

UBERRIMAE FIDEI IN CONSTRUCTION INSURANCE

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“I declare that this project report entitled “*Uberrimae Fidei in Construction Insurance*” is the result of my own research except as cited in the references. The project report has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.”

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ABSTRACT

Caveat emptor or 'let the buyer beware' is a good reference to a circumstances in disclosure of information whereby in English law, the commercial parties is expected to make their own enquiries, rather than rely on the other party to voluntarily disclose relevant information. All insurance contracts are contracts *uberrimae fidei* in accordance with the principle of utmost good faith. The parties to a contract of insurance come under the common law duty of disclosure, which include rules relating to non-disclosure and misrepresentation and the contract itself must be supported by insurable interest. In determining the doctrine of *uberrimae fidei* in insurance law, it is important to identify its principles towards the insurance contract whereby it is often cited as an example of an area where full disclosure is required. One of the important functions of construction contracts is to allocate risks through the pricing of contracts where it can be used to ascertain the possible effect of a wider disclosure obligation. Therefore, this master thesis intends to identify the circumstances which the principle of *uberrimae fidei* is being applied in construction contracts insurance. Furthermore in construction contract context, it has been suggested that if contractor act as quasi insurers in taking on risks, a good faith duty should apply to the supply information as it applies under the law of insurance. It is difficult to argue against a requirement to disclose all information known about a site and anything else which might affect the construction works. The obligation for a contractor to disclose all information which would affect the mind of a prudent employer is too onerous in insurance contracts and it is difficult to see how it can be justified in a construction context. In order to comply with the scope of the research which focused to the construction context, cases were chosen to be analysed and further categorized into 3 kinds of topics as the legal position of application the *uberrimae fidei* in the context construction contract insurances.

ABSTRAK

'*Caveat emptor*' atau juga bermaksud 'biarkan pembeli berhati-berhati' adalah satu contoh rujukan yang baik kepada situasi mengenai mengemukakan fakta maklumat di mana di dalam undang-undang yang digunapakai di England, pihak komersial adalah dijangkakan untuk mengemukakan sendiri pertanyaan daripada mengharap pihak bertentangan untuk mengemukakan fakta maklumat yang berkaitan secara sukarela. Keseluruhan kontrak insurans adalah kontrak '*uberrimae fidei*' di mana berkaitan dengan prinsip tugas untuk mengemukakan fakta maklumat dengan terbaik. Pihak yang berkontrak adalah bertanggungjawab di bawah undang-undang 'lazim' sebagai tugas mengemukakan fakta maklumat, di mana termasuk syarat-syarat kepada tugas untuk tidak mengemukakan fakta maklumat dan kontrak tersebut juga perlu disokong oleh keperluan kepada insurans. Dalam mengenalpasti doktrin *uberrimae fidei* di dalam undang-undang insurans, adalah menjadi satu kepentingan untuk mengenalpasti prinsipal tersebut terhadap kontrak insurans di mana ia seringkali dibaca sebagai satu contoh atau panduan kepada tugas mengemukakan fakta maklumat secara sepenuhnya seperti yang diperlukan. Memperuntukkan risiko melalui proses menghargakan kontrak di mana ia boleh digunakan untuk menjangkakan kemungkinan kesan daripada tanggungjawab mengemukakan fakta maklumat yang luas merupakan satu daripada fungsi penting kepada kontrak pembinaan. Oleh itu tesis ini adalah bertujuan untuk mengenalpasti kedudukan undang-undang *uberrimae fidei* di dalam skop insurans kontrak pembinaan. Tambahan pula adalah turut dicadangkan bahawa sekiranya kontraktor bertindak kuasi penginsuran di dalam mengambilkira risiko, tugas untuk mengemukakan fakta maklumat dengan terbaik harus dilaksanakan terhadap maklumat yang disalurkan memandangkan ia dipraktiskan di bawah undang-undang insurans. Adalah sukar untuk menafikan keperluan untuk mengemukakan semua maklumat yang diketahui terhadap sesuatu tapak bina dan lain-lain berkaitan yang mana boleh memberi kesan kepada kerja-kerja pembinaan. Tanggungjawab pihak kontraktor dalam mengemukakan semua maklumat yang mana boleh memberi kesan kepada keputusan klien sangat sukar dilaksanakan di dalam kontrak insurans. Ia adalah sangat sukar dilihat dari segi konteks pembinaan. Dalam memastikan skop kajian dipatuhi, dimana fokus adalah diberikan kepada konteks pembinaan, beberapa kes telah dipilih dan di analisis dan seterusnya dikategorikan kepada 3 jenis topik sebagai kedudukan undang-undang dalam aplikasi *uberrimae fidei* di dalam konteks insurans kepada kontrak pembinaan.