give the employer quite the degree of control that was necessary to create a fixed charge. There can be little quarrel with this, given that the wording of the document contemplated that the plant and materials might be removed from the site "if not immediately required for completion of the works", so ceasing to be caught by the charge. Although the right to remove was subject to the consent of the employer's engineer, his consent could be witheld only on "operational" grounds, and not on the ground that retention of the assets was necessary to protect the employer's security interest. Moving the assets on and off site was thus consistent with the contractor "carrying on its business in the ordinary way".

L.S. SEALY

MISREPRESENTATION OF VALUE—HONEST BELIEF

IN *Economides* v. *Commercial Union Assurance plc* [1997] 3 W.L.R. 1066, student E contracted contents insurance for his flat. He signed a form stating that the full replacement cost of the contents was £12,000 and containing the standard declaration that "the statements and particulars ... are to the best of my ... knowledge and belief, true and complete". Each time he renewed the insurance, E impliedly repeated that statement. In 1990, he brought his parents from Cyprus to live in his flat. They brought belongings and, at his father's suggestion, E increased the amount of the cover at the next renewal to £16,000, basing that amount on what his father, formerly a senior policeman in Cyprus, had told him about the value of the belongings. A few months later contents including silver and jewellery were stolen. This time E asked his mother what they were worth—and put in a claim for £31,000.

If property is underinsured, usually insurers apply the average rule: they pay the percentage of the loss that the insured value bears to the actual value. E's claim, however, CU refused to pay at all on the related grounds of misrepresentation (of value) and non-disclosure (of the full value) and won in the County Court. The Court of Appeal allowed E's appeal.

Misrepresentation

A misstatement of fact is actionable as misrepresentation but an opinion, as long as it is actually held, is not. The critical question in *Economides* was whether, as contended by E, his declaration of value was no more than a statement of honest belief, *i.e.*, an opinion, or whether, as contended by CU, E was also impliedly stating that he

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had reasonable grounds for that belief, which he did not have and which, therefore amounted to a misstatement of fact.

CU relied on a dictum of Bowen L.J. (in *Smith* v. *Land and House Property Corp.* (1884) 28 Ch.D. 7, 15) that "if the facts are not equally known to both sides, then a statement of opinion by the one who knows the facts best involves very often a statement of a material fact, for he impliedly states that he knows facts which justify his opinion". In *Economides,* however, the Court confirmed that the basic rule for insurance contracts, marine and non-marine, is still section 20 of the Marine Insurance Act 1906, that a "representation as to a matter of expectation or belief is true if it is made in good faith"; and that an expression of belief (or opinion) does not contain any implication of reasonable grounds. The requirement is "solely one of honesty" (p. 1076) and "of good faith which is necessarily subjective" (p. 1082).

How far can ignorance be honest? E could not "wilfully and deliberately shut his eyes" to information (p. 1084). Moreover, he must have had "some basis" for his statement of value (p. 1075), "he could not simply make a blind guess". Evidently, that "basis" is subjective: it does not have to satisfy the reasonable man. E did not have to make specific inquiries or provide objective evidence of value unless the requirement was spelled out in the proposal form (p. 1076). Reliance on his father's estimate of value was basis enough.

Non-Disclosure

Reframed as breach of the duty of disclosure of material information, *i.e.,* the true value, CU's argument also failed. In particular, having referred to the provision in section 18(1) of the Act that an "assured is deemed to know every circumstance which, *in the ordinary course of business,* ought to be known to him", Simon Brown L.J. stated (p. 1077) that a person "effecting insurance cover as a private individual and not 'in the ordinary course of business', must disclose only material facts known to him; he is not to have ascribed to him *any form of deemed constructive knowledge*" (emphasis added). However, it is hard to believe that a court will not expect some "street wisdom", or that people should not draw inferences from knowledge that they do have, although perhaps the court will prefer to call it common sense. An example is the significance of pain and of what the doctor prescribes: *Godfrey* v. *Britannic Assurance Co. Ltd.* [1963] 2 Lloyd's Rep. 515. So too, if E had heard his parents arguing about whether the jewellery should be deposited for safe keeping in their bank, perhaps E should have realised that it was worth more than his father said.

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The strict "Mansfield rule" (*Carter* v. *Boehm* (1766) 3 Burr. 1905), that those who propose insurance must disclose all material information, is an unusual rule born of particular times and circumstances past. The paradigm of 1766 was a general businessman in a London coffee bar, insuring ships and merchandise far away in a world without CNN. A rule of 1766 for the contents of ships on the other side of the ocean is not necessarily the right rule for insurance on the contents of a house down the road today. In 1980, a report of the English Law Commission concluded that English law on this was "inherently unreasonable". In 1982, the Australian Law Commission advised that "a new balance should be struck between the underwriter's need for information and the insured's need for security in relying upon insurance". In Australia, the law was reformed; in England, it was not.

As regards the unreformed rule of disclosure, *Economides* shows a further softening by the courts, and a shift away from the assumption of 1766 that the insured is always the best person to gather information. As regards misrepresentation, it is still all too easy for proposers to undervalue their belongings and too easy for insurers to rescind. True, insurers usually don't, but the fact that they might undercuts the peace of mind which insurers themselves represent to be much of the value of insurance. If a house has any antiques, a professional valuation costs about £500 a day. If insurers specifically required valuation, people might shop around for cheaper cover or better locks. The belief that the Court did not express but clearly implied is that insurers should "put up or shut up". As regards contract law at large, the Bowen dictum is not a hard and fast rule. In the law of misrepresentation, a statement is not treated as a statement of fact at all, unless reliance on it is reasonable. *Economides* reminds us that there are degrees of reliance and that much depends on the proper interpretation of the statement in question.

MALCOLM CLARKE

THE CONVEYANCING PROBLEMS OF RAPID RESALES—A REPRISE

IN [1993] C.L.J. 22 reference was made to the problems that the system of registered conveyancing can pose for a purchaser of land who immediately contracts to sell the land on. In such circumstances, section 110(5) of the Land Registration Act 1925 obliges him, in the event that his own purchaser so requests, "notwithstanding any stipulation to the contrary, [to] either procure the registration of himself as proprietor of the land ... or procure a disposition from the proprietor to the purchaser". Such a request is unlikely to be

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