

**Comparative Studies  
in the History of Insurance Law**

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**Studien zur vergleichenden Geschichte  
des Versicherungsrechts**

**Volume / Band 4**

**The Influence of Marine Insurance Law  
on the Legal Development  
of Life and Fire Insurance  
in England**

**By**

**Sinem Ogis**



**Duncker & Humblot · Berlin**

SINEM OGIS

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Edited by / Herausgegeben von  
Prof. Dr. Phillip Hellwege

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Augsburg, June 2019

*Sinem Ogis*



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## Abbreviations

A. & E.	Adolphus and Ellis
A.C.	Appeal Cases, Law Reports
Add.	Additional
Anon.	Anonymous
App.Cas.	Appeal Cases
Art.	Article(s)
Atk.	Atkyns' Chancery Reports
B. & A.	Barnewall & Alderson's King's Bench Reports
B. & C.	Barnewall & Cresswell's King's Bench Reports
B. & S.	Best & Smith's Queen Bench Reports
Bing.	Bingham's Common Pleas Reports
BL	British Library
Bl.H.	Henry Blackstone's Common Pleas Reports
Bl. W.	William Blackstone's King's Bench Reports
Bli. N.S.	Bligh's Reports, House of Lords
Bos. & Pul.	Bosanquet & Puller's Common Pleas Reports
Bro. P.C.	Brown's Parliamentary Cases
Burr.	Burrow's Reports
c.	Contra
C. & M.	Crompton & Meeson's Exchequer Reports
C.B.	Common Bench Reports
C.B. (N.S.)	Common Bench Reports, New Series
C.P.	Common Pleas
Camp.	Campbell's Nisi Prius Cases
Car. & P.	Carrington & Payne's Nisi Prius Reports
cf.	Confer/ Conferatur (compare)
Ch.D.	Chancery Division Law Reports
Co.	Company
Co.Inst.	Coke's Institutes
Com.Rep.	Comyns Reports

Comb.	Comberbach's King's Bench Reports
Cowp.	Cowper King's Bench Reports
Cranch	Cranch's Supreme Court Reports
D.	Division
Doug.	Douglas's Reports
E. & B.	Ellis & Blackburn's Queen's Bench Reports
E.B. & E.	Ellis, Blackburn & Ellis's Queen's Bench Reports
e.g.	exempli gratia (for example)
East	East's Term Reports, King's Bench
ed. / eds.	Editor /Editors
edn.	Edition
Eq. Cas. Abr.	Abridgment of Cases in Equity
Esp.	Espinasse's Nisi Prius Reports
Ex.	Exchequer Reports
f.	following
F. & F.	Foster & Finlayson's Nisi Prius Reports
ff.	folios following
fn.	footnote
Geo.	George
H. & G.	Harris & Gill's Maryland Reports
H. & M.	Hemming & Miller's Chancery Reports
H. & N.	Hurlstone & Coltman's Exchequer Reports
H.L.	House of Lords
H.L.C.	Clark & Finnelly's House of Lords Cases
Harl.	Harleian
Holt	Holt's Nisi Prius Reports
i.e.	id est (that is)
Ins.	Insurance
K. & J.	Kay & Johnson's Vice Chancellor's Reports
K.B.	Kings Bench
K.B.D.	King's Bench Division
Keny.	Kenyon's Notes of Cases
L	Lloyd's
Ld.Raym.	Lord Raymond's King's Bench and Common Pleas Reports

L.R.	Law Reports
L.T.	Law Times Reports
Lev.	Levinz's King's Bench and Common Pleas Reports
Lloyd's Rep.	Lloyd's Law Reports
LMA	London Metropolitan Achieves
Lutw.	Lutwyche's Entries and Reports, Common Pleas
M. & S.	Maule & Selwyn's King's Bench Reports
M. & W.	Meeson & Welsby's Exchequer Reports
Man. & G.	Manning & Granger's Common Pleas Reports
Mod.	Modern Reports
Moo. N.S.	Moore's New Series
Mood. & M.	Moody and Malkin's Nisi Prius Reports
MS.	Manuscript
No.	Number
P.Wms.	Peere-Williams' Chancery & King's Bench Cases
Pa.	Pennsylvania Supreme Court Reports
Park Ins.	Park on Insurances
Peak. Add. Cas.	Peake's Additional Cases
Peake	Peake's Nisi Prius Reports
rev. edn.	Revised Edition
Q.B.	Queen's Bench Reports
Q.B.D.	Queens's Bench Division
s. v.	sub vocibus (under the word)
Salk.	Salkeld's King's Bench Reports
sec.	Section
Show.	Shower's Parliamentary Cases
Show. K.B.	Shower's King's Bench Reports
Str.	Strange's King's Bench Reports
Sty.	Style's King's Bench Reports
T.L.R.	Times Law Reports
T.R.	Durnford & East's Term Reports, King's Bench
Taunt.	Taunton's Common Pleas Reports
v.	Versus
Vern.	Vernon Chancery Reports
vol.	Volume





# Chapter 1: Introduction

## A. State of Research

Insurance has a long-standing history. Another term which is often found in English historical materials is that of assurance. In early periods, both terms were used interchangeably. Both a policy of insurance and a policy of assurance signified a note or bill of security or indemnity. However, assurance is the older term. It was first used in marine, life and fire insurance alike. This use of the term is retained in the names of long-established insurance companies, such as the London Assurance Corporation. The first author who drew a distinction between the concepts of assurance and insurance was Charles Babbage (1791–1871) in his “Comparative View of the Various Institutions for the Assurance of Lives”, published in 1826. There were other authors such as Cornelius Walford, William Farr and George C. Sprague who also discussed the difference between the two terms. Some preferred the term assurance for life assurance and the term insurance for marine and fire insurance, while others have continued to use the terms indiscriminately.<sup>1</sup> For a historical analysis, the distinction between the two concepts is of no importance.

During the early centuries of its history, insurance had its most common appearance in maritime commerce. J.L. Longnaker illustrates the purpose of marine insurance by reference to a story of two Chinese farmers.<sup>2</sup> They were selling rice at the market of a distant city, located on a river mouth. Each farmer had his own boat, and every year each had to ship his rice down the river to the city. However, both farmers were exposed to the risks of accidents and pirate attacks. In reaction, each farmer loaded half of his rice onto the other farmer’s boat in order to share the risk of loss.

This form of risk sharing could be analysed as a form of insurance as it involved two individuals splitting a risk between them.<sup>3</sup> However, many authors do not classify such early forms of risk sharing as insurance.<sup>4</sup> These authors argue that insurance by definition requires the existence of a contractual agreement,

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<sup>1</sup> See *Marshall*, vol. 1 (3<sup>rd</sup> edn., 1823), 290; *Babbage* (1826), vii; *Hopkins* (1867), 47; *Walford*, vol. 1 (1871), 206; *Joyce*, vol. 1 (1897), 37 f.; *Kerr* (1902), 4 f.

<sup>2</sup> On what follows *Longnaker* (1962), 643.

<sup>3</sup> *Abdel-Khalik* (2014), 113.

<sup>4</sup> *Longnaker* (1962), 643.

and early forms of risk sharing, such as in the case of the two Chinese farmers, were not based on any kind of contract.<sup>5</sup>

When arguing on the basis of any definition of insurance – particularly in an analysis of the history of insurance law in England – it has however to be remembered that such a definition did not make an appearance in England until the early seventeenth century. It was only the Act of 1601, the Act Concerning Matters of Assurances amongst Merchants,<sup>6</sup> which defined the concept of insurance. It was only in the eighteenth century that English literature followed in defining insurance.<sup>7</sup> By contrast, the French *Guidon de La Mer* had defined a contract of insurance already much earlier.<sup>8</sup> The English Act of 1601 stated:

“Whereas it hathe bene tyme out of mynde an usage amongst Merchantes, both of this Realme and of forraine Nacyons, when they make any greate adventure (speciellie into remote partes) to give some consideracon of Money to other psons (which comonlie are in noe small number) to have from them assurance made of their Goodes Merchandizes Ships and Things adventured, or some parte thereof, at suche rates and in suche sorte as the Parties assurors and the Parties assured can agree, whiche course of dealinge is comonlie termed a Policie of Assurance; by means of which Policies of Assurance it hathe come to passe, upon the losse or perishinge of any Shippe there followethe not the undoinge of any Man, but the losse lightethe rather easilie upon many [...]. Provided nevtheles, That noe Comysioner shall intermeddle in the execucon of any suche Comission, in ay cause or matter of Assurance where hymselfe shalbe either a partie assuror, or assured, in the same Assurance”.<sup>9</sup>

In the early seventeenth century, marine insurance contracts could also cover the risk of fire and the risks of the captivity and death of crew members and ship masters.<sup>10</sup> In later centuries these risks were addressed by separate contracts: fire and life insurance contracts. Thus, in the later centuries, when cargo was destroyed by fire and members of the crew were killed, the insured might have had different claims against different insurers based on different types of insurance contracts. Thus, in later centuries there occurred a diversification of the insurance market and of insurance products. For instance, in 1822 the Imperial Insurance Company was established primarily for the purpose of insuring houses and buildings against fire, but it also insured “Goods, Wares, and Merchandizes, and Manufacturing Stock, and Ships, Barges, and other Vessels, in Port or in Dock, and

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<sup>5</sup> *Hendriks* (1851), 121; *Longmaker* (1962), 643, 645.

<sup>6</sup> On the Act see pp. 38 ff., below.

<sup>7</sup> *Magens* (1755), 1; *Millar* (1787), 2; *Park* (1789), ii. Park was the first English lawyer who wrote on insurance. Magens was born in Germany; Millar was Scottish.

<sup>8</sup> Chapter 1, Art. 1: “Assurance est un contract par lequel on promet indemnité des choses qui sont transportées d’un pays en autre, specialement par la mer, et ce par le moyen du prix convenu à tant pour cent, entre l’asseuré qui fait ou fait faire le transport, et l’asseuror qui promet l’indemnité.” *Pardessus*, vol. 2 (1831), 377.

<sup>9</sup> The Statutes of the Realm, vol. 4/2 (1993), 978 f.

<sup>10</sup> See pp. 94 ff., below.

Goods on-board the same; also, Ships and other Vessels Building or Repairing; also, Barges and other Vessels on Navigable Rivers, Canals, and other Inland Navigations, and Goods on-board thereof, from Loss or Damage by Fire.”<sup>11</sup>

Thus, it seems that fire insurance and life insurance were offspring of marine insurance. Against this background it would seem plausible that insurers (in their practice and contract terms) as well as the courts (in their decisions) applied similar principles in cases of life and fire insurance as had been developed in marine insurance. Thus, it would seem plausible that fire insurance law and life insurance law, too, were offspring of marine insurance law. It is the objective of the present study to verify, qualify or rebut this proposition and to examine the exact influence of marine insurance law on the development of life insurance law and fire insurance law in England.

The idea that fire insurance law and life insurance law have simply developed from marine insurance law is shared among English historians, and the notion finds direct support in the rich body of contemporary literature regarding each type of insurance. Already in the eighteenth century, scholars of insurance law had claimed that marine insurance law had influenced the other types of insurance.<sup>12</sup> For instance, James A. Park observed in 1789:

“Policies on lives are equally vitiated by fraud or falsehood, as those on marine insurances; because they are equally contracts of good faith, in which the underwriter, from necessity, must rely upon the integrity of the insured for the statement of circumstances. Indeed, the case of *Wittingham v. Thornborough*, which we took the occasion to cite in support of the doctrine laid down in the chapter upon fraud in *Marine Insurances*, was a policy upon a life insurance. – In other case, the principles of fraud were considered as far as it affects this contract.”<sup>13</sup>

Park focused on marine insurance, and he gives only a short summary of life and fire insurance. It is not clear why his treatment of life and fire insurance was so short. It might have been that life and fire insurance practices were simply non-existent during the eighteenth century, so that there was nothing for him to analyse. Or Park may have believed that the practices and principles of marine insurance had been applied to life and fire insurance, and for that reason he could

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<sup>11</sup> LMA, MS. 15000.

<sup>12</sup> Prior to the eighteenth century, there is no English literature on insurance. *Rossi, Elizabethan England* (2016), 1, gives the following explanation for this: “Before then, the common opinion was – and still largely is – that insurance in England was not really a serious business until (at the very least) the late seventeenth century. Thus, the early history of insurance in England has traditionally received poor attention by legal historians. Over the past decades, however, some studies by non-legal historians have raised some interest in the subjects. Although inevitably not focused on the legal aspects of insurance, they provided important material for legal historians, who recently began to investigate the subject more carefully.”

<sup>13</sup> *Park* (1789), 496 f.