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Actionable Claims and the Rationale Behind Repealing Section 130A of Transfer of Property, 1882

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Abstract

Assignment of life policies was governed until 1938 by the basic principles pertaining to assignment of actionable claims. The Transfer of Property Act, Section 130A, has been repealed. It stipulates that a written instrument signed by the transferor or their duly authorized agent must be executed in order to transfer an actionable claim, with or without consideration. Once this is done, the transfer becomes complete and effective, and the transferee receives all rights and remedies associated with the transfer, regardless of whether notice of the transfer is given. This exemption applies to transfers of marine and fire insurance. However, the reason behind repealing the section along with repealing other related sections from Marine Insurance Act is pondered upon. This research is to bring out the cross reference of sections relating to actionable claim, assignment, and insurable interest in regard to marine insurance policies.

Keywords: Actionable claim, assignment, insurable interest, marine insurance policy, transfer of actionable claims

INTRODUCTION

Actionable claim in simple terms refers to claims for which actions can be taken for legally, that is, you can go to court to claim the amount that ideally belongs to you. Section 3 of the Transfer of Property Act, 1882, puts forth the meaning of actionable claim, and provisions regarding transfer of actionable claims are dealt in Chapter 8 of Transfer of Property Act, 1882. Among different kinds of actionable claims, one such claim is amount to be received through insurance. So, the question as to the transfer of marine insurance policy was dealt under Section 130A of the act until it was repealed on First of September, 1963, by the Marine Insurance Act, 1963. The reason for repealing Sec 130A of Transfer of Property Act, 1882 with regards to Section 92 of the Marine Insurance Act, 1963, which was also repealed later on is the study taken up through this research paper. The meaning and scope of marine insurance, how and when it can be transferred, the concept of assignment as per the Marine Insurance Act, 1963, are also brushed upon in this paper.

MEANING OF ACTIONABLE CLAIMS

Section 3 of the Transfer of Property Act 1882 reads *"actionable claim means, a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing confidential or contingent* [1].

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Indian courts recognize actionable claims to offer redress or assistance concerning unsecured debt or the advantageous interest in movable property. A

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debt is the sum amount that is to be paid by the debtor mandatorily. The responsibility to repay the specified amount lies with the debtor. It shall be paid as decided earlier by the parties. The debtor may be liable to pay immediately or on a particular day in future.

Debts can be classified as secured debts and unsecured debts. Furthermore, existing debt represents debt which is due in present and accruing debt refers to the debt which will be due in future.

Secured debts shall include the following:

- Debtors may have debts that are payable under specific conditions, known as conditional debts. Similarly, when debts become payable upon the occurrence of a specific event, they are referred to as contingent debts. Examples: Arrears of rent, etc.
- They come under actionable claims.

Unsecured debts shall include the following:
When the security is:

- In case of an immovable property, if the debt is secured by a mortgage
- In case of a movable property, when that property is pledged or under hypothecation

While the security is a debt which is secured by a mortgage, hypothecation, and/or pledge, then such debt cannot be claimed under actionable claim. Henceforth, unsecured debts are not considered as actionable claims.

Actionable claims shall include the following [2]:

- A right to the output/profits of a business/organisation
- A partner's right to sue in reference to dissolved partnership
- Under deed of wakf, annuities to be payable
- Before the execution of the conveyance, the amount to be payable by the purchaser of an immovable property
- The right to recuperate the money which remains in the hands of the vendee/buyer
- An amount to be paid (due) under a policy of insurance or letter of credit
- Arrears of rent, and/or future rents
- A decretal debt
- Purchaser's interest in the prize money won or received through a lottery

In the guiding case, *Lachmi Koeri Vs the State of Bihar* [3], it was affirmed that the transfer of arrears of rent is a type of a transfer which comes under actionable claim. Therefore, such transfer of arrears of rent may be transferred in accord with the provisions of the Transfer of Property Act.
Non-actionable claims shall include the following:

- The debt incurred through a judgement or decree
  The same was reiterated by the Supreme Court in the case of *Jugalkishore Saraf Vs Raw Cotton Co. Ltd* [4], that a judgment debt or decree is not an actionable claim for action is required.
- Means profits are unliquidated damages, a claim to such means profits are non-actionable claim.

Actionable claims can be for both movable and immovable properties. Transfer of the same is dealt under Chapter VIII of The Transfer of Property Act, 1882.

CHAPTER VIII OF TRANSFER OF PROPERTY ACT, 1882

Under Section 130 of the aforesaid Act, transfer of actionable claims is permitted. Section 130 of the Transfer of Property Act describes the mode of transfer of actionable claim. Under Section 130, following essentials shall be fulfilled:

- Through written instrument, a valid transfer can be made.

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- The transferor or his legal agent must sign the same.
- Only then transfer is complete.

It is essential to possess the intention to transfer the debt that is represented by the written receipts. This was held in the case of *Simon Thomas vs. State Bank of Travancore* [5].

Exceptions to Sec 130: Sec 130 does not apply to the transfer of marine insurance and fire insurance policies. This is one of the reasons Sec 130A is repealed. Marine insurance policy is governed under the Marine Insurance Act, of 1963. The insurance transfer is similar to the normal transfer of an actionable claim but more detailed.

Section 132 of the transfer of property act, defines the liability of the transferee of actionable claim. The liabilities and equities of the transferor are transferred to the transferee.

Section 133 of the Transfer of Property Act describes the warranty of solvency of the debtor. As per which, when a debt is transferred, the transferor provide warranty to the transferee of the debtor's solvency. This warranty, unless otherwise mentioned, is limited to the solvency of the debtor at the time of payment with the amount equal to the due amount.

Section 134 of the Act puts forth the effect of transfer of mortgaged debt. Section 135 of the Act deals with the assignment of rights in fire insurance; the assignee must endorse or through any other forms of writing must draft the policy, holding required details. Section 135A deals with assignments of rights in marine insurance policy. Section 135A is also repealed by Marine Insurance Act.

As per Section 136, anyone from the Court of Justice, cannot buy or pay hinderance or stipulate or agree to any share of actionable claim in a case undergoing under them. The section expressly mentions legal practitioner, judges of the court, the legal officer who is concerned with the justice of the court last but not the least, Section 137 clearly states the exception to Chapter VIII of the Act. According to which, this Chapter VIII does not include stocks, debentures, and any other negotiable instruments.

Furthermore, actionable claims are goods, however they are not, for the purpose of Sales tax Acts, considered as movables. It was made definite in the case, *State of Kerala and Ors. Vs. Mini Shamsudin and Ors* [6].

CONCEPT OF MARINE INSURANCE

Marine insurance provides coverage for vessels, goods, ports, and any other goods or cargo that is moved, purchased, or stored from the starting location to the ultimate destination. Cargo insurance is a subset of marine insurance. Additionally, marine insurance covers hull, marine casualty, and maritime liability for offshore or onshore exposed property (container terminal, port, oil platform, pipeline, etc.). Marine insurance is often divided between vessels and cargo. It is commonly referred to as hull and machinery insurance. A total loss insurance policy does not cover partial losses; it covers the loss of the entire vessel. The "voyage of time" foundation of the coverage or a combination of the two will apply. The marine insurance industry operates globally and is always subject to national and international laws.

The International Commerce Terms, or "INCOTERMS," developed by the International Chamber of Commerce (ICC) in Paris, and a number of provisions published by the ICLU (Institute of London Underwriters) serve as the general principles of the Marine Insurance Act 1963, which governs the industry in India. India introduced the Marine Insurance Act, 1963, on August 1st, with the primary objective of overseeing and regulating the operations of marine insurance companies, particularly in relation to hull, cargo, and freight.

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Section 3, of the Act, defines "Marine Insurance "as A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

MARINE INSURANCE POLICY

A marine insurance policy must mention:

- Assured's name or name of the person on his behalf
- Subject matter, that is the goods which is insured
- What is the risk insured against
- Voyage or period or both which will be covered through the insurance
- Sum/sums insured
- Name/names of the insurer/insurers

A marine cargo policy can be readily transferred to any individual who gains an insurable interest and is open for assignment both before and after a loss occurs.

Before understanding about the transfer and the repealed section, it is essential to understand the concept of insurable interest and the concept of assignment. It is elaborated here.

Insurable Interest

An insurable interest is a legal, valid form of protection for a person, entity, or event. An insurable interest is created when the destruction or loss of an object would result in a financial loss (losses) or other hardship. In order for an individual or entity to have an insurance policy, they would need to take out a policy that would protect them, the person, the item, or the event. The policy would reduce the risk of a loss if something happened to the asset, such as damage or loss. Insurable interest is a necessary condition for issuing a policy that protects an entity or event. People who are not subject to a financial loss have no insurable interest, meaning they cannot buy an insurance policy unless they are actually exposed to a financial loss.

Meaning of Assignment

An assignment refers to the transfer of interest from one party to another. In the context of insurance, it encompasses the transfer of rights and responsibilities stipulated in a contract. Another type of assignment in insurance is the assignment of benefits under policies. The difference between an assignment of policy and an assignment of benefits is that the former transfers all rights and obligations, while the latter transfers only benefits (e.g. money owed under the policy, etc.). In insurance, an assignment means an assignment of rights under a contract. The assignee of the policy becomes the owner and has all the rights thereunder. An assignment does not change the subject matter of the policy and remains unchanged.

Assignment of Marine Insurance Policy

The Marine Insurance Act, 1963, outlines the regulations governing marine insurance policies. A marine policy is generally transferable, except when explicitly prohibited by its terms. Such assignment can occur either before or after a loss event. An assignee of a marine policy may sue the policy in their own name. If the policy is assigned in such a way that the beneficial interest passes to the assignee, they are entitled to do so. The assignee is also entitled to make a defence of the contract that they would be entitled to do if the action were brought on behalf of the person(s) the policy was issued to. The policy can be assigned either by endorsement of the policy or by other customary means.

Section 17 of Marine Insurance Act, 1963 provides that Assignment of interest.—*Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect. But the provisions of this section do not affect transmission of interest by operation of law.*

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Section 25 of the Act of 1963 provides that a marine insurance policy must specify:

1. The name of the assured, or of some person who affects the insurance on his behalf;
2. The subject-matter insured and the risk insured against;
3. The voyage, or period of time, both, as the case may be, covered by the insurance;
4. The sum or sums insured;
5. The name or names of the insurer or insurers.
6. Contract must be embodied in policy

Section 24 of the Marine Insurance Act of 1963 provides that: "A marine insurance contract shall not be entered in the register of wills and testament unless it is incorporated into a marine policy under this act. The marine policy may be entered into and executed at the time of the conclusion of the contract or at a later date."

Section 52 says when and how a policy can be assigned. A marine policy can be assigned if there are no conditions expressly prohibiting it. It can be assigned before or after a loss. If the policy is assigned in such a way that it passes the beneficial interest to the assignee, they have the right to sue in their own name. The assignee also has the right to make any claims under the contract that they would have had the power to do if the suit were brought in their name. The policy can be assigned either by endorsement or in the usual way. However, Section 53 of the Law of 1963 says that an assured who has not lost interest in the insured subject-matter cannot assign the policy. Any subsequent assignments of the policy are inoperative unless the assured has explicitly or implicitly agreed to assign it.

Section 17 provides that if the insured disassociates or otherwise transfers his interest in the insured subject matter, he (the insured) does not transfer his rights pursuant to the contract of insurance to the assignee, unless there is an explicit or implied agreement between the insured and the assignee for that purpose. This section shall not affect the transfer of interest by act of law. It is important to note that, pursuant to Section 17, even after an assignment is made by the insured pursuant to their contract of insurance, the rights of the insured pursuant to that contract are not transferred to the assignee pursuant to the deed of assignment, but continue to be held by the insured.

A marine policy is assignable both before and after a loss, unless there are specific terms within the policy that explicitly prohibit such assignment. In contrast, a policy on goods can be freely assigned. For example, a policy on tea can be assigned before it reaches its destination, or a policy on wheat can be assigned after it reaches its destination. However, both policies on ships and on freight have restrictions on the ability to assign. A transfer of interest in a subject insured by an insured person, such as by an act of law, such as death or bankruptcy, does not transfer an insured person's rights in that subject-matter insurance policy to an assignee. An insured person may not assign a policy after a loss unless they have explicitly or implicitly agreed to do so. An assignee may assign a marine policy by making an endorsement on the policy or by any other customary means. On the assignment of the beneficial interest in the policy, the assignee is entitled to sue thereon in his name. All these essentials were previously given in Section 130A of the Transfer of Property Act of 1882.

REPEALED SECTION

Section 130A of the Transfer of Property Act, as it stood before being repealed:

Transfer of Policy of Marine Insurance

1. A policy of marine insurance may be transferred by assignment unless it contains terms expressly prohibiting assignment, and may be assigned either before or after loss.
2. A policy of marine insurance may be assigned by endorsement thereon or in any other customary manner.

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3. In cases where the insured person had parted with or lost his interest in the subject-matter insured, and has not, before or at the time of doing so, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:
   Provided that nothing in this sub-section affects the assignment of the policy after a loss.
4. Nothing in clause (e) of Section 6 shall affect the provisions of this section [7].

This section was added through Act 6 of 1944 because at that time transfer of marine insurance policy was not dealt anywhere until 1963. After which, this section was repealed by the Marine Insurance Act, 1963 (11 of 1963), Sec. 92 which came into effect from 1-8-1963. But 92 Section of the Marine Insurance Act of 1963 was also repealed by the Repealing and Amending Act of 1974 (56 of 1978), Section 2 and the First Schedule came into effect from 20-12-1974. Since Section 130A was repealed, Doctrine of Eclipse is not applied even after the removal of Section 92 of the Marine Insurance Act of 1963. The first Schedule of the Act is attached with this paper as Annexure. The section was repealed because a separate act for marine insurance and transfer of policy was put forth in 1963.

Section 92 of the Marine Insurance Act was repealed because the specific details to be prescribed in the contract are clearly mentioned in the form format which is added in the act under the first schedule. The rules and regulations to create such policies and the restrictions thereby are also given properly in the schedule itself.

Along with the requisites for a valid marine insurance policy and its transfer, the concept of assignment and assignee is elaborated in this Act.

RECENT CASE LAWS

United India Insurance Co. Ltd. v. Levis Strauss (India) Pvt. Ltd. Civil Appeal No. 2955 of 2022

This case had put forth the ingredients of Marine Insurance Policy. In its judgment, the Supreme Court, inter alia, examined the terms ‘maritime adventure’, ‘maritime peril’ and ‘maritime policy’ in the context of the Marine Insurance Act of 1973 (‘MI Act’). In its judgment, it was noted that Section 4 of MI Act, ‘combines marine and land risks’. In addition, it allows coverage-either by express terms or by use of trade for the extension of marine policies in order to protect the assured from losses on inland waters and on any land risk that may be associated with any sea voyage.

When an insurance policy extends ‘warehouse to warehouse,’ it means that the coverage encompasses not just the sea journey but also the period of transit from when the goods depart the consignor’s warehouse to their arrival at the consignee’s warehouse. The Supreme Court based its present judgment on its previous judgment in the case of *New India Assurance Co. Ltd. v. Hira Lal Ramesh Chand and Ors.* [8] which, it held that the insurance coverage extended beyond what was stated in the policy.

In this scenario, because the insurance coverage applied from the moment the consignments left the consignors’ warehouse until they arrived at the consignees’ warehouse, as long as the policy included a “warehouse to warehouse” transit clause and specific additional provisions, and considering that the policy addressed both marine and non-marine risks, it was determined that the policy constituted a comprehensive marine insurance policy. What matters is not whether or not the insurable event took place during the voyage; what matters is the nature of that cover.

Sea Glory Maritime Co and Another Company v Al Sagr National Insurance Co [2013] EWHC 2116 (Comm)

Justice Blair determined that the Underwriter’s decision to agree to the policy was not influenced by the Owners’ failure to disclose their awareness of the vessel’s Port State Control (PSC) detention record [9]. The Underwriter argued that the Underwriter’s interpretation of the ISM (International Safety Management) warranty would be difficult to implement, difficult to assess, and would lead to commercial uncertainty. The court agreed with the Underwriter and found that the Underwriter should

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be held to the same standard as the Class Warranty and that Document Compliance was sufficient [10–16]. The Owners sought compensation from the Underwriters for the damage caused by a fire on their vessel the NANCY. The Underwriters refused to pay the claim and argued that they could not be held liable under the Marine Insurance policy. Through this case, we could understand the importance of Warranty and the fact that everything must be clearly disclosed [17–21].

CONCLUSION

The domain of Marine Insurance Business primarily pertains to activities across international or overseas borders. It is regulated by the stipulations of The Marine Insurance Act, 1963, and is also guided by several clauses established by the Institute of London Underwriters (ILU) and the International Commercial Terms, commonly referred to as "INCOTERMS," which are created by the International Chamber of Commerce in Paris. That is why, it is completely unnecessary to have just a section [9] to deal with transfer of marine insurance policy and on contrary if not repealed without a doubt it would have created lot of ambiguity. Along with it, it may delay or waste court's time by just arguing to differentiate both the acts and finding of new loopholes. Therefore, the decision to repeal Section 130A of the Transfer of Property Act, 1882, was a wise one.

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ANNEXURE

The Marine Insurance Act, 1963

SCHEDULE

Form of Policy

(See section 24)

BE IT KNOWN THAT……..…..…….…..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, in part or in all doth make assurance and cause…….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, munition, artillery, boat and other furniture, of and in the good ship or vessel called the…….whereof is master for this present voyage……or whosoever else 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; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship…….upon the said ship, etc……and so shall continue and endure, during her abode there, upon the said ship etc…….And further, until the said ship, with all her ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at…….upon the said ship, etc., 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, etc., 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, etc., goods and merchandises, etc., for so much as concerned 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 contended to bear, and do take upon us in this voyage; they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letter 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, etc., 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, safeguards and recovery of the said goods and merchandises and ship, etc., 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 especially declared and 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 so we, the assurers, are contended, 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 into 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……....

MEMORANDUM 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 per cent. and all other goods, also the ship and freight, are warranted free from average, under three per cent. unless general, or the ship be stranded.

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:—

1. Lost and not lost.—Where the subject-matter is insured "lost or not lost" and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss, and the insurer was not.

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2. From.—Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.

3. At and from.—(a) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately. (b) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival. (c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety. (d) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the ship-owner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4. From the loading thereof.—Where goods or other movables are insured "from the loading thereof", the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

5. Safely landed.—Where the risk on goods or other movables continues until they are "safely landed", they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

6. Touch and stay.—In the absence of any further license or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

7. Perils of the seas.—The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8. Pirates.—The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

9. Thieves.—The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

10. Restraint of Princes.—The term "arrests, etc., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11. Barratry.—The term "barratry" includes every wrongful act wilfully committed by the master of crew to the prejudice of the owner, or, as the case may be, the charterer.

12. All other perils.—The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

13. Average unless general.—The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges".

14. Stranded.—Where the ship has stranded, the insurer is liable for the excepted losses although the loss is not attributable to the stranding, provided that when the standing takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15. Ship.—The term "ship" includes the hull, material and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured and also in the case of a ship driven by power other than steam, the machinery and fuels and engine stores, if owned by the assured.

16. Freight.—The term "freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables as well as freight payable by a third party, but does not include passage money.

17. Goods.—The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

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