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A s t u t e l a w y e r s w i t h b u s i n e s s a c u m e n

**THE “REASONABLE CARE /
PREVENTION OF LOSS” CLAUSE
IN INSURANCE
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Introduction

1. Insurance covers risk of damage

- E.g. accident, fire, storm, theft, death, disability
- A "fortuitous event"

2. Insurance is a contract

- Product(cover) // Price(premiums)
- Same as buying a house, car,
- Terms apply. Else, premiums will be too high

3. Insurance contract terms

No cover:- fraud or misrepresentation

- damage caused intentionally
- damage caused due to lack of "reasonable care"



Principles i.r.o. “reasonable care”

1. Policy wording

“The insured shall take all reasonable steps and precautions to prevent accidents or losses”

2. Intention of Insurance

- To cover fortuitous loss
- Unexpected bad luck
- Insured must take “reasonable care” to prevent loss

3. Reasonable care

- What is “reasonable”?



The law

1. Textbooks

- Insurance is intended to cover negligent acts
- Negligence is not enough to breach "reasonable care" clause
- Conduct must also be reckless

2. Auto Protection Ins v Hanmerstrudwick 1964(1)SA349(A)

Facts

- Smooth tyres
- Vehicle in accident
- Vehicle owner claimed from Ins Co
- Claim rejected by Ins Co: said breached "reasonable care" clause
- Vehicle owner sued Ins Co

Judgment

- Smooth tyres was "negligent", not "reckless"
- Ins Co must pay claim



The law cont.

3. Turdeich v NEG Insurance 1982(2)SA219(C)

Facts

- Diamond rings accidentally left in restaurant bathroom
- 10 min later rings gone
- Owner claimed against Ins Co
- Claim rejected by Ins Co: said breached "reasonable care" clause
- Owner sued Ins Co

Judgment

- The policy was "all risks"
- "Reasonable care" to be interpreted restrictively
- Policy covered negligence or forgetfulness
- Ins Co must pay claim



The law cont.

4. Santam v CC Designing 1999(4)SA199(C)

Facts

- Vehicle sold to stranger
- Deposit slip received. Seller handed over vehicle
- Deposit slip was false
- Owner claimed against Ins Co for theft
- Claim rejected by Ins Co: said breached "reasonable care" clause
- Owner sued Ins Co

Judgment

- Seller was negligent in handing over vehicle
- Ins Co must prove
 - + seller was reckless
 - + knew steps inadequate
 - + acted deliberately or did not care
- Ins Co must pay claim



The law cont.

5. Ombudsman Ruling

Facts:

- Accident at high speed
- Wet weather
- Owner claimed against Ins Co
- Claim rejected by Ins Co: said breached "reasonable care" clause
- Owner sued Ins Co

Judgment:

- Driver was negligent
- Driver's conduct not reckless or tantamount to intent

6. Summary

- Policy covers negligence
- But, not recklessness
- Conduct almost like intent is required



Case study

1. Insured drove Porsche
2. 02h00 in the morning. In city in 60 kph zone
3. Porsche left road on curve. Porsche rolled. Driver died
4. No other cause known. No witnesses. No alcohol proved
5. Insured claimed R800K from Ins Co
6. Accident reconstruction experts appointed: driver did 175 kpm !
7. Can Ins Co reject claim on failure to take "reasonable care" ?









Reckless or Negligent Driving?

1. National Road Traffic Act No 93 of 1996 Section 63

Reckless driving

- Use ordinary meaning of "reckless"
- Driving in willful or wanton disregard for safety of others
- The circumstances of the case
- The nature, condition and use of road
- The amount of traffic
- The speed
- The manner in which the vehicle was driven



Reckless or Negligent Driving? cont.

2. *S v Bredell 1960(3)SA558(A)*

Facts

- Drove around blind corner on wrong side of road
- Lost control. People killed

Judgment

- Guilty of reckless driving, culpable homicide
- Jail 2 yrs, 1 yr suspended

3. *S v Boshoff 1974(3)SA227(E)*

Facts

- Young driver. Irrational maneuvers. No traffic at time
- Made u-turns. Up and down with screeching tires
- Through intersections. Skidded
- Drove at about 100 kmh. Stopped by traffic officer

Judgment

- Guilty of reckless driving
- Danger to others not a prerequisite for reckless driving
- Jail 3 months, suspended 3 yrs. License suspended 2yrs



Reckless or Negligent Driving? - cont.

4. Statistics

- Risk of accident in 60kph zone doubles every 5km over 60kmh
At 175kph risk increased 46 times compared to 60kph
- Decrease of 1kph speed: Decrease of 9 fatal, 120 accidents pm
- At 60kph: Stop & prevent collision with pedestrian 60m away
At 80kph: 100% will hit and kill pedestrian at 60m
- At 120kph: 227m to stop. At 180kph: 480m to stop
- Permanent speed cameras reduced fatal accidents by 41%
- Drivers who exceeded 60kph caused 68% of accidents

“SPEED KILLS”



DISCUSSION

1. "Reasonable Care" clause untested in serious accident cases
2. In recent cases drivers charged with murder. It implies "intent"
 - Jub Jub case
 - Mandela great-granddaughter
 - Taxi driver in Western Cape
3. If convicted of murder, should be in breach of "reasonable care"
4. Potentially huge implications for insurers and drivers
 - No cover for own, other vehicle loss
5. We predict insurers will in future reject more claims based on failure to comply with "Reasonable Care" clause
6. Speed kills



DISCUSSION

QUESTIONS

THANK YOU

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