# OUTLINE TABLE OF CONTENTS

CHAPTER 1	The Insurance Contract Uberrimae Fidei	1
CHAPTER 2	Other Contracts of the Utmost Good Faith	21
CHAPTER 3	The Nature of the Duty of the Utmost Good Faith	35
CHAPTER 4	The Source of the Duty of Utmost Good Faith	81
CHAPTER 5	Law Reform	103
CHAPTER 6	Legislation Affecting the Duty of Good Faith	117
CHAPTER 7	The Assured's Duty of Full Disclosure at Placing	131
CHAPTER 8	The Exceptions to the Duty of Disclosure at Placing	189
CHAPTER 9	Modifications of the Duty of Disclosure at Placing	227
CHAPTER 10	The Post-contractual Duty of Good Faith	243
CHAPTER 11	The Assured's Duty of Utmost Good Faith and Claims	265
CHAPTER 12	The Insurer's Duty	301
CHAPTER 13	Third Parties	319
CHAPTER 14	Materiality and Inducement	357
CHAPTER 15	Examples of Material Facts	405
CHAPTER 16	Remedies	453
CHAPTER 17	The Loss of the Right to Avoid the Contract or to Rely Upon a	
	Breach of Warranty	511
CHAPTER 18	Evidence: How to Prove a Breach or a Defence	557
CHAPTER 19	Issues Affecting Conflict of Laws and Dispute Resolution	56

Foreword to the Third Edition	vii
Preface to the Third Edition	ix
Foreword to the Second Edition	xiii
Foreword to the First Edition	XV
Outline Table of Contents	xvii
Table of Cases	xxvii
Table of Legislation	lvii
Table of Legislation	1411
CHAPTER 1: THE INSURANCE CONTRACT UBERRIMAE SIDEI	1
Introduction	1
Meaning of good faith	5
The necessity of identifying an insurance contract	3 7
To which types of policy does the duty of good faith apply?	10
Insurance markets	10
But differences do exist	
	13 16
Insurance instruments	16
CHAPTER 2: OTHER CONTRACTS OF THE UTMOST GOOD FAITH	21
Ordinary contracts and contracts uberrimae fidei compared	21
Guarantee/surety	24
Partnerships	28
Contracts between spouses and settlements between family members	29
Salvage contracts	30
Contracts for the purchase of shares publicly offered	30
Disclosure by fiducienes	32
CHAPTER A THE NATURE OF THE DUTY OF THE HTMOST	
CHAPTER 3: THE NATURE OF THE DUTY OF THE UTMOST	25
GOOD FAITH	35
Good faith and a structured duty  Causation	35
	36
Placing and disclosure	37
Good faith and claims	40
Good faith in other guises	41
Tailoring the duty	44
The purpose of the duty of good faith	48
Continuity of the duty of good faith	51
Placing	52
When does the duty of disclosure at placing come to an end?	53
After the contract is made: an adjustment of the parties' obligations	57
After the contract is made: claims	62

After the contract is made: the operation of the contract When does the duty of good faith come to an end?	70 72
Mutuality Good faith as an engine of fraud	74 78
CHAPTER 4: THE SOURCE OF THE DUTY OF UTMOST GOOD FAITH	81
The law merchant, the common law and insurance—an accelerated history	81
Fraud before and after the contract	86
Negligent and innocent misrepresentation	88
Non-disclosure	90
The source of remedies for breach of the duty	97
Conclusion	101
CHAPTER 5: LAW REFORM	103
The social or policy view of the duty of good faith	103
Proposals for reform	106
Proposal for European Council Directive relating to insurance contracts	107
Law Commission recommendations in 1957 and 1980	109
Voluntary reform and regulation	110
Australian Law Reform Commission's recommendations	112
Law Commission's current review of insurance contract law	113
Law Commission's issues paper on damages for late payment	114
CHAPTER 6: LEGISLATION AFFECTING THE DUTY OF GOOD FAITH	117
Marine Insurance Act 1906	117
The Road Traffic Acts	120
Misrepresentation Act 1967	122
Rehabilitation of Offenders Act 1974	124
Anti-discrimination legislation	120
Freedom of information legislation	127
Legislation imposing obligations of confidence	127
Criminal offences created by statutes	128
Freedom of information legislation Legislation imposing obligations of confidence Criminal offences created by statutes Directive 93/13/EEC on unfair terms in consumer contracts  CHAPTER 7: THE ASSURED'S DUTY OF FULL DISCLOSURE ATPLACING Introduction Fraud The misrepresentation, the non-disclosure The source	129
CHAPTER 7: THE ASSURED'S DUTY OF FULL DISCLOSURE AT	of the State of State
PLACING	131
Introduction	131
Fraud	134
The misrepresentation, the non-disclosure	130
The source	1.07
The representation and the non-disclosure—the line between	139
Implied representations	139
Misrepresentation by silence Representations and warranties distinguished	145
The circumstance (misrepresentation and non-disclosure)	147
Facts and statements of belief or opinion	147
Implied representation that opinion justified when opinion expressed	147
The representation of opinions	150
Disclosure of opinions, fears, speculation and inferences	153
Intention and promises of future conduct	155
Representations of law	158
Purpours, allegations, communications and intelligence	160

The falsity or untruth of the representation (misrepresentation)	162
The meaning of the representation	163
The meaning of questions put to the assured	163
The meaning of the representation	165
The variance from the truth	167
Knowledge of the assured (non-disclosure)	169
Actual knowledge	170
Imputed knowledge	172
The agent who has knowledge of the subject-matter of insurance	174 175
General agents The broker or agent to insure	176
Other agents	177
Constructive or deemed knowledge	179
The principal's deemed or imputed knowledge of the agent's fraud or breach of duty	183
The principal 3 decined of impared knowledge of the agent 3 hadd of oreach of daty	105
CHAPTER 8: THE EXCEPTIONS TO THE DUTY OF DISCLOSURE AT	
PLACING	189
Diminution of risk	191
The actual and presumed knowledge of the insurer	193
Actual knowledge	193
Conmon knowledge	194
Matters which the insurer in the ordinary course of business ought to know	195
Normal and unusual risks	195
Means of knowledge	197
Characteristics and usage of the insured trade	201
Waiver	204
Express waiver	205
Implied waiver based on the questions asked by the insurer	206
Implied waiver based on the insurer's selection of questions	207
Implied waiver based on the questions answered or unanswered by the assured	210
Waiver where the assured provides a summary of material facts	211
Waiver based on the state of the insurer's actual or presumed knowledge	214
Waiver based on custom	217 217
Superfluity by reason of a warranty A conflicting duty	221
Other statutory exceptions	223
Information received too late	224
information received too fate	224
CHAPTER 9: MODIFICATION OF THE DUTY OF DISCLOSURE AT	
PLACING	227
Modification of the duty generally	227
Warranties and basis clauses	228
The nature and effect of basis clauses	228
Alleviation from basis clauses and the effect of legislation	236
Where the insurer asks questions	238
CHARTER 10 THE BOOT CONTRACTOR OF COOR BUTTON	0.10
CHAPTER 10: THE POST-CONTRACTUAL DUTY OF GOOD FAITH	243
The making of the contract of insurance	246
The post-contractual duty  Post contractual ediastroopt of the parties' obligations	248
Post-contractual adjustment of the parties' obligations  Variations to the insurance contract	249 249
Held covered clauses	251
Held covered clauses	431

Other additional premium clauses	253	The assignment is subject to
Change of circumstances clauses	253	When must the equities exist
Cancellation clauses	254	When will the assignee be so
Renewals	255	Co-assureds
Claims	256	Co-insurers; leading and follow
Notice of loss, claims co-operation clauses and claims control clauses	257	Agents
The insurer's claims handling	258	Imputation of agent's knowle
Follow the settlements clauses	258	Disclosure at placing
Subrogation	259	An exception: the agent's
The operation of the insurance contract: performance of the contract	259	other than as agent
The circumstances in which the right of avoidance may be exercised	261	Claims
The end of the duty of utmost good faith	262	Agent as representor
		Assured's agents
CHAPTER 11: THE ASSURED'S DUTY OF UTMOST GOOD FAITH AND		Insurer's agent
CLAIMS	265	Agent as representee
* The duty of utmost good faith and claims	267	The broker
The scope of the assured's duty	270	The status of the broker
Fraudulent claims	274	Disclosure at placing
The fraud must be "substantial"	275	Whose agent is he?
Proving fraud		Legal advisers
Types of fraudulent claim	277	Third Parties (Rights Against I
Pure fraud: wilful misconduct and invented losses	278	Road Traffic Acts
	279	Road Traffic Acts
Cloaking the insurer's defence to the claim	279	0.
Exaggerated claims	280	CHAPTER 14: MATERIALI
Fraudulent devices	283	The general law requirements
Initially honest claims	286	Materiality and disclosure by the
Concealment	287	The common law and statute
Fraudulent claims which are withdrawn	287	The exception of fraud
Who is the "assured" for the purposes of the duty?	288	The evolution of the test of
Corporate assureds	288	The reasonable assured v
Co-assureds	289	The characteristics of the
The fraud of the assured's agents	289	The effect on the prudent
The fraud of the assured's agents Fraudulent claims clauses The duration of the duty in the context of claims Remedies Forfeiture of the claim Avoidance Forfeiture of all benefit	290	When is materiality tested?
The duration of the duty in the context of claims	292	Material to the risk: must the
Remedies	295	Introduction
Forfeiture of the claim	296	The two theories: material
Avoidance	296	The preferred theory: mate
Forfeiture of all benefit	298	The basis on which mater
Contractual remedies	300	Materiality and amendmen
		Materiality and misreprese
CHAPTER 12: THE INSURER'S DUTY	301	Inducement of the insurer at pl
Introduction	301	The requirement of inducem
Disclosure at placing	301	Proof of inducement
The insurer's own enquiries and assessment of the risk	307	Materiality and the assured's c
The insurer's duty to explain the policy terms to the assured	311	Materiality and disclosure by t
Does the insurer have a duty to issue the policy?	313	
Post-contractual disclosure	314	CHAPTER 15: EXAMPLES
Treatment and investigation of claims	314	The assured
a company or menupolicy and only characteristic in Medicinations (SCC) is gift (Benedicination).	(#6.#c.#)	Identity
CHAPTER 13: THIRD PARTIES	319	Nationality, origin and reside
Assignees	321	Age
Assignee or co-assured?	321	Occupation or profession
indigne of compared;	341	Occupation of profession

The assignment is subject to equities	322
When must the equities exist?	325
When will the assignee be subject to the duty of the utmost good faith?	326
Co-assureds	328
Co-insurers; leading and following underwriters	331
Agents	336
Imputation of agent's knowledge	337
Disclosure at placing	337
An exception: the agent's breach of duty and knowledge acquired other than as agent	338
Claims	340
Agent as representor	341
Assured's agents	341
Insurer's agent	342
Agent as representee	342
The broker	345
The status of the broker	345
Disclosure at placing	347
Whose agent is he?	352
Legal advisers	354
Third Parties (Rights Against Insurers) Act 1930	355
Road Traffic Acts	356
APTER 14: MATERIALITY AND INDUCEMENT	357
The general law requirements	357
Materiality and disclosure by the assured at placing	359
The common law and statutory requirement	359
The exception of fraud	362
The evolution of the test of materiality	362
The reasonable assured v the prudent underwriter	362
The characteristics of the prudent underwriter	364
The effect on the prudent underwriter	367
When is materiality tested?	377
Material to the risk: must there be an objective connection to the risk?	378
Introduction	378
The two theories: material to the risk or material to inducement?	379
The preferred theory: material to the risk	382
The basis on which materiality is tested	386
Materiality and amendments	387
Materiality and misrepresentation	388
inducement of the insurer at placing	389
The requirement of inducement	389
Proof of inducement	394
Materiality and the assured's claim	399
Materiality and disclosure by the insurer at placing	402
HAPTER 15: EXAMPLES OF MATERIAL FACTS	405
The assured	406
Identity	406
Nationality, origin and residence	408
Age	409
Occupation or profession	409
9	

Health	410
Insurable interest	411
Financial history and practices	412
Moral hazard	413
Introduction	413
Past convictions and dishonesty	415
Allegations of dishonesty	418
Past breaches of the duty of the utmost good faith	420
Summary on moral hazard	422
The subject-matter insured: property	422
Identification of the property	422
Non-marine	422
Marine	423
Age of the property	424
Non-marine	424
Marine	424
Ownership and interest	424
Non-marine	424
Marine	425
Previous use	426
Non-marine	426
Marine	426
Current use and location	427
Non-marine	427
Marine	427
Intended use	427
Non-marine	427
Marine	428
Qualifications of persons in whose charge or custody the property may be kept	429
Condition, nature and safety of the property	429
Nature of related property	431
Non-marine	431
Marine	431
The voyage: location and timing (marine)	432
Nationality, class, licences and registration (marine)	434
Value	434
Nature of related property  Non-marine  Marine  The voyage: location and timing (marine)  Nationality, class, licences and registration (marine)  Value  Insurance history  Loss and claims experience	439
Loss and claims experience	439
Reaction of other underwriters and prior refusals to the risk proposed	441
Reinsurance	443
Summary	446
Insurance-related information	446
Illegality	447
Brokers and agents' fraud	448
The existence of other policies	449
Other contracts and arrangements	450
Accumulation of non-material circumstances	451
Obviously material circumstances	451
CHAPTER 16: REMEDIES	453
Introduction	453
Avoidance (respission)	457

	Meaning and source of avoidance	457
	Void or voidable?	459
	A harsh remedy?	460
	Can the insurer decline a claim without avoidance?	462
	A remedy for all seasons	464
	An election must be made	467
	Restitutio in integrum must be possible	469
	What is avoided or rescinded?	472
	Contractual avoidance	476
	Exemption clauses	477
	A discretionary remedy?	480
Т	ermination of the insurance contract	484
D	pelivery up and cancellation of the policy	485
F	orfeiture	486
	Contractual right	486
	Forfeiture in the absence of an express contractual right	487
	Relief against forfeiture	491
R	testitution	491
D	Damages	493
	Fraudulent misrepresentation or deceit	494
	Negligent misrepresentation	496
	Misrepresentation Act 1967	498
1	Breach of contract	500
)	Squitable compensation	501
	Does the duty of disclosure import a duty of care?	502
	Damages for breach of the duty of good faith?	506
	Summary	509
	A DEED 15 THE LOSS OF THE DIGHT TO AVOID THE CONTRACT	
	APTER 17: THE LOSS OF THE RIGHT TO AVOID THE CONTRACT	
	TO RELY UPON A BREACH OF WARRANTY	511
	Background	511
1	The applicable doctrines	512
	Unconscionability	512
	Waiver	516
	Waiver where there is a right to avoid for breach of the duty of good faith	516
	Waiver where there is a breach of warranty	517
Ŀ	Election and affirmation	526
	Communication	527
	Final once made	527
	Knowledge	527
	Knowledge of facts	527
	Actual knowledge required	530
	Knowledge itself a question of fact	530
	Knowledge of rights	531
	Intention distinguished from knowledge	534
	Whose knowledge?	535
	Reliance	536
	Unequivocal conduct	537
	Exercise of contractual rights	538 541
	Issue of policy	542
	Acceptance of premium Reliance on a policy defence	543
	Renance on a poncy defence	14.

Variation to contract	543
Payment of claims	543
Promissory estoppel	544
Suspensory only, not final	545
Knowledge	545
Reliance	547
Detriment	549
Unequivocal conduct	550
Delay/inactivity/silence	552
Practical considerations	555
Burden of proof	555
Limitation Act 1980	555
Reservation of rights	555
CHAPTER 18: EVIDENCE: HOW TO PROVE A BREACH OR A DEFENCE	557
The onus of proof	557
The standard of proof	561
Means of proof	561
Expert evidence	561
The parties' testimony	564
CHAPTER 19: ISSUES AFFECTING CONFLICT OF LAWS AND DISPUTE	
RESOLUTION	567
The applicable law	567
Arbitration and jurisdiction agreements	567
Allocation of jurisdiction in the absence of a prorogation agreement	569

Index

# TABLE OF CASES

A C Harper & Co Ltd v R D Mackechnie & Co (1925) 22 Ll L Rep 514
A C Ward & Sons Ltd v Catlin (Five) Ltd [2009] EWHC 3122 (Comm)
ACN 007 838 584 Pty Ltd v Zurich Australia Insurance Ltd (1997) 69 SASR 374 (Sth Aust Sup Ct)3.75, 10.53
A F Watkinson & Co Ltd v Hullett (1938) 61 Ll L Rep 145
AIG Europe (UK) Ltd v Anonymous Greek Co of General Insurances; The Ethniki [2000] Lloyd's Rep IR
343
A/S Rendal v Arcos Ltd [1937] 3 All ER 577
Aaron's Reefs Ltd v Twiss [1896] AC 273
Aas v Benham [1891] 2 Ch 244
Abbott v Strong, unreported, 22 May 1998
Abram Steamship Co Ltd (In Liquidation) v Westville Shipping Co Ltd (In Liquidation) [1923] AC 773; (1923) 16 Ll L Rep 2454.26, 4.52, 4.53, 4.55, 14.03, 16.15, 16.20, 16.42, 16.66, 17.08
Abu Dhabi Investment Co v H Clarkson & Co Ltd [2007] EWHC 1267 (Comm); [2007] 1 Lloyd's Rep 264; reversed [2008] EWCA Civ 699 (CA)
Avademy of Health and Fitness Pty Ltd v Power [1973] VR 254
Ace Insurance SA-NV v Seechurn [2002] EWCA Civ 67; [2002] Lloyd's Rep IR 489
Adam v Newbigging; <i>sub nom</i> Newbigging v Adam (1887) LR 34 Ch D 582; affirmed (1888) LR 13 App Cas 308
Adam Steamship Co Ltd v London Assurance Corporation (1914) 20 Com Cas 37
Adams v London General Insurance Co (1932) 42 Ll L Rep 56
Adams Eden Furniture Ltd v Kansa General International Insurance Co Ltd [1997] 6 Re LR 352 (Manitoba)13.70,
Adamson, Re, Collie ex parte (1878) LR 8 Ch D 807
Advance (NSW) Insurance Agencies Pty Ltd v Matthews (1989) 166 CLR 606 (HCA)
Aegeon, The. See Agapitos v Agnew
Afovos Shipping Co SA v R Pagnan & Fratelli; The Afovos [1980] 2 Lloyd's Rep 469; reversed [1982] 1
WLR 848; [1982] 1 Lloyd's Rep 562 (CA); affirmed [1983] 1 WLR 195; [1983] 1 Lloyd's Rep 335; (HL)
Agapitos v Agnew; The Aegeon (No 1) [2002] EWCA Civ 247; [2002] 3 WLR 616; [2002] 2 Lloyd's Rep
42 (CA)3.15, 3.62, 3.71, 3.72, 3.77, 3.88, 4.23, 7.11, 10.01, 10.05, 10.57, 10.60, 10.63, 11.06, 11.11, 11.16,
11.23, 11.34, 11.37, 11.40, 11.43, 11.65–11.71, 11.74, 11.101, 11.104, 11.105, 11.110, 11.114
12.51, 13.89, 14.16, 14.117, 14.118, 16.30, 16.35, 16.37, 16.86–16.88, 17.09
Agapitos v Agnew (No 2) [2002] EWHC 1558 (Comm); [2003] Lloyd's Rep IR 54
Agnew v Länsförsäkringsbolagens AB [1996] 4 All ER 978; affirmed [1997] 4 All ER 937 (CA); affirmed
[2001] 1 AC 223; [2000] Lloyd's Rep IR 317 (HL)1.06, 2.07, 3.41, 3.42, 4.41, 4.49, 10.01, 10.08, 11.01, 11.02
11.13, 17.158, 19.02, 19.10–19.12
Agrabele, The. See Gebr Van Weelde Scheepvaart Kantoor BV v Compania Naviera Sea Orient SA
Aiken v Stewart Wrightson Members Agency Ltd [1995] 2 Lloyd's Rep 618; affirmed [1996] 2 Lloyd's Rep 577 (CA)
Ajayi (t/a Colony Carrier Co) v RT Briscoe (Nigeria) Ltd [1964] 1 WLR 1326
Akedian Co Ltd v Royal Insurance Australia Ltd (1997) 148 ALR 480 (Sup Ct Victoria) 14.100
Akerhielm v De Mare [1959] AC 789
Al Wahab, The. See Amin Rasheed Shipping Corp v Kuwait Insurance Co
Alati v Kruger (1955) 94 CLR 216 (HCA)
Alderslade v Hendon Laundry Ltd [1945] KB 189
Aldrich v Norwich Union Life Insurance Co Ltd (formerly Norwich Union Life Insurance Society) [2000] Lloyd's Rep IR 1