

A double-edged sword: The role of insurable interest in non-indemnity insurance in the light of the Covid-19 pandemic in Zimbabwe

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SUMMARY

The on-going Covid-19 pandemic has affected many facets of life including the business of insurance. It raises fresh questions as to who can insure the life of another because it has led to the loss of many lives. This brings one to the requirement of insurable interest in non-indemnity insurance. This paper argues that the requirement should be removed as it adds confusion to this branch of insurance law. It further limits the categories of people who can insure the lives of others. The Insurable Interest Bill of England attempts to expand the circumstances where one can have insurable interest. It is a step in the right direction as it represents liberalisation of that requirement. However, there are persuasive decisions in both Zimbabwe and South Africa which held that the existence of insurable interest should be a mere factor in deciding whether a contract is one of insurance or a mere wager. It is submitted that this decision can still be arrived at in some cases without even considering the existence of insurable interest. Removing the requirement of insurable interest has precedence as it has happened in other jurisdictions such as New Zealand and Australia. In fact, the intention of the Life Assurance Act 1774 has not been achieved in real practice. The legal principles surrounding insurable interest in non-indemnity insurance are not only confused but they are confusing. Thus, the paper proposes for other facts which may be taken into account in determining whether a contract is one of insurance and not a wager. Such factors may include the age of the parties, the intention of the parties, the relationship of the parties and the consent of the insured. The emphasis should be on determining whether a contract is not a wager rather than to rely solely on the presence or absence of insurable interest.

1 Introduction

Zimbabwe has not been spared by the pervasive and devastating Covid 19 pandemic. As at 22nd of February 2021, Zimbabwe had 35 796 confirmed cases of Covid 19 and 1436 had succumbed to the disease.¹ The pandemic raises many legal challenges which are of interest in insurance law. One of such challenges relates to the requirement of insurable interest in non-indemnity insurance. In cases of life insurance,

1 www.who.int/countries/zwe (accessed 2021-02-03).

Zimbabwe has followed English law.² Despite the statutory declaration of the applicable law in Zimbabwe, the country continues to be affected by developments in South African law of insurance. The South African influence on Zimbabwe's insurance law is partly explained by history. In 1980, Zimbabwe adopted a new constitution which provided that the country was to be governed by the law which was applicable in the Cape of Good Hope as at the 10th of June 1891.³ The applicable law at that date in the Cape of Good Hope were largely insurance law principles which were derived from English statutes.⁴ Section 89 of the Constitution of Zimbabwe (1980) was significant in that it initiated a legal system in Zimbabwe that was identical to South African system. Hence, South Africa is a rich source of insurance law principles which are generally applied and followed in Zimbabwe.⁵

In addition, South Africa is a rich hunting ground for Zimbabwe's insurance law relating to insurable interest in non-indemnity insurance because it was also influenced by English law.⁶ As a fundamental concept of insurance law, one would assume that insurable interest's meaning and application is clearly straightforward yet it is not the case in both theory and practice. The problem is worsened by the absence of statutory definition and scope of insurable interest in non-indemnity insurance in Zimbabwe. In addition, courts have not had an opportunity to provide clear guidance on the subject. It, therefore, becomes necessary to analyse the current law on the requirement of insurable interest in non-indemnity insurance in Zimbabwe. This is significant because such a requirement determines whether one can insure the life of another or not. The article further points out the deficiencies in the interest theory and how it can negatively impact families who are facing the ravaging Covid-19 pandemic.

2 S 3 of General Law Amendment Act [Chapter 8:07] provides as follows: "In any suit, action or cause having references to questions of fire, life or marine insurance, stoppage in *transitu* or bills of lading which is brought in the High Court or any other competent court of Zimbabwe, the law administered by the High Court or Justice in England for the time being, so far as the same is not repugnant to and in conflict with any Act, shall be the law to be administered in Zimbabwe by the Supreme Court, High Court and other competent court."

3 S 89 of the Constitution of Zimbabwe (1980).

4 [https://www.nyulawglobal.org/globalex/South Africa](https://www.nyulawglobal.org/globalex/South%20Africa) (accessed 2021-02-03).

5 *Brightside Enterprises (Pvt) Ltd v Zimnat Insurance Ltd* 1998 (1) ZLR 117 (HC); *KDV Foam Manufacturers v Zimnat Lion Insurance Co. Ltd* HH 233-17. Although these cases dealt with insurable interest in indemnity insurance, they highlight the heavy dependence by Zimbabwean courts on South African law.

6 Reinecke, van Niekerk & Nienaber South African Insurance Law (2013) 25.

2 Insurable interest in non-indemnity insurance under English law

It is necessary to discuss the position of English law with regards to the requirement of insurable interest in non-indemnity insurance since it is applicable in Zimbabwe.⁷ The English common-law position was that gaming and wagering agreements were valid.⁸ The English common-law position led to undesirable consequences of gambling on the lives of other people.⁹ In that vein, the English Legislature enacted the Life Assurance Act 1774¹⁰ which outlawed gambling on the lives of others by requiring insurable interest in life insurance contracts.¹¹ Thus, after the enactment of the Life Assurance Act 1774, failure to prove insurable interest in life policies rendered them void.¹² It is apparent that the intention of the English Legislature was to prevent wagering with other people's lives. It becomes necessary to analyse the position of the law with regard to the time when such interest is required. This is done in order to show whether the requirement of insurable interest achieves its intended purpose in real practice.

2 1 The time when interest is required in life insurance

The effect of section 1 of the Life Assurance Act 1774 was to require insurable interest at the time of entering into the contract.¹³ Initially, there was confusion which emanated from section 3 of the Life Assurance Act 1774 with regards to insurable interest on the life of a third party which required a pecuniary interest. Thus, in the early case of *Godsall v Boldero*¹⁴ it was held that a policy by a creditor on the life of his debtor was an indemnity policy because section 3 of the Life Assurance Act 1774 allowed for recovery in language which was consistent with the concept of loss in indemnity insurance.

The position of law as enunciated in the case of *Godsall v Boldero* case were reversed in 1854 through the case of *Dalby v India and London Life Assurance Co.*¹⁵ The *Dalby* case decided that insurable interest in life insurance was only required at the time of entering into the contract.¹⁶ In this case, the claimant was the director of a company which had

7 S 3 of the General Law Amendment Act *supra*.

8 Havenga "The Classification of Life Insurance Contracts (Part 1)" 1994 *De jure* 216; Reinecke, Van Niekerk & Nienaber 49; Birds *Birds' Modern Insurance Law* (2013) 41.

9 Havenga 1994 *De jure* 216.

10 (14 Geo 3c 48).

11 Reinecke, Van Niekerk & Nienaber 49; Wood "Insurable Interest" 1908 *Law Times* 548.

12 *Harse v Pearl Life Assurance Co* [1904] 1 K.B. 558, *Mackie, Dunn & Co v South British Insurance Co.* (1885) 3 SC 405 409.

13 Davis *Gordon and Getz on The South African Law of Insurance* (1993) 107.

14 (1807) 9 East 72.

15 (1854) 15 C.B. 365.

16 Birds 44.

insured the life of Duke of Cambridge for £3000. At the same time, Anchor Life Assurance Company reinsured with the India and London Life Assurance Company for £1000 against their liability of £3000 towards Wright on the death of the Duke. The original insured, one Wright had surrendered his policies to Anchor Life Assurance Company. Curteis, who was a director of the Anchor Life Assurance Company continued with reinsurance and paid premiums until the death of the Duke. The claimant then claimed £1000 from the India and London Life Assurance Company on behalf of Anchor Life Assurance Company (which was initially represented by Curteis). The Court held that Anchor Life Assurance Company had no insurable interest at the time of the Duke's death.¹⁷ Basically, the Court held that insurable interest was only required at the time of entering into the contract and it did not matter if the interest had fallen away by the time of the occurrence of the insured event.¹⁸

Thus, the requirement of insurable interest in life policies can serve to distinguish insurance contracts from wagers at the time of entering into the contract.¹⁹ In addition, the time when insurable interest must exist in life insurance policies also means that it is required for the validity of such a contract.²⁰ It can be argued that these consequences do not serve any useful purpose in practice. To begin with, the insured can still claim after the loss of interest.²¹ The fact that insurable interest need not to be proved at the time of loss means that it cannot be used to distinguish insurance contracts and wagering agreements at that stage. Consequently, it defeats the purpose of requiring insurable interest in life purposes as loss of interest can lead to wagering on the lives of others.²²

In addition, requiring the existence of insurable interest at the time of the conclusion of the insurance contract in non-indemnity policies presents further challenges with regard to the lives of third parties. The English law position is that insurance on the lives of third parties is limited to the pecuniary interest of the insured.²³ This position is best illustrated by the case of *Hebdon v West*,²⁴ where a bank clerk decided to insure the life of his employer with two different insurers. The first policy was for £5000 and the other one was for £2500. The clerk's contract of employment was for seven years with an annual salary of £600. He owed his employer £4700 and the employer had promised that he would not demand payment of the debt in his life time. After the death of the

17 *Dalby v India and London Life Assurance Co* at 386.

18 *Dalby v India and London Life Assurance Co* at 390.

19 Davis 92. The author discusses generally the role of insurable interest in distinguishing insurance contracts from gaming and wagering agreements.

20 See Reinecke, Van Niekerk & Nienaber 49.

21 A good example is when a husband insures the life of her wife and later divorces her. He can still claim from the insurance upon the death of his former wife.

22 McGovern "Homicide and Succession to Property" 1969 *Mich L.Rev.*78.

23 Davis 107; Birds 48.

24 (1863) 3 B & S. 579.

employer, the clerk was paid £5000 by the first insurer. The second insurer refused to pay out of the insurance on the basis that the insured had an insurable interest in the life of the employer to the extent of what he was contractually entitled to under the contract of employment. The maximum stood at £4200. The court upheld the contention of the second insurer.

The *Hebdon* case clearly illustrates that insurance policies on the lives of third parties are indemnity policies in the strict sense. Reinecke, van Niekerk and Nienaber rightly point out that such policies should be insured by way of indemnity insurance.²⁵ In the context of Zimbabwe which has encountered high inflation figures for a long time, assessing the extent of loss at the time of entering into the contract disadvantages the insureds.²⁶ By the time of loss, the value of the insurance policy would have fallen. Therefore, it can be argued that the requirement of insurable interest in non-indemnity insurance involving third parties adds more confusion in such policies. Such a requirement should be scraped and replaced by other considerations which shall be discussed later.

Furthermore, there is no obligation on the part of the insured to prove his/her insurable interest at the time of entering into the contract.²⁷ Insurers can use the absence of insurable interest on the part of the insured as a ground to repudiate the contract.²⁸ Thus, insurers are free to honour their obligations even if there is no insurable interest.²⁹ This anomaly has the potential to expose the insured to potential abuse by insurers. It can be argued that most insured do not have the technical knowledge of what constitutes insurable interest and how it is applied. It leaves the insurers with an opportunity to accept a risk that they know they will repudiate later on the ground of lack of insurable interest on the part of the insured.

2 2 Proposed Insurable Interest Bill in England

England has witnessed crucial attempts to reform the law on insurable interest in non-indemnity insurance. The English and Scottish Law Commissions carried out extensive research on this area and the second draft Insurable Interest Bill was published in 2018. The Insurable Interest Bill uses the term “life-related insurance” instead of “life-insurance”.³⁰ The reason is that the term “life insurance” did not cover critical illness, disability, personal accident and other insurances which depend on human life even though these categories should be subjected to the same

25 Reinecke, van Niekerk & Nienaber 53.

26 The year-on-year inflation rate for the month of February 2021 stood at 321.59% (www.rbz.co.zw accessed 2021-02-26).

27 Reinecke “Insurable Interest” 2013 *Journal of South African Law* 819.

28 Reinecke 2013 *Journal of South African Law* 819.

29 Meng “Insurable Interest in Life Policies” 1981 *Malaya Law Review* 139.

30 Clause 1 of the Insurable Interest Bill.

rules.³¹ In addition, the term “life-related insurance” encompasses both indemnity and contingency policies as long as they relate to human life.³² Finally, it covers investment-linked insurance products with an element of life insurance and contracts where the insured event is the continuation of an individual’s life.³³ Thus, it is clear from the expanded definition of life insurance that it will cover many situations which have developed in the insurance industry. Furthermore, the divide between indemnity and non-indemnity insurance becomes very thin in some cases like indemnity and contingency policies relating to human life. It is submitted that this makes the requirement of insurable interest unnecessary given that the legal principles on insurable interest in indemnity insurance are different from non-indemnity insurance. This is against the background that the proposed Insurable Interest Bill creates composite policies.

The Insurable Interest Bill specifically provides that a contract of life-related insurance is void unless the insured has insurable interest at the time of entering into the contract.³⁴ It is clear that it does not change the current position that insurable interest only need to be present at the time of entering into the contract. It makes the requirement of insurable interest less useful as one can still claim even if it has fallen away. One needs only to prove that he had insurable interest at the time of entering into the contract. In addition, the Bill expands the requirement of insurable interest where proof of financial loss is required. It provides that an insured “has an insurable interest if there is a reasonable prospect that the insured will suffer economic loss if the insured event occurs.”³⁵ Under the current law, insurable interest in certain relationships such employer-employee or business associates is a financial one.³⁶ It means the contract of insurance cannot be valid unless one can prove the existence of financial interest. Thus, the new proposed requirement of reasonable prospect of economic loss means the test for determining the existence of insurable interest will be wider than the current law.

Further, the Insurable Interest Bill expands circumstances where insurable interest automatically exists.³⁷ The insured will have insurable interest not only in the life of his or her spouse but also in the life of a cohabitant. In addition, the insured will have insurable interest in his/her child or grandchild. These are significant developments as many people would be able to take out insurance against their loved ones which

31 Pinsent Mason > Out-Law > Legal Updates (accessed 2021-05-26).

32 Pinsent Mason > Out-Law > Legal Updates (accessed 2021-05-26).

33 Pinsent Mason > Out-Law > Legal Updates (accessed 2021-05-26).

34 Clause 2(1) of the Insurable Interest Bill.

35 Clause 2(2) of the Insurable Interest Bill.

36 Reinecke, van Niekerk and Nienaber 55.

37 Clause 2(3)(a) provides that: “Other circumstances in which an insured has an insurable interest include, in particular, circumstances where – (a) the individual who is the subject of the contract – (i) is the insured, (ii) is the spouse or civil partner of the insured or lives with the insured as a spouse or civil partner, (iii) is, or is treated as, the child or grandchild of the insured.”

represents a significant departure from the current law. Another significant development is that the insured will be able to take out a group policy and will have insurable interest in the lives of members of that group.³⁸ Thus, it recognises the importance of group policies in modern insurance. It is sufficient to refer to a category or just describe the beneficiaries (including future beneficiaries) without mentioning their names.³⁹ Therefore, it is clear that the Insurable Interest Bill expands the categories of people who can insure the lives of others. However, it is submitted that this should not be the emphasis of the enquiry. The real enquiry should be whether the contract in question is one of insurance and not a mere wager regardless of the relationship of parties.

2 3 Examples of insurable interest under non-indemnity insurance

An examination of examples of insurable interest is necessary so as to highlight whether that requirement in non-indemnity insurance serves any useful purpose. Firstly, a person has an unlimited interest in his own life or in the life of a spouse.⁴⁰ In the *Griffiths* case, the court remarked as follows:

“It is ordinarily said that every man has an unlimited insurable interest in his own life. It is more accurate to say that the question of insurable interest is immaterial when the policy is upon the insured’s own life. The presence of insurable interest is really required only as evidence of the good faith of the parties and it is contrary to human experience that a man should insure his own life in order to secure payment of money to some other, although instances of such gruesome fraud upon insurers are not wanting.”⁴¹

It is clear from the *Griffiths* case that insurable interest does not serve any useful purpose when it comes to insurance on one’s own life. It can be argued that the insured has a duty of good faith whether insurable interest exists or not. Hence, the existence or non-existence of good faith can be proved without necessarily focusing on the requirement of insurable interest.⁴² With regards to insurance on the life of a spouse, it could have made sense if insurable interest was required at the time of loss. The fact that it is required at the time of entering into the contract

38 Clause 2(3)(b) of the Insurable Interest Bill.

39 Clause 2(3)(5) of the Insurable Interest Bill.

40 *Griffiths v Fleming* [1909] 1 KB 805 821; Davis 108; Reinecke, van Niekerk and Nienaber 53.

41 *Griffiths v Fleming* 821.

42 See generally Reinecke, van Niekerk and Nienaber at 139 where the authors discuss the duty of good faith in South African law. In English law, insurance contracts are referred to as contracts of utmost good faith. In the case of *Least Suppliers (Pvt) Ltd v T.I.B Insurance Brokers & Another* HB-09-2015, the Zimbabwean High Court held that contracts of insurance, by their nature, require utmost good faith (*uberrima fides*) on each side. Thus, Zimbabwe follows the English law requirement of utmost good faith. See also Birds 119.

defeats the purpose of such a requirement. It makes it less useful as one can still claim after it has long been lost.⁴³ Therefore, it can be argued that the requirement of insurable interest should be discarded in non-indemnity insurance on one's own life or the life of a spouse. The requirement can only be used by insurers to evade liability especially when it involves spouses.

Another area of interest involves the requirement of insurable interest in other family relationships. As a general rule from English law, a person has an insurable interest in the life to be insured if the latter's life has a legal obligation to support the insured.⁴⁴ This position is illustrated by the English case of *Harse v Pearl Life Assurance Co. Ltd*⁴⁵ where a son insured the life of his mother who lived with him and kept a house on his behalf. The insurance was for funeral expenses. The Court held that the son did not have a legal obligation to bury his mother when she died. In the same vein, the mother did not have a legal obligation to keep her son's house. Birds rightly points out that the existence of a legal obligation is difficult to find in practice.⁴⁶ There are many reasons which can push one to insure the life of another which include the existence of a legal obligation or mere love and affection.⁴⁷ The loss of a family member can cause tremendous pain to his/her family members.

The better approach is to put emphasis on the intention of the parties rather than the existence of insurable interest. There are South African decisions on the requirement of insurable interest in indemnity insurance and the principles of law which were laid therein are arguably applicable to non-indemnity insurance. To that end, the case of *Lorcom Thirteen (Pty) Ltd v Zurich Insurance Company South Africa Ltd*⁴⁸ provides useful insights where the court held that:

“The leading cases on insurable interest have concerned the interpretation of one or other of these English statutes. For many years until 1977 this was in turn the law to be applied in the Cape and Orange Free State. But this ceased to be the position in 1977. There is no South African statute which lays down the need for so-called insurable interest. In England, the statutory requirement of insurable interest was introduced in order to outlaw wagers in the form of insurance contracts and to remove the incentives which such contracts might provide for people to destroy the subject-matter of the policy. We have our law (both common and statutory) to regulate gambling. In terms of section 16 of the National Gambling Act 7 of 2004, a debt incurred in the course of a gambling activity licenced under that Act or under provincial law is enforceable. In respect of other gambling debts, the common-law position is that gambling contracts are not illegal but are stigmatised to the extent that

43 A clear example is where the husband divorces his wife. Sometimes the reasons for divorce can induce the husband to wish the death of his wife so that he can claim from the insurance.

44 Birds 47.

45 [1904] 1 K.B. 558.

46 Birds 47.

47 Reinecke, van Niekerk and Nienaber 55.

48 [2013] 4 All SA 71 (WCC) para 23.

they will not be enforced ... If an insurance contract does not constitute a gambling transaction for purposes of our law, why should it not be enforced? There certainly appears to be little justification for importing requirements from English law which only ever applied in the Cape and the Orange Free State”

In the *Lorcom Thirteen (Pty) Ltd* case,⁴⁹ the court agreed with the decision in the case of *Phillips v General Accident Insurance Co (SA) Ltd*.⁵⁰ In the *Phillips* case, the court held that a husband had an insurable interest in an engagement ring belonging to his wife because he had bought it for her and because, although he was under no legal obligation to replace it if it was stolen, he nevertheless felt under a moral obligation to replace it.⁵¹ The validity of insurable interest was questioned by the court which held that too much emphasis was being put on it. Instead, the court held that the intention of the parties was the primary consideration and the presence of insurable interest was one of the factors to be taken into account in determining such intention.⁵² The husband’s interest was held to be sufficient.⁵³ It is submitted that the husband was legally not entitled to claim from the insurer but the court adopted a more liberal approach by merely determining whether the transaction was not a betting one. Despite the general legal position that Zimbabwe follows English law of insurance, it has quoted with approval key South African decisions on insurable interest. One good example is the *Brightside Enterprises* case where the court relied on the *Phillips* case resulting in Chinhengo J making the following remarks:⁵⁴

“I have expressed my opinion that I am entirely in agreement with the proposition that the requirement of insurable interest is but only a consideration in the real inquiry whether or not the agreement in question is a betting or wagering agreement ...”

This approach is consistent with the view that insurable interest should not be the primary consideration in determining the validity or enforceability of non-indemnity insurance contracts. Other factors which may be taken into account include the ages of the parties, the value of the policy, the consent of the life insured and the bona fides of the insured. If that approach is adopted, it makes it easier for many people to insure the lives of their loved ones in light of the Covid-19 pandemic.

Since the requirement of insurable interest in English law was meant to prevent wagering in the name of insurance, perceptions on wagering agreements have changed over time. Commenting on life policies specifically, the court in the *Lorcom Thirteen* case had the this to say:⁵⁵

49 *Lorcom Thirteen v Zurich Insurance Company South Africa Ltd supra* para 26.

50 1983 (4) SA 652 (W).

51 *Phillips v General Accident Insurance Co (SA) Ltd* para 660 G-H.

52 *Phillips v General Accident Insurance Co (SA) Ltd* para 660 A-E.

53 *Phillips v General Accident Insurance Co (SA) Ltd* para 660 A-B.

54 *Brightside Enterprises (Pvt) Ltd v Zimnat Insurance CO. Ltd* para 123G.

55 *Lorcom Thirteen v Zurich Insurance Company South Africa Ltd* para 31.

“I do not think that anyone in this country doubts that a parent may insure the life of a child or that spouses may insure each other’s lives. In some cases, such insurance may have an economic justification but that is not necessary for the policy to be valid; the insured party can claim on the death of the insured life without proof that the death has occasioned him or her financial loss. All one can really say is that the law finds it acceptable for persons in such relationships to insure each other’s lives, that the relationships provides an acceptable reason (or ‘interest’ in the event-the insured life’s death) quite apart from the reason created by the contract of insurance itself. That is a policy-laden conclusion, one on which views could be expected to change over the years.”

In order to buttress the view that perceptions have changed, gambling activities can be lawfully carried out in Zimbabwe. In terms of Lotteries and Gaming Act,⁵⁶ any person who wishes to conduct a lottery, operate a casino, install or operate a gaming device may apply to the Lotteries and Gaming Board for a licence.⁵⁷ Therefore, it is clear that the legislature clearly allows regulated wagering. This is an example of a change in policy that makes the requirement of insurable interest in non-indemnity insurance less useful in modern day Zimbabwe than it was when it was initially introduced. It is submitted that the same situation prevails in South Africa since regulated gambling is also allowed.⁵⁸

Insurable interest that is based on business relationships has already been discussed. It suffices to emphasise that it suffers the same fate as other interests which are insured under non-indemnity insurance. It was discussed that such insurances require proof of pecuniary interest.⁵⁹ This is akin to indemnity insurance. However, the requirement that insurable interest is required at the time of entering into the contract and nothing else makes it less useful. It is contradictory as pecuniary loss can only be correctly measured at the time of the happening of the insured event. Therefore, it can be equally argued that it is an unnecessary burden to the insured.

56 [Chapter 10:26].

57 S 32 of the Lotteries and Gaming Act *supra*. S 2 defines a game as “any game, irrespective of whether or not its result is determined by chance, played with playing-cards, dice or a gaming device for money, property, credit or anything of value, other than an opportunity to play a further game, and includes, without derogating from the foregoing, roulette, bingo, twenty-one, blackjack, *chemin de fer*, baccarat and computerised racing”. It further defines a lottery as “a lottery in the generally accepted meaning of the word and, more particularly, a scheme, arrangement, system or device by which any prize is or may be won, drawn, or competed for by lot, dice or any other method of chance, either with or without reference to the happening of an uncertain event other than the result of the application or use of such lot, dice or other method of chance; and (b) without derogation from paragraph (a), includes –
(i) the schemes or arrangements known as lotto and scratch-card; and
(ii) any other scheme, arrangement, system or device which the Minister may declare, by statutory instrument, to be a lottery”.

58 Section 16 of the National Gambling Act 7 of 2004.

59 Davis 107; Reinecke, van Niekerk and Nienaber 55.

In other jurisdictions, they took legislative measures to remove the requirement of insurable interest in non-indemnity insurance. For example, in New Zealand, they enacted the Insurance Law Reform Act 1985 which removed the requirement of insurable interest in life policies.⁶⁰ Similarly, Australia removed the requirement of insurable interest in non-indemnity insurance through the Insurance Contracts Act 1984.⁶¹ The New Zealand and Australian legal positions fortify the view that the requirement of insurable interest in non-indemnity insurance can be dispensed with. It creates more confusion to this branch of insurance law.

3 Conclusion

The research has discussed the role of insurable interest in non-indemnity insurance. It was noted that Zimbabwe follows the English law principles in this branch of insurance law. In addition, it is also guided by developments in South Africa because of history and the fact that South African insurance law was shaped by the English law. Although the Life Assurance Act 1774 introduced the requirement of insurable interest as a way of preventing gambling on lives of others, the principles of law which were developed around the interest theory are far from satisfactory. It was noted that to require that insurable interest should exist at the time of entering into the contract clearly defeats the intended purpose of insurable interest. The Insurable Interest Bill of England attempts to expand the circumstances where one can have insurable interest. It is a step in the right direction as it represents liberalisation of that requirement. However, there are persuasive decisions in both Zimbabwe and South Africa which held that the existence of insurable interest should be a mere factor in deciding whether a contract is one of insurance or a mere wager. It is submitted that this decision can still be arrived at in some cases without even considering the existence of insurable interest.

It was further discussed that in other jurisdictions such as Australia and New Zealand, they have done away with the requirement of insurable interest. Thus, it was argued in this research that to require insurable interest brings more disadvantages to the insured who is in a weaker position in terms of bargaining power and technical knowledge of these legal principles. The insured is likely to lose the benefits of insurance by the invoking of the requirement of insurable interest. In the light of Covid-19, it is time to widen the scope of people who can insure the lives of others by removing the requirement of insurable interest. There are

60 S 6 thereof provides as follows: "A contract for assurance on the life of a person is not void or illegal by reason only of the fact that the insured under the contract does not have, or did not have when the contract was entered into, any interest in the life of that person"

61 S 16 thereof provides as follows: "A contract of general insurance is not void by reason only that the insured did not have at the time that the contract was entered into, an interest in the subject matter of the contract".

many factors which can be used to determine whether a contract is not a wager. Other suggested factors include the ages of the parties, the relationship of the parties and the consent of the insured.