of mid 1500<sup>s</sup> and thereafter, but its

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(10) Ripert, G., no 2348.



<sup>(11)</sup>  
compiler is still unknown. In 1681, the “Maritime Act” (Ordonnance de la Marine) was completed by J. Colbert (1617~1683) after his 10 years researches, in which in the 6th Section of the Chapter concerning the marine insurance, those provisions of the said “Guidon de la mer” were taken into due consideration. This 3rd Chapter, 6th Section of the Ordonnance de la mer has proved to be not only significant for the marine insurance in France herself, but also of the great influence over the Marine Insurance Act that was enacted in Great Britain in 1906.

In this matter, we should study the researches on the “Ordonnance de la marine” by Valin, Pothier, <sup>(12)</sup>Émérigon. In the Commercial Law (Code de Commerce) of Napoleon 1807, the private law chapter of the Ordonnance de la mer was set aside from the other chapters under the title of the 2nd and 3rd. “Maritime Code” of the Napoleon Commercial Code and has since then been in force till today with some alterations from time to time.

In France, early in the 19th century, the marine insurance business began to be transacted by way of stock company and so all the private marine underwriters ceased to exist to see the establishment of the “La Compagnie Royale” and “Les Assurance Générales” whose capitals counted so very much over the marine market to grow up to require those marine Hull insurance clauses in use to be standardised with result

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(11) Marshall, S., A Treatise on the Law of Insurance. 3rd ed. London. 1823. P.20.

Lownders, The Law of General Average. 4th ed. London. 1888. P.15.

(12) Valin, Nouveau commentaire sur l'assurance de la marine du 1681. 1760.  
Pothier, Traité du contrat d'assurance 1767.

Émérigon, Traité des assurances et des contrats à la grosse. 1783.

(13) Ripert, G., no.2350.

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the standard hull policy known as “La police corps Paris-Marseille” was set up first and in 1873, the standard combined policy form for Hull and Cargo business was established.

The standard forms of marine insurance policies that are in use to-day in France are the one framed in 1913, know as “Police Française d’assurance maritime sur corps de navires” and also the “Poice Française d’assurance sur marchandises ou facultés”<sup>(14)</sup> that was made out in 1919 and partly revised in 1922.

## 5. Development in Great Britain

Now, a brief mention must be given here of the marine insurance business in Great Britain. After driving out the Dutch power from their overseas colonies, Great Britain achieved the British Dominions of Common Wealth since the mid 17th century.

As a matter of fact, in the 13th century, some of the Lombards came in London to do export and import business in the Lombard Street, and in 1568, the Royal Exchang was found under the regime of Queen Elizabeth I who, in order to get back the control of commerce from the hand of the Lombards and also of the cadres of the Hanseatic League, both of whom were all foreign residents in London, issued an order to integrate all the marine markets into the Royal Exchange where marine insurance business was to be transacted inclusively. In the 2nd half of the 17th century, however, the insurance business began to be run outside the Royal Exchange gradually, when shipments of coffee were imported in London

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(14) Ripert, G, no.2373. 2374. 2375.

and several coffee houses were run where business talks about marine insurance contracts were talked about among the shipping merchants over the coffee. So the underwriters in the Lloyd's Coffee House had already become popular since the time E. Lloyd was still alive. After E. Lloyd (1648-1712) died, some underwriters took over the Lloyd's coffee house.

In 1770, the marine insurance brokers become independent of the marine underwriters. The Lloyd's Coffee House was removed to Pope's Head Alley and became the New Lloyd's which finally turned out to be the Lloyd's Corporation in 1871, while the marine insurance brokers' business was specialized to represent the assured's interest and place the marine insurance with the underwriters. In addition to the Lloyd's the two chartered companies, such as, London Assurance and the Royal Exchange were established in 1720, both of which were privileged companies but proved to be inferior to the Lloyd's in their market shares in this country.

The "Marine Insurance Act (MIA) 1906" of the Great Britain is a single statute which was effective as from January 1st, 1907 and until then, there had been practically no law whatsoever on marine insurance. Even in 1756, when Lord Mansfield was the Chief Justice of the King's Bench, the cases of legal decisions given in the Court were as few as 60 in number. The decision in these days were all based on common sense only subject to the judge's personal discretion, except Lord Mansfield who studied deeply the Roman Laws, Common Laws and the French nautical ordinances. Anyhow, up until the time of MIA 1906, the marine insurance laws can be said to have been very primitive ones in

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such a way that every case of the law-suit on marine insurance was decided in the court on the basis of the so called “Florence Principles.”

In the 17th century, the so called “Common Policy Form” was put in use first, which was then converted into the “Lloyd’s Policy Form” adopted by the Lloyd’s underwriters as the standard policy form approved by the Lloyd’s Corporation for their exclusive use.

The origin of the Lloyd’s Policy Form of this kind can be traced back to the time of marine insurance transactions in the Mediterranean Sea. In fact, the heading words “Be it known that……” is the ones that were substituted in mid 19th century for the wording “In the name of God, Amen”<sup>(15)</sup> which comes from the wording of “Dio la salvi Amen” in Italian.

This is no doubt that most of the standard clauses contemplated in the “Lloyd’s Policy Form” come from those “Florence Clauses” based on the then marine insurance laws that were established in the time of marine insurance transactions in the Mediterranean Sea.

The Lloyd’s Policy Clauses differ from the Continental Policy Clauses in that they are mainly referred to voyage risks in the time of sailing ships and that they are made applicable to both Hull and Cargo insurances. The general standard clauses in the Lloyd’s Policy still retains their traditional form of wording unaltered and can not be regarded, therefore, to have been adequately adaptable to the development of the past marine insurance market. The special clauses in the Lloyd’s Policy are exclusively concerned with the newly developed situations to cope

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(15) Manes, A., a a OS. 11., Wright, C. and C.E.Fayle., A History of Lloyd’s. London 1927. p.148. (r). Photograph.: In the Name of God, Amen. ……as well in……own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may or shall appertain…….

S. G. In the Name of God, Amen. *Forme de Tacke de l'Es*  
Printed according to the *as well to their own Name, as for and in the Name and Name of all and every other Person or*  
as then revised and confirmed *Part or in all, such make Assurance, and*  
at New-Lyons, on the 11th of the month of January, 1779. *and them, and every of them to be Insured, left or not left, at and from*

*Swanhook to the Coast of Africa, during her Voyages of her*  
*Command of, from the Coast of her part or parts of discharge and the*  
*Islands of the Coast*

Upon any Kind of Goods and Merchandizes, and also upon the Body, Tackle, Apparel, Ordnance,  
Munition, Artillery, Boat, and other Furnitures, of and in the good Ship or Vessel called the

*Swanhook*  
whereof is Master, under God, for this present Voyage. *Philippe de la Motte*  
or whatsoever she shall go for Master in the said Ship, or by whatsoever other Name or Names the  
said Ship, or the Master thereof, is or shall be named or called, by whom the Adventure upon the  
said Goods and Merchandizes from the Loading thereof aboard the said Ship, *at*, *and*, *and*

upon the said Ship, &c. *at* *from* *Swanhook to Africa*  
and she shall continue and endure, during

her Abode there, upon the said Ship, &c. And further, until the said Ship, with all her Ordnance,  
Tackle, Apparel, &c. and Goods and Merchandizes whatsoever shall be arrived at *Africa* and her  
part or parts of discharge

upon the said Ship, &c. until she hath moored at Anchor Twenty-four Hours in good Safety, and upon  
the Goods and Merchandizes, until the same be there discharged and safely landed. And it shall be  
lawful for the said Ship, &c. in this Voyage, to proceed and sail to and touch and stay at any Ports or  
Places whatsoever

without Prejudice to this Insurance. The said Ship, &c. Goods and Merchandizes, &c. for so much  
as concern the Assured, by Agreement between the Assured and Assurers in this Policy are and shall  
be valued at

*In case of Capture: a declaration of how being carried into port to be taken*  
*a declaration of how being carried into port to be taken*

Touching the Adventures and Perils which we the Assurers are contented to bear, and do take  
upon us in this Voyage; they are of the Seas, Men of War, Fire, Enemies, Pirates, ROVERS,  
Thieves, Jetisons, Letters of Mart and Counter Mart, Surprizals, Takings at Sea, Arrests,  
Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or  
Quality soever; Barrery of the Master and Mariners, and of all other Perils, Losses and Misfor-  
tunes, that have or shall come to the Hurt, Detriment or Damage of the said Goods and Mer-  
chandizes and Ship, &c. or any Part thereof. And in Case of any Loss or Misfortune, it shall be lawful  
to the Assured, their Factors, Servants and Assigns, to sue, labour and travel for, in and about  
the Defence, Safeguard and Recovery of the said Goods and Merchandizes and Ship, &c. or any  
Part thereof, without Prejudice to this Insurance; to the Charges whereof we the Assurers will  
contribute each one according to the Rate and Quantity of his Sum herein Assured. And it is  
agreed by us the Insurers, that this Writing or Policy of Assurance shall be of as much Force  
and Effect as the surest Writing or Policy of Assurance heretofore made in *Lombard-Street*, or  
in the *Royal-Exchange*, or elsewhere in *London*. And so we the Assurers are contented, and  
do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors,  
and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Per-  
formance of the Premises, confessing ourselves paid the Consideration due unto us for this  
Assurance by the Assured *at* and after the

Rate of *Twenty Four p Cent*

In Testimony whereof we the Assurers have subscribed our Names and Sums Assured in London.

H. B. Carr, Fla. Oak, Fresh, Flour and Seed, are warranted free from Average, which year, or the Ship be stranded—Engage,  
Wholen, Hemp, Flax, Hides and Skins are warranted free from Average, under Five Pence per Cent, and all other  
Goods, and the Ship and Freight are warranted free of Average under Three Pence per Cent, unless general, or the Ship  
be stranded.

*On Goods valued at £3500*  
*Goods shall be carried for freight and value*  
*the Goods valued at £45 each*

*London 7th Dec 1779*  
*Philippe de la Motte*  
*Swanhook*  
*1779*  
*1796*  
*1794*  
*1796*

*Original parchment manuscript by James Oakes and John Oakes*

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with and, therefore, together with the general clauses make the policy wording all the more incomprehensible. This documents only represents the clumsy conservativeness of the British People who are very fond of curios and is regarded as a really lunatic document.

This Lloyd's Form is not forced by the MIA for its use (MIA §30(1):

Construction of term of Policy.—(1) A policy may be in the form in the First Schedule to this Act. In the First Schedule Form of Policy means the Lloyd's S. G. Policy)

But all the other policy form are more or less same as this in their structures. The standard clauses are compiled jointly by the Institute of London Underwriters, Lloyd's Underwriters Association, Liverpool Underwriters Association and Association of Underwriters and Insurance Brokers in Glasgow, and are called the "Institute Clauses. And see f-<sup>(16)</sup>  
(n) 16.

## 6. Development in Japan.

The writer would like to be short by referring a history of marine insurance in America to "the Marine Insurance" written by W.D. Winter. 3rd ed. New York. 1952. which, it is hoped, is self explanatory, and would make a brief survey on the marine insurance in Japan.

In Japan, in the 16th century, there was a financial device called

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(16) Martin, F., A History of Lloyd's and of Marine Insurance in Great Britain. London. 1876., Grey. H.M, Lloyd's Yesterday and To-Day. London. 1922., Lay. H.G., A Text Book of the History of Marine Insurance. London. 1925. Wright, C. and C. E. Fayle, A History of Lloyd's. London. 1927. Maclean, F.J. The Human Side of Insurance. London., Worsley, F and Griffith., The Romance of Lloyd's. London. 1932.

“Chyo-Gin (搦銀) [Fund Raising]” to raise a necessary fund by way of a financial loan form, which was equivalent to the “Foenus Nauticum”. We can assume that the device of this kind was introduced in Japan by those Portuguese who were in close business relation with Japanese marchants.

Also in the 16th century, there were what was called the “Kaiji-shyo-Hatuto (海事諸法度) [Maritime Regulations] to govern how to jettison the cargo on board the ship and these rules can be said to have given rise to the Japanese custom of “General Average” (Gross Haverei, Avarie Commune). In the 17th century, some kind of contracts very similar to to-day’s cargo insurance can be seen already in practice.

In fact, the existing marine insurance in Japan can be said to have been first introduced by those foreign residents and transacted by them up until the “Meiji Restoration” times in 1879, when the present “Tokyo Marine Insurance Co. Ltd” was established by the Japanese merchants.

In 1890<sup>s</sup>, the money in Japan was so easy that same such marine insurance companies as “Japan Sea and Land Camany” (Nippon-Kai-Riku-Hoken-Gaishiya.) and “Toyo Marine Insurance Company” (Toyo-Kaijiyo-Hoken-Gaishiya) as well as “Hokuriku Marine Insurance Company” (Hokuriku-Kaijiyo-Hoken-Gaishya.) were set up by speculative interest but all of them were liquidated after a few years of business.

Among those marine insurance companies who were subsequently established, the “Teikoku Marine Insurance Company” (Teikoku-Kaijiyo-Hoken-Gaishiya) and “Osaka Marine Insurance Company” (Osaka-Kaijiyo-Hoken-Gaishiya) who were financially favorable could only survive to become the two major marine insurance companies to-

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day. As for the life and fire insurance business in Japan, a large number of companies were set up during the China-Japan War of 1895 and the Russia-Japan War of 1905.

In 1900, the Insurance Business Law was put in force to govern the insurance business in general, and prior to this, the standard Japanese marine insurance clauses were already integrated in 1898. These clauses, however, gradually turned out so inconsistent and irregular that they were required to be regulated towards the end of the Taisho Era (1912-1916), when the Standard Hull Clauses were completely revised. And later in 1932, the Standard Cargo Clauses were revised as well.

## II The vicissitude of marine insurance law

It goes without saying that in case we study laws, we should always take into our consideration the social and economic background of the laws. Especially, in the case of insurance laws—likewise any other laws whatsoever—the social and economic conditions of the community always precede the legalities of the laws that any revisions, if necessary, of the existing laws are to be justified solely by the adaptability of such revisions to the actual social and economic situations in which the laws of issue are now in force. The students of Social Studies and Economics, therefore, in order to solve any problems before them, should always refrain from relying only upon the laws concerned, as otherwise such approaches are likely to make the students not only miss their academic dreams and ambitions of their own but also draw back the science



new before them for further study. Now on this standpoint, the writer would make a general survey in brief on the current marine insurance clause as follows.

### 1. General Survey on the Marine Insurance Clause.

The existing Japanese Commercial Law is framed in the continental, namely, German or French way of legislation in such a way that the provisions for the marine insurance are put aside from those of inland insurance and included in the chapter of the Marine Insurance Law. This is mainly because the marine insurance is closely related with the undertakings at sea and is distinct, by nature, from insurances on land such as fire and automobile insurance. Furthermore, the marine underwriters are subject to various right and duties under the Abandonment and Subrogation clauses because of the legal structures of the Marine Commercial Law. Actually, however, all the marine insurance transactions in Japan are now being carried out by virtue not of the legal provisions but of the insurance clauses.

Therefore, the significance of the marine insurance laws is only supplementary to the functions of marine insurance clauses. Naturally, in case marine insurance clause work out as private self-governing rules similar to “Allgemeine Deutsche Seeversicherungs-Bedingungen 1919, (ADS)”, the laws should become of no use.

The standard general clauses mean the general form of insurance protections prepared in advance by marine insurers to be granted to a large number of future assureds. Insurance relations between the assured and the insurer are built up on the basis of private contract of free will.

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In reality, however, the items agreed upon between the assured and insurer only refer to the customary terms and conditions of the insurance contract, such as, "Class of Risk", "Term of Insurance" and "Premium" and excepting these items, everything is subject to the general clauses that have already been prepared by the insurance company or her curtail solely at their discretion. In other word, normal undertaking of the contract of insurance (Vertragsinhalt) means nothing but the common and general clauses (Allgemeine Bedingungen) themselves.<sup>(17)</sup>

## 2. Frame of Clauses or Conditions of Marin Insurance

We wonder whether or not the marine insurance clauses are framed in a fixed pattern. Probably, they can be assumed to have had certain patterns all the times, except the time of the said Maritime Loans or of the Substitute Marine Contracts. As and when marine adventures were protected by way of marine insurance contracts, the insurers used to average their risks and especially, during the time of the Anti-Interest Order issued by Saint Gregory IX in 1230 down after the time of the said Bottomry and Respondentia, when every financial enterprise used to be carried out under the disguise of sales contracts, the marine insurance contracts should have been necessitated to have a certain standard form<sup>(18)</sup> of their own. If, therefore, the fact pointed out by A. Manes that in 1393, a notary public in Genoa dealt with as many as 80 cases of marine

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(17) Hagen, O., Das Versicherungsrecht, in Ehrenbergs Handbuch des gesamten Handelsrecht. Bd. VIII. I. Abt und II Abt. Leipzig. 1922. 8. 1. 33., Ritter, C., Das Recht der Seeverversicherung. Hambrug., Bd. 1. 1922. Anm 10 zu Vorb.

(18) see foot-note (1).(2).

insurance contracts in 3 short weeks is true, we have to assume that the marine insurance clauses then in use must have believably been standardized to some extent for convenience sake.<sup>(19)</sup>

However, it is presumable that the individual insurers standardized their own clauses exclusively for their own use and that all the clauses then in use by the individual insurers were as yet hardly integrated into standard ones for their common joint use. Nevertheless, such insurance technique as clauses was the common property of all the insurers concerned and they must have, it is assumed, had the need of integrating all these clauses into standard ones at their earliest convenience. In this sense, it is worthy of note that Manes, Kiesselbach, Kracht are of the opinions that such potential ingenuity of the insurers have brought forth the “Co-Insurance” and “Re-Insurance”<sup>(20)</sup> devices as well as the eventual legislation of the marine insurance laws with a view to securing “the fair play of the marine insurance transactions.”<sup>(22)</sup>

The Barcelonean Law of 1435, which is regarded as the oldest law of this kind in world history, is not only the most ancient but also the origin of the marine insurance law of many different countries including

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(19) Manes, A., a. a. OS. 6.: -, ein Versicherungsvertrag., der die Eierschalen anderer Verträge noch an trugt.“

(20) Hagen, O., Hagen in Ehrenbergs Handbuch. 8. 1. 33., Kiesselbach, Die wirtschaft-und rechtsgeschichtliche Entwicklung der Seeversicherung in Hamburg (Hamburg 1901)4.-5., Kracht. Die Rotterdamer Seeversicherung-Böse, ihre Entwicklung Bedeutung und Bedingungen (Wimer 1922) 9.

(21) Katoh, Y., Haseishi-Ron (History of Birth on Insurance Policy) p.10. 5 fn.

(22) Kracht., a. a. OS. 13. Goldschmitt, Geschiednis von het Nederlandsch Zeerecht, Haag. 1882. S.203.

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(23)

Italy and Spain, where the earlier marine insurance laws were legislated. We must not forget that the spirit of to-day's self-governing activities of private persons of community was originally represented by the first insurance contract under the said Barcelonean Law. So much so that, the priority of "The Commercial Law" or "The State Law" should never be given inprudently to the marine insurance clauses which should always be respected as the most traditional business background.

Among such earlier marine clauses that were then under way of their integration, the Average Ec form of a policy prescribed to insurance in conformity with the "Ordinances of the City of Florence concerning Insurance and Average Ec" of 1523 is worthy of mention here, because this Particular Form, has subsequently become the frame work of the Lloyd's Form of Insurance Policy by virtue of the following fact.

Ordinances of the City of Florence, in 1523, concerning Insurances Average Ec.

Form of a Policy prescribed to Insurers.

**B<sup>E</sup>** it known to all Men that N. has made Insurance to N. for \_\_\_\_\_, on such and such Goods, belonging to him or other Friends of his, or whomsoever else they may belong to, marked by N. or under whatever other Name, or not at all marked, loaded or still to be loaded, in such and such Port, or such and such Road, on board the Ship call'd N. or by whatever other Name she shall go, N. being Master, or whosoever else shall go for Master. This Insurance

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(23) Katoh, Y., op. cit., p.278., p.320., p.408.

begins from the Time those goods are loaded, at such and such Place, on board the said Ship, till they arrive and are brought a-shore safe at such and such Place. It shall be lawful for the said Ship to touch at any other Place, to sail forwards and backwards, to Windward or Leeward, according to the Pleasure of the Master; and every Thing may be transacted which Necessity shall require. The Insurers, with respect to the Risk and those Goods, take upon them all Dangers caused by the Sea, Fire and Jettison, Reprisals or Robberies of Friends and Foes, and all other Cases, Perils, Tempests, Disasters, Impediments and Misfortunes, even such as cannot be thought of, that may happen, or have happened, to these Goods: they are likewise answerable for Barratry of the Master; saving only the Stowage and the paying of Customs. The said Insurers take upon them all these Dangers, till the Goods are arrived at such and such Place, and there safely landed. But if the Goods are not put a-shore, the Insurers only keep *per Cent*, and return the rest of the Premium to N. In case any Disaster happen (which God avert) or has happen'd to the said Goods, the Insurers are obliged to pay to the said N. the Sum insured within two Months from the Day the News of such Disaster is brought to *Florence*. In Case no certain News is brought within six Months, the Insurers must pay to N. the insured Sum; but if it happen that the Goods afterwards arrive and are brought a-shore at the said Place, such Sum or Sums must be repaid by the Insured to those that paid them. In case of Shipwreck, the Goods lost may be saved and recovered without Permission had of the Insurers. The Insurers declare at the same Time, that they

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will not be liable in Case the Master of the Ship steals any Thing. The Insurers pay first of all the Sums insured, and then have Leave to go to Law, to oblige the Insured to give one or more Bails, according to the Decision of the Five Officers deputed for regulating Affairs of Insurance, for repaying the Sums received, with the Loss of 20 *per Cent* [a] And Eightteen Months shall be allowed to the Insurers for giving in their Evidence.

For the better Observance of this Agreement, Insurers, for themselves and their Heirs, bind their present and future Substance, and subject themselves to the afore-mention'd Court of Deputies, and all other judges and Courts, where the said N. shall chuse to sue them.

[a] The meaning is, the insured shall pay 20 *per cent*, more than the Sum he received, as a Penalty for having unjustly taken it.

from Magens, N., An Essay on Insurance. London. 1755.  
vol II. pp.4-5.

LLOYD'S MARINE INSURANCE POLICY (HULL FORM)

(No. )



No Policy or other Contract dated on or after 1st Jan. , 1924, will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantces lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.

Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

S.G.

£

Printed at Lloyd's, London, England.

Be IT KNOWN THAT

as well in *their* own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make Assurance, and cause *themselves* and them and every of them, to be insured, lost or not lost, at and from

upon any kind of Goods and Merchandises, and also the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the whereof is

Master under God, for this present Voyage,

or whosoever else shall go for Master in the said Ship,

or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship *as above* upon the said Ship, &c., *as above*

and shall so continue and endure

during her Abode there, upon the said Ship, &c., and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at *as above*

upon the said Ship, &c., until she hath moored at

Anchor Twenty-four Hours in good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever *and wheresoever for all purposes*

without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured by Agreement between the Assured and

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Assurers in this Policy, are and shall be valued at

TOUCHING the Adventures and Perils Which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence. Safeguard and Recovery of the said Goods and Merchandises and Ship, &c.; or any Part thereof, without Prejudice to this Insurance; to the Charges whereof, we, the Assures, will contribute, each one according to the Rate and Quantity of his Sumherein assured. And it is especially declared and agreed that noacts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Forch and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

*Warranted free of captures, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weathor or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purposes of this warranty. "power" includes any authority maintaining naval, military or air forces in association with a power.*

*Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civit strife arising therefrom, or piracy.*

And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured

at and after the Rate of

IN WHITNESS



whereof we, the Assurers, have subscribed our Names and Sums assured in *LONDON*, as hereinafter appears.

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per Cent, unless general, or the Ship be stranded.

NOW KNOW YE, that We the Assures, members of the Syndicate(s) whose definitive number(s) in the attached list are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for another, and in respect of his due proportion only, to pay or make good to the Assured all such Loss and or Damage which he or they may sustain by any one or more of the aforesaid perils, and so that the due proportion for which each of Us the Assurers is liable shall be ascertained by reference to his proportion as ascertained according to the said List of the Amount, Percentage or Proportion of the total Sum assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Assurer is a member.

IN WITNESS whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE.

MANAGER.

*(In the event of accident whereby loss or damage may result in a claim under this Policy, the settlement will be much facilitated if immediate notice be given*

Definitive Numbers of Syndicates and Amount, Percentage or Proportion of the Total Amount assured shared between the Members of those Syndicates.					
Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Reference.	Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Reference.

to the nearest Lloyd's Agent.)

LLOYD'S MARINE INSURANCE POLICY (CARGO FORM)

BE IT KNOWN THAT

(No. )



Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

S. G.

£

Printed at Lloyd's, London, England.

INSTITUTE DANGEROUS DRUGS CLAUSE

"It is understood and agreed that no claim under this policy will be paid in respect of drugs to which the various International Conventions relating to Opium and other dangerous drugs apply unless.

- (1) the drugs shall be expressly declared as such in the policy and the name of the country from which, and the name of the country to which they are consigned shall be specifically stated in the policy and
- (2) the proof of loss is accompanied either by a licence, certificate or authorisation issued by the Government of the country to which the

as well in *their* own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in in part or in all, doth inake Assurance, and cause *themselves* and them and every of them, to be insured, lost or not lost, at and from upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Muniton Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the whereof is Master, under God, for this present Voyage, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship *as above* upon the said Ship, &c., *as above* and shall so continue and endure during her Abode there, upon the said Ship, &c.; and further until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at *as above* upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voy-

No Policy or other Contract dated on or after 1st Jan., 1924, will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.

drugs are consigned showing that the importation of the consignment into that country has been approved by that Government, or, alternatively, by a licence, certificate or authorisation issued by the Government of the country from which the drugs are consigned showing that the export of the consignment to the destination stated has been approved by that Government;

- and  
(3) the route by which the drugs were conveyed was usual and customary."

age to proceed and sail to and touch and stay at any Ports or Places whatsoever *and where-soever for all purposes*

without prejudice to this Insurance. The said Ship, & c., Goods and Merchandises, & c., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at

TOUCHING the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality soever. Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, & c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, & c., any Part thereof, without Prejudice to this INSURANCE; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared an agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance hereto-fore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

1. *Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service*

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*which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.*

*Further warranted free from the consequences of civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or piracy.*

2. *Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labour disturbances riots or civil commotions.*

3. *Should the risks excluded by Clause 1 (F. C. & S. Clause) be reinstated in this policy by deletion of the said Clause, or should the risks or any of them mentioned in the same clause or the risks of mines torpedoes bombs or other engines of war be insured under this policy, then notwithstanding anything in this policy to the contrary,*

*(a) the insurance against the said risks shall not attach to the interest hereby insured or to any part thereof*

*(i) prior to being on board an overseas vessel, (For the purpose of this Clause 3 an overseas vessel shall be deemed to mean a vessel carrying the interest from one port or place to another where such a voyage involves a sea passage by that vessel)*

*(ii) after being discharged overside from an overseas vessel at the final port of discharge or after expiry of 15 days counting from midnight of the day on which the overseas vessel is safely anchored or moored at the final port of discharge, whichever shall first occur.*

*(iii) at a port or place of transhipment to another overseas vessel after expiry of 15 days (counting from midnight of the day on which the overseas vessel entering with the interest is safely anchored or moored) until the interest is on board the on-carrying overseas vessel.*

*In the event of the exercise of any liberty granted to the Shipowner or Charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named therein such port or place shall be deemed the final port of discharge for the purpose of this Clause 3.*

*(b) this Policy is warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or detentions of Kings Princes Peoples Usurpers or persons attempting to usurp power.*

if anything contained in this Policy shall be inconsistent with Clause 3 (a) and 3 (b) or either of them it shall to the extent of such inconsistency be null and void.

And so we, the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured

at and after the Rate of

IN WITNESS whereof we, the Assurers, have subscribed our Names and Sums assured in *LONDON*, as hereinafter appears.

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under

Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per Cent., unless general, or the Ship be stranded.

NOW KNOW YE, that We the Assurers, members of the Syndicate(s) whose definitive number(s) in the attached list are set out in the Table overleaf, or attached overleaf, hereby bind Ourselves, each for his own part and not one for another, and in respect of his due proportion only, to pay or make good to the Assured all such Loss and/or Damage which he or they may sustain by any one or more of the aforesaid perils, and so that the due proportion for which each of Us the Assurers is liable shall be ascertained by reference to his proportion as ascertained according to the said List of the Amount, Percentage or Proportion of the total Sum assured which is in the said Table set opposite the definitive Number of the Syndicate of which such Assurer is a member.

IN WITNESS whereof the Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE.

MANAGER.

*(In the event of accident whereby loss or damage may result in a claim under this Policy, the settlement will be much facilitated if immediate notice be given to the nearest Lloyd's Agent.)*

Definitive Numbers of Syndicates and Amount, Percentage or Proportion of the Total Amount assured shared between the Members of those Syndicates.					
Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Reference.	Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Reference.

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- (1) This formula was very similar to to-day's Lloyd's Form.
- (2) The Perils Clause contemplated therein was up-to-date.
- (3) The liberty of putting to ports was granted to the insured vessels.
- (4) A primitive form of to-day's Sue and Labour Clause can be found out.
- (5) To-day's custom of Abandonment was not yet adopted.<sup>(24)</sup>

### 3. The progress of marine insurance clauses down to the end of 19th century.

By tracing the progress of these marine insurance clauses down to the end of the 19th century, we now find that the body of the British marine insurance policies come from the commercial usages and customs of the Antwerp Exchange in Holland or of those in the Lombard Street in London, in view not only of the fact that the usage in the Antwerp Exchange had been brought forth along with the Ordinance issued by Phillip II in 1563 known as "Ordonnantie op de verzekering of assurantie"<sup>(25)</sup>, but also of the Sancta Crux Policy of 1555 and St. John Baptist Policy (1562-63) as well as the May Rose Policy (1558-59)<sup>(26)</sup>.

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(24) Wright & Fayle, A History of Lloyd's London, 1927. pp.135-136.

(25) Kiesselbach says, "actervolgende de forme ende naer Costuyme von de Böse von Antwerpen, onder welcken ons sumiteren" (Kiesselbach, a a O. SS. 109-110.)

(26) The Sancta Crux Policy says as follow: "And we will that this assurance shall be so stronge and good as the most ample writinge ef assurance whiche is used to be maid in the strete of London [: Lombard Street] or in the burse of Antwerp or in any other forme that shulde have more force."

The St. John Baptist Policy in 1562 to 1563.

"All the ventures and chaunces that may contayne in the best bill of assurances

The modernization of marine insurance policies was commenced in the 17th century, and Perils Clauses contemplated in “the Tiger Policy” in 1613 and “the Three Brothers Policy” in 1657<sup>(27)</sup> are often referred to by the marine insurance theorists as then having been improved year after year. This is true, but the marine insurance policy in those days was a document in a written form of the marine insurance clauses, and its pol-

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that is used or may be made in this Lombarde Streate in London.”

The May Rose Policy in 1588 to 1559. “And do beare all manere of casoltes and mesventores that may happene upone the same accordinge to the ordere of the potese [? policies] of Lumbard Streate yf any myshape do chaunce to pay the same accordinge to the order of the poteses maid in the said Lumber Streate.”

(27) (i) perils Clause in Faymes Ypswyche Cargo Insurance Policy in 1563 say that “From the dawnger of the see ffrom ffyer and water men of warr hennemys cosaryes [corsairs] pyratte thyves lettars of marte baratrye of master and maryners jetesonns retaignementt by kyng or prynce or by any by theyr aucthorety of by anye other persone or persones whom so evar (sic) and ffrom all other parrelles and dawngers whatt so ever.” at the same

(ii) time in Tiger Policy of Cargo Insurance was written as follow:

“Touching the adventures & perils which wee the assurers hereafter named are contented to beare, & doe faithfully promise by these to take uppon us in this presente voyadge are of the Seas, men of warr, fyer, enemyes pirratte rovers theeves, jettezons, Lettres of marte & counterarte arests restraints, & deteynments of Kings & princes and all other persons barrtary of the master & mariners, & of all other perills Losses & misfortunes whatsoever they be or howsoever the same at any tyme before the date here of hath chanced or heereafter shall happen or come to the hurte detryment or damage of the said cloth Lead Kersies Iron & c. or any parte or parcell there of.”

(iii) Three Brother’s Policy which developed more than Tiger Policy is written in 1655 as follow: “Touching the adventures and perils which Wee the Assurers are contented to bear and do take upon us in this voyage, are of the Seas, men of warr, fire, enemies, pirates, rovers, thieves, jettizons, letters of marte and countermate; surprizalls and taking at Sea, arrests, restraints and detainments, of all Kings, Princes and People of what Nation, condition or quality so-ever. Barratry of the Mr and marriners and of all other perills losses and misfortunes that have or shall come to the hurt detriment or damage of the said goods and merchandises or any parts thereof.”

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icy body already printed in part, such printed passage did not cover the main important written clauses whatsoever. It was until after twenty years in 1690 that the policy body was printed on the whole, and this can be said to have been the sign that the demand for more insurance policies had ever grown up.

The oldest printed clauses in world history that are still in existence to-day are these in the Golden Fleece Policy of 1680, in which the Memorandum Clause was not yet included, but which form can be found more or less the same as to-day's Lloyd's Policy.<sup>(28)</sup> As a matter of fact, it was in the Lloyd's Corporation's general meeting in 1779 that the said Golden Fleece Policy form was first adopted officially as the Lloyd's Policy Form and later in 1795, approved as the standard form for the general use of the marine underwriters in accordance with the Act for Granting to His Majesty certain Stamp Duties on Sea Insurance 35 Geo III <sup>(29)</sup> 63 of 1795.

Concerning the Memorandum Clause, it is said that in the European Continent, coming from the "Guidon de la mer", the "Franchise Usage" was originally established in the 2nd half of the 16th century.<sup>(30)</sup>

In Great Britain, this clause was taken up in 1746 in "the Duke of Bedford Cargo Policy" and is known as the oldest clause of this kind ever found in this country,<sup>(31)</sup> according to which, the customary rate of

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(28) Martin, F., *The History of Lloyd's and of Marine Insurance in Great Britain*. 1876., Wright, C. and C.E.Fayle., *A History of Lloyd's*. 1928.

(29) Wright and Fayle., *ibid.*, pp.141-142.

(30) Kiesselbach., a a OS. 119. 124f, 142f, 145f., Kracht., a a OS. 27.

(31) Wright and Fayle., *op. cit.*, p.144.:—Memorandum. It is Agreed by and between the Assured and Assurers, That in Case of any Loss, there shall be an



the franchise appears to have been 2 per Cent.

The first Memorandum Clause attached to the Lloyd's Policy Form was in 1749, when such "franchise" as then intended for first seems to have been the "deductible franchise", that is the "excess franchise".

Shortly, after the time of the memorandum clause in the Lloyd's Policy as above, all the marine policies in use in the then marine market begin to be standerzided, which, however, took rather a long time to be complete until the time when the printed body of the Lloyd's Policy Form was finally settled down. As a matter of fact, even in the Lloyd's marine market, a certain amount of marine insurance business was being transacted by private underwriters under their own policies with irregular clauses so that in the general of the Lloyd's Subscribers, all such irregular clauses were shut out of the Lloyd's market.<sup>(33)</sup> Moreover, in Bristol areas, there used to be issued some other kinds of policies than

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Abatement of *Tow Pounds* per Cent. And in Case of any Average Loss not exceeding Five Pounds per Cent. The Assurers by Agreement, are not to pay or allow anything towards such Loss." "But this is a first memorandum clause and it's a Duke of Bedford." She is a cargo ship in EngLand, in 1746.

(32) Wright and Fayle., *ibid.* p.144.

(33) In the General Meeting of Lloyd's Subscriber's in 1779. The Lloyd's Form of Policy had admitted in it as a Lloyd's Marine Insurance Form of Policy. But we have to make some attention as follow: "That no Policy be subscribed from this time *knowingly*, that may be printed in Words different from a Form now produced.

That we will not Underwriter to any Person or Persons who may here after tender any Policy *otherwise Printed*."

And after this decision was made by the General Meeting of Lloyd's Subscriber's. The Form of Lloyd's Policy had been printed like these word's in outside of its Policy. So that to say, "Printed according to the Form revised and confirmed at New Lloyd's on the 12th day of January 1779." (Wright and Fayle., *ibid.* p.148. See a poto and pp.148.-149.).

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the Lloyd's Form. But in 1795, in compliance with the said, "An Act for Granting to his Majesty certain Stamp Duties on Sea Insurance. 35. Geo III. c 63" the policies at random were completely integrated into these Standard S. G. (Ship and Goods) Form of Lloyd's Policy.

The different between this Lloyd's Form of 1795 and the later one of 1906, which is still in current use to-day, can be pointed out as to be only the following 2 points.

- (1) The wording of the caption clause, "Be it known that……" is said to have been altered from the wording, "In the name of God, Amen, " around <sup>(34)</sup>1850.
- (2) The existing "Waiver Clause" and "FC & S Clause" were not found out in the Policy Form of 1795 but were incorporated in the later Policy Form of 1874 and that of 1893 respectively. The said Royal Exchange Assurance Co. Ltd. and the London Assurance Co. Ltd. were then entitled to issue any other different forms of policies than the Lloyd's Form, but actually, those policies issued by these two chartered companies were in more or less the same form as far the Lloyd's, excepting only 3 minor wordings which are not worth attention.

Thus, the existing British Marine Insurance Policy Form was finally established in accordance with Article 30 of the MIA 1906. and has since then been in use as the standard British Policy Form up until to-day. <sup>(35)</sup> It is taken for granted that the existing standard Japanese Marine Insur-

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(34) Wright and Fayle., *ibid.* p.151.

(35) Gow, W., *Marine Insurance*. 5th ed. by King-Page. London. 1931.p. 8.

ance Policy Form comes from this British Form of 1906.<sup>(36)</sup>

### III Conclusion of this survey

Since the older times, of all the various kind of insurance clauses, the Marine Insurance Clauses, have particularly been given the keenest attention by Underwriters who, in an attempt give the most appropriate legal structure to the marine clauses, were obliged to co-ordinate their own insurance techniques with the assured's demand to the best of their ability. Indeed, in order that the underwriters might cope with the situation, it was inevitable for them to have had such a difficult time when they were at a loss how to find out a basic law to resort to, or such a hard time when they had to make efforts to be set free from the then government controls and interventions as much as possible.

Anyhow, the so called "Lexis' Principle" is taken for granted to-day, and there is no doubt that this Principle must have grown up naturally. We can say for certain that marine clauses have been interpreted so differently from time to time that, in conformity with the expectations and requirements of the times. They must have finally been integrated into the statutory laws.

Therefore, in case marine clauses are interpreted, the followings

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(36) Standard Japanese Marine Insurance Policy has said as follow: "And it is agreed that this Writing or Policy of Insurance shall be of as much Force and Virtue as the surest Writing or Policy made in London," and "This insurance is understood and agreed to be subject to English Law and usage as to liability for and settlement of any and all claims." (Suguro, H., op.cit., pp40-41.).

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should be taken into consideration.

In the first place, in case the marine insurance clauses have some more possibilities of their betterment in futur, and actually at work at present satisfactorily to look after the marine business, the relevant statutory laws ought not to be excessively binding upon the business transactions contemplated in those clauses. In other words, the interpretation of them can be made along with the interpretation of the statutory law, but they could not be one and the same. The clause should be understood as to be effective to bring forth fair and proper rules beyond the statutory laws. The same thing can be said with the problem of "Insurable Interest", which will be dealt with later.

Some theorists are of the opinion that insurable interest is an objective interest. The maritime law appears to indicate the objective state of things, but from the economic viewpoint, insurable interest is nothing but subjective. Legal aspects and economics views ought not to be confused with each other since laws and economics and their respective approaches as well might often press the laws to determine the economic need in a too much business like manner.

Finally, therefore, the writer is of the opinion that marine insurance clauses now in current use should always be interpreted;

- (1) Equitably in good faith.
- (2) Objectively.

It is imperative for marine underwriters that they should admit the advisability of the customary inter pretation of the marine insurance clauses and should take all the burden of proof imposed therein.