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A Critique of The English And Nigerian Marine Insurance Laws on Insurable Interest

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Abstract : The paper examines modern approaches to the insurable interest, which is a fundamental principle of insurance law that affects the enforceability of insurance contracts. The study starts by examining the competing definitions of the nature of the insurable interest doctrine. It finds that while legal interest theory is seen to be sufficient as the test of insurable interest, the paper argues on how this approach deprives the insured of a full indemnity of losses suffered. The problem with the Nigerian and English current legislative framework is that it defines insurable interest as a legally recognized interest of the insured in the subject matter of insurance. However, other countries like Australia, the United States, South Africa, and more recently, Canada, have rejected the English test and trodden their own path along the factual expectancy line. The study justifies the rationale behind the departure of similar common law jurisdictions and argues that the English and Nigerian position, which appears to be too rigid, harsh on the insured, and no longer fit for purpose in the 21st century, should be revised. The paper concludes that the common law doctrine does not represent better interests of certainty, justice, and fairness, as well as not meeting the policy behind the requirement of insurable interest. This paper adopts a doctrinal comparative research methodology to examine complex areas of insurable interest in selected countries and work out some suggestions for reforming the Nigerian and English laws by referring to the approaches of other jurisdictions.

Keywords : Australia, common law, English law, insurable interest, insurance, Nigeria
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