

# DIGEST OF INSURANCE LAW

## MANITOBA

Not revised for this Edition

### CIVIL JUDICIAL SYSTEM

#### Courts of Original Jurisdiction

Court of Queen's Bench is court of record, having original jurisdiction with all powers conferred by laws of England as of date of July 15, 1870, on English superior courts of record of civil and criminal jurisdiction, practice in equity and common law being completely fused. R.S.M. C280.

Court of Queen's Bench has Family Division, Probate Division (Dealing with matters and causes testamentary and governed by The Court of Queen's Bench Surrogate Practice Act, R.S.M. C290), and Small Claims Division (dealing with claims under \$5,000 and governed by Court of Queen's Bench Small Claims Practices Act, R.S.M. C285).

#### Appeal Court

General appeal court in civil cases is court of appeal of seven judges being court of last resort in Manitoba R.S.M. C240.

Appeal lies from Court of Appeal to Supreme Court of Canada in certain cases. Supreme Court Act RSC 1985.

### LAW

#### Abbreviations

- A.C. – Appeal Cases (English).
- All E.R. – All England Reports (English).
- Ch. – Chancery (English).
- D.L.R. – Dominion Law Reports.
- H.T. Act – Highway Traffic Act R.S.M. H60.
- Ins. Act – Respecting insurance and insurers R.S.M. I40.
- I.L.R. – Insurance Law Reporter (Canadian).
- K.B. – King's Bench (English).
- M.R. – Manitoba Reports.
- R.S.M. – Revised Statutes of Manitoba, 1987.
- S.C.R. – Supreme Court of Canada Reports.
- S.M. – Annual Statutes of Manitoba.
- W.L.R. – Western Law Reporter.
- W.W.R. – Western Weekly Reports.

### ACCIDENT AND HEALTH INSURANCE

Creditors. Subject to garnishment when due or accruing due.

Disability. See "DISABILITY."

See Ins. Act, R.S.M. 1987 c. I40, §203-230.

The Health Services Insurance Act. R.S.M. 1987, c. H35.

Disease Induced by Accident. Unless policy fixes time limit length of interval between accident and onset of disease is immaterial if relationship is clear. *Young v. Acc. Ins. Corp.*, (1891) 20 S.C.R. 280. But insured who, following accident, works for three weeks has not been "continuously" disabled. *Matthews v. Continental*, (1932) 3 W.W.R. 289. Wool sorter becoming infected with anthrax caused by bacillus or germ of disease lighting upon and infecting his eye held accident in *Brintons v. Turvey*, (1905) A.C. 230. Where ankle was crushed in 1924 and spot appeared there in 1928 and became infected and leg was amputated, held accidental loss not proved. *Barnaby v. Union Assur. Soc'y*, (1931) 1 D.L.R. 1002. Where myocarditis or arteriosclerosis contributing was latent, death was caused "directly" by accident. *Continental v. Casey*, (1934) 1 D.L.R. 577. See also *Fidelity v. Mitchell*, (1917) A.C. 592, *infra* "ACCIDENTAL MEANS."

Double Indemnity. See *Therrien v. L'Indus Cie*, 8 I.L.R. 308; *Kinman v. Ocean Acc.*, (1913) 3 W.W.R. 630. Passenger elevator in office building has been held not to be "public passenger conveyance." *Robb v. Merchants*, 29 M.R. 113.

Excepted Risks. Policies generally except risks of war and aviation but allow traveling in licensed passenger aircraft. Insurer must prove exception. Doing of single isolated act of more hazardous occupation does not amount to "engaging" therein. Claim of manager stated to have office duty and travelling only, who was injured while assisting to load cars on rush day in mill yard not within exception against "engaging" in more hazardous work. (1930) S.C.R. 122. Insured last seen intoxicated taken out of river four months later, held death "while under influence of intoxicating liquor" not proved. *Haines v. Can. Rly. Acc. Ins. Coy.*, (1911) 44 S.C.R.



386. Exception "directly or indirectly caused by war" includes officer on duty killed by train when lights in England obscured pursuant to regulations. *Cox v. Employers Liab.*, (1916) 2 K.B. 629. Exception "while fighting" does not apply to self-defense. *Horowitz v. Loyal*, (1932) 3 D.L.R. 378.

Notice and Proof of Loss. Must furnish insurer notice within 30 days and proof within 90 days after claim arises under the contract (Stat. Cond. 7). Insurer to furnish forms for proof of claim within 15 days of receiving notice of claim (Stat. Cond. 8).

Standard Provisions. Uniform statutory conditions provided by Ins. Act, §211 are part of every policy unless varied or partially omitted under §212. If policy conditions changed, strict compliance with Act necessary. *Green v. Manitoba Assur.* 13 M.R. 395. Injury or sickness when engaged in more hazardous risk indemnified to extent premiums would have purchased extra coverage (3); notice of accident or sickness within 30 days unless not reasonably possible (7); action must be commenced within one year after cause arose (12). Licensing and regulation of insurance companies generally provided by Insurance Act. Write Superintendent of Insurance, Woodsworth Building, Winnipeg.

Government has introduced compulsory contributory plan for payment of all or part of cost of hospitalization and medical treatment to residents and called Manitoba Health Services Commission. Health Services Insurance Act R.S.M. H35. There is right of subrogation against third parties where injured person has claim in negligence. All private contracts covering Hospital Services given under Act are cancelled effective 1 Jan. 1959 and no new contracts for that coverage may be written.

### ACCIDENTAL MEANS

Usually defined in policies as "bodily injury caused by violent accidental and external and visible means."

Following held accidental means: Freezing to death on prairie when wagon broke. *N. W. Com. Trav. v. London Guar. & Acc.*, 10 M.R. 537. Drowning, *Haines v. Can. Rly. Acc.*, 44 S.C.R. 386. Schoolmaster attacked and killed by pupils (1914) A.C. 667. Driving car into river. *Ferland v. Prudential*, (1938) 5 I.L.R. 325. Fall in bath causing subdural hematoma, operation, and death from pulmonary thrombosis. *Jerome v. Prudential*, 6 I.L.R. 59. Insured fell getting out of bed, sustaining injuries; bronchial pneumonia set in causing death. Plaintiff succeeded. *Little v. London*, 7 I.L.R. 281.

Death from Insulin treatment is by external means. *Price v. Dominion*, 8 I.L.R. 208.

Where assured had suffered from tubercular infection and there were concurrent findings that tuberculosis would have remained harmless but for accident and that injured wrist would have recovered but for infection. Held, disablement resulted directly from accident. *Fidelity v. Mitchell*, (1917) A.C. 592. See *Continental v. Casey*, (1934) 1 D.L.R. 577.

Following have been held not to have been caused by accidental means: Injury from 1) strenuous curling, 2) accidental slip on ice, and 3) subsequent sweeping. *Harmon v. Travelers*, (1937) 1 W.W.R. 424; nor death from heat stroke. *Wyman v. Dominion*, (1936) O.W.N. 163; nor blister which becomes infected. *Sloboda v. Continental*, (1938) 2 W.W.R. 237.

### ADJUSTERS

Adjusters for insurers must be licensed. Ins. Act. 385. License issued and may be revoked for cause by superintendent. Ins. Act, §385 (7). Adjusters must give information relative to any contract on request of superintendent. Ins. Act, §17. Adjuster must disclose name of insurer he represents on request of claimant with whom he is negotiating settlement of public liability claim. Ins. Act, §388.

Superintendent of Insurance will supply application forms. Fee \$25 per year from adjuster and \$10 per year from assistant. Man may be assistant for only one year, training period under licensed adjuster. Advisory board assists superintendent on questions of granting, refusing, renewing, or cancelling licenses.

### AGE

See "AUTOMOBILES"; "LIABILITY INSURANCE, Violation of Law."

### AGENTS AND BROKERS

Collusion between agent and insured to defraud insurer. Statement in application false to knowledge of insured and insured's soliciting agent held to be part of contract and to avoid policy. *Norwich Union Fire v. Le Bell*, 29 S.C.R. 470.

Definition of "Agent" means person who, for compensation, solicits insurance on behalf of any insurer or transmits, for person other than himself, application for, or policy of insurance to or from such insurer; or offers, acts, or assumes to act in negotiation of such insurance; or negotiates continuance or renewal of other than life insurance contracts. Ins. Act. §1.

Foreign Insurance Companies. Where head office outside Manitoba, process effectively served on Superin-

tendent of Insurance who forwards to address filed by company. Ins. Act, §19 (1), (4).

**Duty of Agents.** Private insurance agents owe a duty to customers to provide not only information about available coverage, but also advice about which forms of coverage they require to meet their needs. *Fine's Flowers Ltd. v. General Acc.*, (1979) 81 D.L.R.3d 139 (Ont. C.A.).

**Fraud of Agents.** Insurer's local agent held acting within scope of his authority and insurer bound by his fraudulently obtaining insured's signature to and misappropriating insurer's draft in payment of insured's loss. *National Union Fire v. Martin*, (1924) S.C.R. 348.

**Knowledge of agents imputed to insurer.** Knowledge of soliciting fire agent instructed by insured to substitute new policy, held to prevent defense of new insurer under condition against "other insurance." *Whitla v. Royal Ins.*, 34 S.C.R. 191. Notice to local representative of company of insured's enlistment imputed to company and provision requiring notice of active service and higher premium held waived. *Beasant v. Northern Life*, 32 M.R. 471. Knowledge of agent held not binding on insurer when statutory condition violated. *Continental v. Adilman*, 8 I.L.R. 200. Statements, false to knowledge of insurer's soliciting agent, made by insured in application and made basis of policy issued, bind insured and prevent action on policy. *Rocco v. Northwest National*, (1930) 1 D.L.R. 472. Probably even if agent had power to issue policies. *Dorsht v. Trans-Canada*, (1933) 1 D.L.R. 509.

**License and Regulation.** No person shall act as insurance agent in Manitoba without having first obtained license, Ins. Act §369 (1).

Holder of license for life insurance may only act as agent for one insurer, but where such agent is unable to negotiate insurance with insurer, may procure from another insurer who shall obtain written consent of other insurer and file same with Superintendent of Insurance. §374 (1) and (2).

Superintendent may issue special brokers license to Manitoba resident to negotiate contracts (other than life, accident and sickness insurance) with unlicensed insurers (Ins. 381 (1)), but broker shall only accept contract etc. from insured or licensed agent, otherwise contract is unlawful Ins. Act, §384. See Ins. Act, §89, Re prohibition against dealing with unlicensed insurers, except through duly licensed special broker.

Payment in cash to agent of insurer of amount of premium or assessment due in respect of contract issued by insurer shall be deemed payment to insurer, but does not apply to life insurance. Ins. Act §390.

Payments to agents in negotiating or renewing contracts deemed to be payments to insurer, but does not apply to life insurance. Ins. Act, §390.

## APPLICATION

See "LIABILITY INSURANCE."

## ASSIGNMENT

See "FIRE INSURANCE."

## AUTOMOBILES

See "NO-FAULT"

**Age.** Automobile operation. H. T. Act, requires that drivers of public service vehicles, semi-truck trailer, or truck over gross weight greater than 11,000 kilograms be over 18 years, chauffeurs over 18 years, and other persons, 16 years or over. §23 (9) and §165.

**Agency.** Owner of motor vehicle is liable for driving of persons acquiring possession with his consent. Ins. Act §239 (1) but one borrower has no implied authority to lend to another. *Martel v. Chartier*, (1935) 1 W.W.R. 305.

**Guest Cases.** Guest passengers no longer need prove gross negligence, or wilful and wanton misconduct of owner or operator of motor vehicle. Passenger identified with negligence of his driver, Tort-feasors and Contributory Negligence Act, §5 R.S.M T90. Passenger by failure to warn driver of imminent danger might be contributorily negligent. *Gauley v. C.R.R.*, (1930) 4 D.L.R. 354, but has no duty ordinarily to notice or warn driver of signs, *Fillion v. O'Neill*, (1934) 4 D.L.R. 598, or of other automobiles. *Foster v. Ridgrave*, (1935) 1 W.W.R. 33. Guest cannot sue driver after assuming known risk of drunken driver or other risks. *Jennings v. Davis*, (1934) 1 W.W.R. 686.

**Speed Limits.** Automobiles, 50 KPH in cities, towns, etc. and 90 KPH in all places not designated in the Act. Traffic board may increase speed limits from 90 KPH to maximum of 110 KPH on highways. Special regulations may be made in regard to bridges, parks, school areas, etc. and for speeds more than 50 KPH in cities, towns, etc. H. T. Act, §95-105.

## AVIATION

"Aircraft Insurance" defined as "insurance against loss of or damage to aircraft and against liability for loss or damage to persons or property caused by aircraft or by operation thereof." Ins. Act, §1. Grouped for licensing with casualty lines. Fire insurance provisions do not apply. §137 (1) (a).

**BROKERS**

See "AGENTS AND BROKERS."

**BURGLARY INSURANCE**

"Theft Insurance" means insurance against loss or damage through theft, wrongful conversion, burglary, housebreaking, robbery or forgery. Ins. Act, §1. Licensed under casualty. Policy exempting insurers from liability "unless books of account are regularly kept by assured and actual amount of damages sustained can be accurately determined therefrom by insurer" calls for books which are so complete that insurer may ascertain loss without extrinsic evidence. *Brock v. U.S. Fidelity*, (1921) O.W.N. 278. Requirement is condition precedent to liability. *Freedman v. U.S. Fidelity*, 40 M.R. 160.

**CANCELLATION**

Policies may be terminated by (Fire Cond. 5) insurer giving 15 days notice registered mail or five delivered and repaying unearned cash premium or insured giving written notice and insurer repaying excess over short-rate earned premiums. (Automobile Cond. 8) insurer giving 15 days notice registered or 5 days delivered and refunding pro rata unexpired premium, or at insured's request, insurer to refund excess premium above short rate for expired time. Only excess of premium paid by insured is to be returned; "Registered mail" includes mail registered in United States. *Clapp v. Travelers*, (1932) 1 D.L.R. 551.

**CHATTEL MORTGAGE**

See "FIRE INSURANCE."

**CONTRIBUTION**

See "FIRE INSURANCE"; "LIABILITY INSURANCE."

**CREDITORS**

See "ACCIDENT AND HEALTH INSURANCE."

**DEATH**

Abatement and Survival of Actions. Under Trustee Act, all actions in tort other than for libel, slander, malicious prosecution, false imprisonment, or false arrest in or against person dying, shall continue in or against his personal representative. No such action shall be commenced after expiration of two years from death of deceased.

Action for Wrongful Death. Under Fatal Accidents Act by personal representative on behalf of dependants

for loss of pecuniary benefits. Actions under Fatal Accidents Act includes damages for loss of guidance, care and companionship that deceased might reasonably have been expected to give to any person for whose benefit action is brought. No duplication of awards. Limitation under F.A.A. two years. *See Begalke v. Wiebe*, (1939) 2 W.W.R. 84; *Benham v. Gambling*, (1941) 1 All E.R. 7.

Effect of Soldier Pension on Damages. *Crait et al. v. Dunn et al.*, (1942) 3 W.W.R. 355.

For loss of wife by death, (1943) S.C.R. 197.

Duplication of Damages. *Fleming v. Markovitch*, (1942) O.W.N. 406.

Presumption of. When man is not heard of for seven years in spite of diligent inquiries he is presumed dead. *Oag and Order of C.H.C.*, 9 D.L.R. 771; *Lal Chand, Marwari v. Mahant Ramrup Gir.*, (1925) 42 T.L.R. 159 (P.C.). Presumption does not arise when probability of intelligence being received is rebutted by circumstances. *Wilcox v. Wilcox*, (1914) 24 M.R. 93. Where claimant alleges insured is dead by absence of seven years, insurer may before or after action on thirty days notice apply to court for declaration as to presumption of death. Ins. Act, §187.

**DISABILITY**

This is typically determined in accordance with the policy wording. Injury completely preventing commercial traveler from following his occupation although he might be able to perform certain details of it held within policy requiring disability that immediately and continuously prevents insured performing each and every duty in his occupation. *MacGinn v. Fidelity*, (1928) 3 D.L.R. 814. Migraine headaches compelling butcher to discontinue his work held total and permanent disability. *Harding v. Prudential*, 7 I.L.R. 227 (Ont.). Teamster whose leg "goes dead" occasionally held not to have "given proof satisfactory to insurance company." *Teur v. London Life*, (1935) 3 W.W.R. 368. Whether progressive and incurable eye disease within disability clause. *Boroditsky v. Travelers*, (1937) 3 W.W.R. 665. *See Deutch v. Martin*, (1943) S.C.R. 366.

Coronary thrombosis, total disability. *Kruker v. Mutual Benefit*, (1944) O.W.N. 115. Permanent disability from injuries, not total disability. *Deutch v. Martin*, (1943) S.C.R. 366. "Totally and presumably permanently disabled." (1944) O.W.N. 740.

**FINANCIAL RESPONSIBILITY LAW**

When automobile is involved in accident where there is bodily injury or death of person or property damage of more than \$1000, driver's license and registration

of vehicle suspended unless motorist can produce proof of financial responsibility. Financial Responsibility may be proved by production of owner's certificate, issued by insurance company showing vehicle is insured to at least extent of \$200,000 inclusive. Ins. Act §249 (1). It may also be proved by production of proof of deposit with the Registrar of Motor Vehicles of \$200,000 for each vehicle registered in name of motorist or owner, or by production of a bond of a guarantee or insurance company in the amount so provided for. Insurer issuing policies to non-residents can obtain cards of type required from Superintendent of Insurance on application with material set out in H. T. Act, §160, 161.

License will remain suspended until Registrar of Motor Vehicles is satisfied that (a) At time of accident vehicle was stolen, or (b) That only damage resulting from accident was to person or property of owner or driver, or (c) That motorist gives security sufficient in opinion of Registrar to satisfy any judgment that might be obtained against him as result of accident, or (d) That motorist satisfies Registrar that he has satisfied all claims against him arising out of accident; and in case (c) or (d) is applicable also gives proof of future financial responsibility by obtaining insurance or making required deposit.

Minimum limits are \$200,000. with priority of \$20,000 for property damage and \$180,000. for bodily injury. Ins. Act §249 (1).

As of 1 Nov. '71 compulsory Government insurance came into force, Minimum Limits \$200,000, and limited no fault coverage, Manitoba Public Insurance Corporation Act, R.S.M. 1987, c. P215. Extended cover available from Government and private insurers.

When judgment rendered against person by any court in Canada or U.S.A. in action for damages for bodily injury or death or for property damage of over \$500 arising out of ownership, maintenance, operation or use of motor vehicle is unsatisfied, privilege of that person driving or having motor vehicle in Manitoba will be suspended. Registrar will suspend license of driver convicted of certain more serious driving offences anywhere in Canada or U.S.A. until proof of financial responsibility is given. There are also provisions for suspending right of non-resident to drive in Manitoba where his license has been suspended or cancelled by law of another Province or State for reasons which could lead to cancellation in Manitoba.

Victims of accidents who recover judgment against person who is not financially responsible and where identity of driver can not be ascertained have certain rights of recovery against Autopac. It covers for personal injuries up to \$200,000. arising out of any one accident,

regardless of number of claims or claimants (M.P.I.C. Act, Reg. 333/74, §38 (5)). Insurer may not make subrogation recovery against fund. Claimant must prove he has exhausted all remedies against all persons against whom he has cause of action. If he has made settlement he must satisfy court it was reasonable one. Onus under H. T. Act is on Registrar in same manner as on owner or driver and plaintiff's claim is subject to apportionment under Contributory Negligence Act. *Pash v. Registrar of Motor Vehicles*, (1949) 1 W.W.R. 225.

By §258 Ins. Act third party may after recovering judgment against insured, sue insurer for moneys payable under auto insurance contract. But no action may be brought against insurer after one year from final determination of action against insured. (1958) S.M. CAP. 25 §7. *Barr v. Scottish Union*, 6 I. L.R. 37; *Shaw v. Home*, (1940) 1 W.W.R. 655. Material misrepresentations in application which were formerly defense available to insurers in such action are no longer available (Ins. Act §258 (4)). Insurer in such event can still claim back against insured.

Insured held liable to reimburse insurer for moneys paid to third party under financial responsibility law. *Wesley v. Toronto*, 6 I.L.R. 142.

## FIRE INSURANCE

See Ins. Act, § 137-147.

Assignment. Giving of chattel mortgage is not breach of condition against "assignment" although absolute assignment of assured's interest before loss is. *Sovereign Life v. Peters*, 12 S.C.R. 33. Assignment of money's recoverable after loss is not breach. *Thompson v. Equity*, (1910) A.C. 592, although it might be as to balance of policy where loss is partial only. *Welford Fire Ins.*, 3rd Edit. 224. Where policy insures insured "and assigns" it is assignable without permission or endorsement. *Noack v. Lanark*, (1932) 4 D.L.R. 64.

Cancellation. See "CANCELLATION."

Explosion. Loss caused by grain dust explosion is loss by fire caused by explosion. *Reidle v. Merchants Fire*, (1926) 1 W.W.R. 497.

Friendly Fires. Cigarette burn in table cloth is loss by fire. *Osborne v. Federal*, (1936) 3 I.L.R. 28, as also is "hostile" fire from grate. *Hand v. Commercial Union*, (1936) 3 I.L.R. 564. Accidental burning of bank notes in grate held to be loss or damage by fire. *Harris v. Poland*, (1941) 1 All E.R. 204. Overheated engine. *Morley v. Employers*, 6 I.L.R. 93.

Limitation of Risk or Hazard. Ins. Act, §362. Attorney for Reciprocal or Inter-Insurance Exchanges must state on oath on request of Superintendent maximum

amount of any single fire risk and that no subscriber has assumed on single fire risks over 10% of its net worth. If policy has stamped on face in lettering of at least 12 point size the words: "This policy contains a clause which may limit the amount payable," it may limit liability to portion of loss or percentage of property value; or, if other insurance, to ratable proportion or percentage or provide that insurer shall only be liable for specified percentage unless certain stipulations are fulfilled by insured. Ins. Act, §143.

Mortgage Clause providing that insurance as to interest of mortgagees shall not be invalidated by acts or neglect of mortgagor applies only to acts after risk commences and does not protect against concealment of material facts by mortgagor in application. *Liverpool v. Agricultural*, 33 S.C.R. 94. See *Farmers v. Hanrahan*, (1941) O.W.N. 212.

Ownership. Appointment of receiver, authorized assignment, under Bankruptcy Act change of title by succession or operation of law or death does not constitute assignment or end liability. Cond. 3.

Proof of Loss. By fire conditions, person claiming must (a) give notice in writing forthwith, (b) deliver particulars, (c) furnish statutory declaration, (d) produce books and records. (Cond. 6). Proof must be made by assured or in his absence or inability by agent or, on refusal by insured, by person entitled (Cond. 8). Fraud or wilfully false statements in proof vitiates claim. (Cond. 7). *Glagovky v. National Fire*, (1931) 1 W.W.R. 573; *Etterman v. London*, (1936) 2 W.W.R. 513. Claim for double amount recovered not necessarily fraudulent. *Fefferman v. N.B. Fire*, (1932) 2 W.W.R. 507. The onus is on insurer. *Kirby v. Canadian Indem.*, (1933) 3 W.W.R. 272. Fraudulent statement in proof of loss. *Union Fire v. Chatelain*, (1941) O.W.N. 347.

Failure to object to proof held waiver of defects by insurer. *Konovsky v. Pacific Marine Ins. Co.*, (1923) 2 W.W.R. 71; *Green v. Manitoba Assur.*, 13 M.R. 395. Sufficiency of proof of loss. *Anderson v. Stevenson*, (1943) O.W.N. 287.

Standard Policy Provisions. By Insurance Act, uniform statutory conditions are deemed to be part of every contract of fire insurance (§142 (1)). These conditions replace former conditions and came into force Jan. 1, 1959. Misrepresentation in application voids policy if material (Cond. 1) also material change in risk within control and knowledge of insured unless notified to insurer (Cond. 4). Mere nondisclosure to be fatal must be fraudulent. (Cond. 1) *Taylor v. London*, (1935) 3 D.L.R. 129. Loss is payable within 60 days after proof (Cond. 12) and action must be commenced within two year after loss occurs. (Cond. 14).

An inland marine policy covering loss by fire has been held to be fire insurance and statutory provisions relating to fire insurance applied. *Regal v. Glens Falls*, 13 I.L.R. 62.

## FRAUD

See "AGENTS AND BROKERS"; "FIRE INSURANCE, Proof of Loss"; "REPRESENTATIONS AND WARRANTIES."

## GUEST CASES

See "AUTOMOBILES."

See "NO-FAULT."

## HOSPITAL

Standard ward care covered by compulsory government insurance plan. Plan has mandatory subrogation rights for hospital costs against third parties in liability cases. Health Services Insurance Act, R.S.M. 1987, Cap. H35, §130.

## HUSBAND AND WIFE

Married woman capable of holding property as if femme sole. Married Woman's Property Act. A husband and wife have same right to sue each other for tort as if they were not married. Married Women's Property Act, §6 (2).

## INFANTS

See "AUTOMOBILES, Age"; "LIABILITY INSURANCE, Violation of Law."

## INSANITY

Contracts and dispositions of property for value are voidable by lunatic or those responsible for his estate if it can be shown that he was so insane as to be unable to manage his affairs and that other party knew of his condition. A contract made by person of unsound mind is not voidable, on ground of insanity, if other party to contract believed at time he made contract that the person with whom he was dealing was of sound mind.

## LIABILITY INSURANCE

Application. Where applicant falsely and prejudicially describes automobile or knowingly misrepresents or fails to disclose in application any fact required to be stated therein his rights are forfeited (Ins. Act, §236) (1). Where written application made, no statements other than those contained therein usable in defense of claim.

(Ins. Act, §236) (2). For material misrepresentation *see Fonciere v. Divinsky*, (1939) 2 W.W.R. 587.

Chattel mortgage. Made after application for policy included in "material change" in automobile risk. (Automobile Ins. Act, cond. 1). Misrepresentation knowingly in application forfeits indemnity (§236) (1).

Compromise of Claims. By Automobile Cond. 3 (2) insured shall not assume liability or settle any claim except at his own cost and shall not interfere in any negotiations. Payment of claim without consent of company held fatal to insured's claim. *Fidelity v. Marchand*, (1924) S.C.R. 86.

Contribution between Tort-feasors and Contributory Negligence Act. R.S.M. T. 90. Amount of contribution depends on relative responsibility for damage.

Co-operation of Insured in Defense of Action. Insured required to cooperate with insurer in defense of any action (Automobile cond. 3) (3). *Fidelity v. Marchand*, (1924) S.C.R. 86. Admitting liability in written statement to plaintiff and not notifying insurer held breach. *England v. Dominion*, (1931) 3 D.L.R. 489. Failure to help insurer prove intoxication of insured not breach. *McKnight v. General*, (1931) 3 D.L.R. 476. Promoting action by mother, etc., held failure to cooperate. *Walters v. Ocean Acc.*, (1935) 1 W.W.R. 516. *Generally, Provident v. Adamson*, 1938 S.C.R. 482.

Definition. Public liability insurance is insurance against loss or damage to person or property of others not included in any other class of insurance. Ins. Act, §1.

Medical Expenses. Insurer by form of automobile policy in use agrees to reimburse insured for outlay for immediate surgical relief at time of personal injury but if negligence is established medical expenses are generally part of damages. Limited accident insurance came into force Jan. 1, 1969, and permits auto insurer to include coverage for (a) uninsured motorist, (b) medical expense, and (c) accident benefits to driver, passenger and pedestrian struck by vehicle regardless of fault.

This coverage taken 1 Nov. '71, by compulsory government insurance with limited no fault accident coverage under Manitoba Public Insurance Corporation Act, S.M. 1987 c. P215.

Rights of Injured Party against Insurer. By Ins. Act, §258 (1) person having claim against insured is entitled after judgment against insured to sue insurer on behalf of all claimants. Other creditors do not share (3). Insurer is practically always liable on judgments in favor of third party claimants except possibly where policy never in force because of statements in application or fraud at inception (4). *Bright v. Ashfold*, (1932) 2 K.B. 152, and *Barn v. Scottish Union*, 6 I.L.R. 37, but insurer can claim

over against insured where no liability to insured and be added as 3rd party and defend claimant's action against insured notwithstanding denial of liability under policy. §258 (14).

Violation of Law. Unless contract otherwise provides violation of law does not render claim for indemnity unenforceable against insurer unless committed by insured or with his consent and with intent to cause loss or damage. Ins. Act §258 (4).

Auto Cond. 2 prohibits driving by person not authorized by law or qualified, or by person under 16 years. Insurer would be liable to third party but might have right of recovery against insured or driver Ins. Act, 258 (13). Where insured did not know his driver was unlicensed and accident happened and insurers settled claim, they were held to be entitled to recover from insured amount of settlement. *Canadian v. Clark*, 13 I.L.R. 73 and 99. *See generally, Continental v. Yorke*, (1930) S.C.R. 180.

#### LIMITATION OF TIME FOR COMMENCEMENT OF ACTION

Automobile Accident. Period of 2 years after accident, and two years after date of death in fatal accident. Limitation of Actions Act, R.S.M. 1987, L150; Fatal Accidents Act, R.S.M.R.S.M. 1987, c. F50; Trustee Act, R.S.M. 1987, c. T160.

A court may extend period within which action may be brought where material facts were outside knowledge of plaintiff until limitation period expired if application to extend was made within 1 year of date on which applicant first knew, or in all circumstances of case, ought to have known material facts. However, no leave shall be granted more than 30 years after date of occurrence of acts or omissions giving rise to cause of action. Limitation of Actions Act, §14 (1), (4).

Auto Insurance. Two years after loss for damage to auto and 2 years after cause of action arose for damage to persons or property. Auto Cond. 6 (3).

Fire Insurance. Loss payable within 60 days after proof of loss (Cond. 12) and action barred unless action commenced within two year after loss occurs. (Cond. 14). Condition 14 not waived by request of insurer for further proofs. *King v. Caledonia*, (1934) O.W.N. 171.

Life Insurance. One year after furnishing of reasonably sufficient proof of maturity of contract and of right of claimant to receive payment or within six years next after maturity of contract whichever period shall first expire. Ins. Act, §184 (1). Time runs from first proof filed even if it is defective. *Somerville v. Prudential*, (1935) 3 W.W.R. 81.

## NEGLIGENCE

Under Tort-feasors and Contributory Negligence Act, R.S.M. 1987, c. T90 §2 (1), plaintiff who has obtained judgment against one tort-feasor is not barred from bringing action to recover against any other tort-feasor who would have been liable if named as defendant in first action. However, where more than one action is brought, aggregate sum of damages awarded cannot be greater than amount awarded under first judgment.

Tort-feasor who has been found liable may recover contribution from any other tort-feasor who is or would have been liable, if sued. Amount of contribution is determined by court on basis of what is just and equitable, having regard to extent to which individual is responsible for damage at issue.

The mere fact that plaintiff is contributorily negligent does not preclude him from recovering from negligent defendant. Rather, court merely apportions damages between plaintiff and defendant to reflect proportion of negligence of each.

Co-defendants liability under this Act is joint and several. Thus, plaintiff can look to any co-defendant for satisfaction of full amount of award and has full recourse to post judgment execution remedies.

## NO-FAULT

The Manitoba Public Insurance Act R.S.M. (1987) c. P215, came into force on November 1, 1971. On March 1, 1994, The Manitoba Public Insurance Corporation introduced the personal injury protection plan which is a total no-fault compensation plan. The plan is based on four principles, namely: 1) Coverage for all Manitobans injured in automobile collisions anywhere in Canada or the United States. 2) Compensation for real economic loss, i.e. such as income loss and medical expenses, resulting from accidental injuries and automobile collisions. The plan does not make monetary payments for non-financial losses like pain and suffering. 3) Guaranteed compensation for all injured Manitobans regardless of fault for the accident, i.e. the plan removes injured victims access to the courts and the right to sue and replaces it with an internal appeal commission. 4) Indexing of benefits, i.e. claimants receiving the personal injury protection plans and income replacement indemnities for long term disabilities will have their benefits indexed once a year at the same rate as the cost of living.

The amendments to The Manitoba Public Insurance Corporation Act which came into force on March 1, 1994, also provide for funeral expense coverage and death benefits. Details are set out in the Act and in extensive Regulations authorized by the Act with sched-

ules to calculate death benefits and/or compensation for loss of use of a limb or body part. The particulars can be obtained from The Manitoba Public Insurance Corporation, 330 Graham Avenue, Winnipeg, Manitoba, R3C 0C4. There are weekly indemnity benefits based on a maximum of \$55,000 per year calculated on 90 percent of net income. If Manitoba motorists travelling outside the province with their vehicles injure someone or damage property, they can be sued according to the laws of the jurisdiction in which the accident occurred. Manitobans injured in motor vehicle accidents outside Manitoba are entitled to Manitoba's accident benefits and have the right to pursue further benefits through the courts and the jurisdiction where the injury occurred. Non-Manitoba residents and their vehicles involved in accidents or injured in the Province of Manitoba may be limited to recovery pursuant to the personal injury protection plan.

All perils coverage with \$400 deductible and third party liability coverage of \$200,000 per accident is compulsory. All perils deductible may be reduced and liability coverage increased either through government plan or by private insurance carriers.

## RELEASE

Release of third party by insured made in bad faith at expense of insurer probably gives insurer defense against insured. *Globe v. Truedell*, (1927) 60 O.L.R. 227. Insured under auto policy must not settle any claim. (M.P.I.C. Act, §21 (9)) See *Davis v. MacRitchie*, 5 I.L.R. 345. Release of liability from insured to insurer is void as against third party claimants. Ins. Act, §258. Mutual promises in settlement although unexecuted will discharge and release original liability in tort or contract and leaves only remedy under promises in settlement. *Br. Russian v. Associated*, (1933) 2 K.B. 616.

## REPRESENTATIONS AND WARRANTIES

Contracts of insurance other than life, accident and sickness, fire and automobile (as to which see those heads) required to limit effect of misstatements in application to material facts by Ins. Act, 117 (4). Answers in Fidelity Bond application held untrue and material and to afford de of Motor Vehicles, government agent, or person authorized in writing by Superintendent of other provinces. Brokers will be e any express reservation of or claim to assured's rights, but insurers are not entitled to any benefit until assured has received full indemnity. *Gill v. Yorkshire*, 4 W.W.R. 692. True test of right to subrogation is whether enforcement of right will diminish insurer's loss. *Kapoor v. C. N. P.*, (1932) 3 D.L.R. 487. Subrogation to insurer provided for by Statutory



provisions; e.g., Ins. Act, §146 (fire); M.P.I.C. Act, §26 (1) (automobiles).

Insured who recovers from third person can deduct all reasonable expense before repaying to insurance company. *Baloise Fire v. McArthur*, (1937) O.W.N. 151.

### THEFT

Under auto insurance policy, *Florence v. Glens Falls*, (1940) 3 W.W.R. 565. See "BURGLARY INSURANCE."

### WAIVER AND ESTOPPEL

Waiver and estoppel are matters of intention. During settlement negotiations, an admission of liability is not sufficient to estop the insurer from relying upon a limitation period unless there is evidence from which a promise not to rely on a limitation period can be inferred, i.e. an intent to affect legal relations. *Travelers Indem. Co. v. Maracle*, (1991) 80 D.L.R. 4th 652 (S.C.C.). Letter of adjuster denying liability on one

ground held not waiver but to be estoppel against denying liability on other defects in proof of loss. *Glagovky v. National Fire*, (1931) 1 W.W.R. 573. Waiver cannot support claim which is contrary to public policy. *Home v. Lindal*, (1934) S.C.R. 33. Under M.P.I.C. Act s.25, insurer may waive term of Act or regulations, but such waiver must be in writing and signed by officer of Corporation. Waiver may be avoided by liability. Insurer withdrawing from defense, *Walters v. Ocean Acc.*, (1935) 1 W.W.R. 516. Intoxicated driver; knowledge of insured. *Stevenson v. Brique Champlain*, 10 I.L.R. 188. It is probably not safe to proceed with conduct of defense after giving notice of reservation of rights, *Dufferin v. Can. Surety*, 2 I.L.R. 525.

When company pays loss on chattels it waives election to repair building after fire loss. *Chysy v. Fire*, 6 I.L.R. 163.

### WARRANTIES

See "REPRESENTATIONS AND WARRANTIES."