

**A LEGAL ANALYSIS OF MOTOR VEHICLE THIRD PARTY
INSURANCE IN UGANDA**

BY

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DECLARATION


I, LWANGA EUNICE declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

Signature *Llwanga Eunice*

Date..... *3rd / Nov / 2016*

APPROVAL

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a research report in partial fulfillment for the award of a Bachelor of Laws degree of Kampala International University,”

Sign.....

Date..... 3/11/2016

MR. WANDERA ISMAIL
Supervisor

DEDICATION

I dedicate this work to the Lord Almighty who has seen me through my education journey, my parents Mr. and Mrs. Lwanga Bamukisa Isreal who was there for me throughout the four years and my sisters Naume, Racheal, Dorcus and Mary.

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LIST OF ACRONYMS

MTPI	Motor third party insurance
IA	Insurance Act
IRA	Insurance Regulatory Authority
UIA	Uganda Insurer's Association
URA	Uganda Revenue Authority
MIA	Marine Insurance Act

OPERATIONAL DEFINITIONS

INSURANCE: Is a form of risk management which entails the pooling of funds by the insured persons or entities to pay to the losses that they may incur.

POLICY HOLDER: A person that holds an insurance contract or a person or organisation in whose name an insurance policy is registered (insured).

INSURANCE REGULATORY BODY: Body established under S. 14 of the **Insurance Act Cap213** whose main object is to ensure the effective administration, supervision, regulation and control of the business of insurance in Uganda.

INSURANCE BROKER: Person who sells solicits or negotiates insurance for compensation.

INSURER: Means an insurance company conducting business in accordance with the **Insurance Act Cap 213**.

MORALHAZARD: In common usage, moral hazard infers a conscious malicious, even illegal, motivation, versus an unconscious behavior change. Circumstance that increases the likelihood of a loss or abnormal loss. Basically due to a change in an insurance policy issuance. Incentives may lead the insured to act in ways that increase insurer risks and costs.

RISK AVERSION: Isa concept in economics and finance, based on the behavior of humans (especially consumers and investors) while exposed to uncertainty to attempt to reduce that uncertainty. It is the reluctance of a person to accept a bargain with an uncertain pay off rather than another bargain with a more certain, but possibly lower, expected pay off.

RISK TRANSFER: This ordinarily lies with the insured. It is a risk management strategy in which an insurable risk is shifted to another party (the insurer) by means of an insurance policy. The insured pools funds with other insured's for indemnity in the event of a loss. The effect of the insurance contract is that it transfers the risk to the insurer.

INSURABLE RISK: Eventuality for loss or damage that is definable fortuitous, similar to a large number of known exposures and pays a premium that is commensurate with potential risk.

UNINSURABLE RISK: Condition or situation that fails to meet the requirements of an insurable risk, such as where a loss is inevitable (as the death of a patient suffering from a terminal illness) or where the damage is gradual (as corrosion or rusting of metals).

VEHICLE: Defined under S.2 (sss) **Traffic and Safety Act Cap 361** to include a machine or implement of any kind drawn or propelled along toads whether by animal, mechanical, electrical or any other motive power.

UNDER WRITER: A person who joins with others in entering into a policy of insurance as an insurer. Except where an insurance is effected with a company, a policy of marine insurance is generally entered into by a number of person each of whom makes himself liable for a certain sum, so as to divide the risk; they subscribe or underwrite the policy in lines one under the other.

COVER NOTE: Document evidencing issuance of an insurance policy and gives a summary of the information in a certificate of insurance.

COUNCIL: A body to be known as the nominal defendant council established for purposes of the motor vehicle insurance (third party risks) Act. The council consists of the government and all the insurance companies in Uganda undertaking the business of insurance business as provided under the insurance Act.

ABSTRACT

This is a descriptive cross study on motor vehicle third party insurance in Uganda carried out on 7 insurance companies and 70 motor vehicle owners. The study basically looks at a legal analysis of motor vehicle third party insurance in Uganda. Study focuses on the meaning of motor third party insurance under the motor vehicle insurance (third party risks) Act Cap 214.

The study looks at the history of motor vehicle third party insurance right from the birth of a car until it came into force in Uganda.

Research critically analyzes why some victims are not compensated and on the other hand assess how well motor vehicle owners know about motor third party insurance looking at their knowledge, attitude and awareness on motor third party insurance.

Research also covers the extent to which insurance companies compensate victims. What they (insurance companies) consider to compensate the policy holder and why the insurance companies do not compensate the policy holders in some circumstances.

The study looks at the legal framework of motor third party insurance, analyses the challenges of motor vehicle insurance from the insurance company's point of view and the policy holder's point of view that is to say, how well both parties understand the law. In an interview with the independent newspaper the Uganda insurers' association technical manager submitted that people needed to understand more about insurance and the Uganda insurer's association's intention is to interpret insurance especially motor third party insurance in a local language. With this, the research critically analyses the loopholes in the law governing motor third party insurance.

LIST OF STATUTES

Insurance Act Cap 213

Motor Vehicle Insurance (third party risks) Act. Cap. 214

Uganda Revenue Authority Act Cap 196

Traffic and Safety Act Cap. 361

Marine Insurance Act

LIST OF CASES

1. Njiruzawo Chingaibe, Sofia Katongole, F. Chingaibe (next friend) **V.** National Insurance Company (ltd) Civil Cause No. 60/2000.
2. Daniel Ssebowa **vs.** Paramount Insurance Company Ltd. HCT-00-CC-CS-0010-2010
3. Jubilee Insurance Co. Ltd. vs. John Sematengo (1965) EA.
4. Carter v Boehm (1766) 97 ER.
5. Stebbing v Liverpool and London globe insurance.
6. Banque Financier De La cite SA V west Gate insurance (1991) 2 AC 249.
7. Chapman and others v Assignees of Kennet Fraser

CHAPTER ONE

1.0. Introduction

Insurance is a contract whereby a person called the insurer agrees on consideration of money paid to him called the premium by another person, called the insured, to indemnify the latter against loss resulting to him on the happening of certain events.¹

Insurance is a contract of uberrima fides (ut most good faith). Generally, insurance can be classified into two categories. **Indemnity**, where the insured is indemnified against actual loss so that the amount paid is the amount of loss and **contingency**, where a specified sum is payable upon the occurrence of an event such as death.

The major legislation regulating insurance in Uganda is the **Insurance Act Cap. 213**. Insurers are required by the insurance Act under **section 4** to be a body corporate operating as a company, cooperative, insurance society or mutual insurance company. **Section 5 of the Insurance Act** classifies the different types of insurance and essentially the common types include;

- i) Liability insurance (which includes automobile insurance, property damage and body injury)
- ii) Property insurance
- iii) Third party insurance (which includes loss and damage to a third party or other property)
- iv) Life insurance (which includes burial costs, death loans as peril insured against).

Motor third party insurance is a type of insurance policy which pays the legal liabilities of a motorist to the third party bodily injuries including death while the vehicle is being driven on public roads.²

¹ Osborne's concise law dictionary

² Definition by United Assurance Policy (UAP)

In Uganda, motor third party or motor vehicle third party insurance is compulsory and is mandated and regulated under **the motor vehicle insurance (third party risks) Act Cap. 214**. Other legislation include; **traffic and road safety Act Cap 361 and the URA Act Cap 196. Section 2(i)** of the Act mandates all vehicle operators to have motor vehicle insurance cover. **Section 2(2)** puts an exception to vehicles owned by the government of Uganda³.

Where a vehicle operator does not abide by **S.2(1), S.2(3)** makes it an offence and the vehicle operator is liable on conviction to a fine not exceeding 100,000/= or to a term of imprisonment not exceeding of two years or to both such fine and imprisonment.

The policy of insurance must be a policy which is issued by an insurer holding a license issued by the commissioner under the Insurance Act and the policy of insurance must be a policy which also insures such a person or persons or classes of persons as may be incurred by him or her or them in respect of death or bodily injury to another person caused by or arising out of the use of vehicle on the road.⁴

The insurance policy is not required to cover liability in respect of the death or bodily injury to a person arising out of and in the course of employment of a person insured under the policy.

The Traffic and Road Safety Act under **S. 12(1)** requires owners of motor vehicle trailer or engineering plant to make an application for registration in the prescribed form and further requires under **S. 12(3)** that every application for registration of a motor vehicle, trailer or engineering plant to be accompanied by or combined with an application for a license and insurance of the motor vehicle, trailer or engineering plant.⁵

³ Motor Vehicle Insurance (third party risks) Act Cap. 214

⁴ S. 3 of the motor vehicle insurance (third party risks) Act

⁵ Traffic and safety Act Cap 361

Under **S.13 (1)(d)** A licensing office is required to verify the particulars in the application for registration and shall satisfy himself or herself that any tax or duty due in respect of the motor vehicle, trailer or engineering plant under any written law has been paid. Furthermore, **S.35 Traffic and Safety Act** prohibits a person to drive without a permit (driving permit).⁶

Under the Uganda Revenue Authority Act, one of the functions of the authority is to administer and give effect to the laws or specified provisions of the laws set out in the first schedule of the URA Act and for this purpose to assess, collect and account for all revenue to which those laws apply.⁷

1.1. Historical Background

Motor third party insurance traces its way back to the birth of a car. Motor vehicles made their first spluttering appearance at the turn of the 20th century but during the first years, there was no requirement or consideration for the need of insurance in any form. In fact, the first vehicles to hit the open road were so cumbersome and slow, the common horse and carriage was considered much more efficient and faster at the time⁸.

Widespread use of the automobile began after the First World War in cities. The motor car had developed dramatically, cars were relatively first and dangerous by that stage, yet there was still no compulsory form of car insurance anywhere in the world. This means that injured victims could often not get any compensation in an accident, and drivers often faced considerable costs for damage to their car and property⁹.

By the end of the First World War, people were returning from the conflict with the interest to continue their driving experience.

⁶ Traffic and Safety Act Cap 361

⁷ Uganda Revenue Authority Act Cap 196

⁸ [En.wikipedia.org/history of a vehicle](https://en.wikipedia.org/history_of_a_vehicle)

⁹ [En.wikipedia.org/history of a vehicle](https://en.wikipedia.org/history_of_a_vehicle)

Accidents became a common sight on many roads in most countries like Britain, USA, and Germany to name but a few. There was total lack of compensation for those innocent victims involved in the road traffic accidents.

A compulsory car insurance scheme was first introduced in the United Kingdom with the **Road Traffic Act 1930**. This ensured that all vehicle owners and drivers had to be insured for their liability for injury for death to third parties whilst their vehicle was being used on a public road. Germany around the year 1939 enacted a similar legislation.

The **1930 Road Traffic Act**, of the United Kingdom introduced driving offences, dangerous, reckless and careless driving and driving whilst being under the influence of drink alcohol and drugs, compulsory third party insurance. First UK driving tests for disabled drivers only classification of motor vehicles.¹⁰

In many jurisdictions, it is compulsory to have vehicle insurance before using or keeping a motor vehicle on public roads. Most jurisdictions relate insurance to both the car and the driver; however the degree of each varies greatly.

Several jurisdictions have experimented with a "pay as you drive" insurance plan which is paid through a gasoline tax (patrol tax). This would address issues of uninsured motorists and also charge based on the miles (kilometers) driven, which could theoretically increase the efficiency of the insurance, through streamlined collection.

In Germany since 1989, it has been compulsory to have third party personal insurance before keeping a motor vehicle in the federal states of Germany. In addition, every vehicle owner is free to take out a comprehensive insurance policy. All types of car insurance are provided by several private insurers. The amount of insurance contribution is determined by several criteria like the region, the type of car or personal way of driving.¹¹

¹⁰ Royal Commission on transport, UK 1929 by HMSO in London

¹¹ Informationen zur RFZ versicherung English translation 21 September 2012

The end of the Second World War saw the need for insurance brokers. A boom of motor insurance broking occurred during the 1960s. In the UK the largest insurance company Lloyds relied on the service of brokers to sell their product and in those days broking was very manual and paper work generated progresses.

The motor insurance has seen change over the past 100 years. In Uganda however, motor third party insurance was introduced by the **Motor Vehicle Insurance (third party risks) Act 1989**¹². This Act was introduced by the government in 1989 to make provision for compulsory insurance against third party risk of vehicles.

Types of insurable vehicles include;¹³

- i) Private; these are vehicles used for social, domestic and pleasure purposes.
- ii) Commercial vehicles (taxes, buses and hire cars); these are vehicles used for carrying fare paying passengers.
- iii) Commercial vehicles (own goods); these are vehicles used for carrying commercial goods owned by the insured.

In simpler terms, the type of insurable vehicles include Salon wagons, small vehicles used for official, social, domestic and pleasure purposes commercial vehicles, pick-ups, trucks, lorries, van and minibuses. Not excluding motor cycles used for official business social in domestic purposes.¹⁴

A vehicle is defined under section 2(sss) Cap 361 to include a machine or implement of any kind drawn or propelled along roads whether by animal, mechanical, electrical or any other motive power.¹⁵

The enacting of the **motor vehicle insurance (third party risks) Act** cap 214 meant that one cannot operate a vehicle in Uganda without third party insurance and if the third party is injured as he or she was using the road should be compensated.

¹² <http://www.ira.go.ug/faqs>

¹³ www.nic.co.ug/non-life/motorcommercial

¹⁴ United Assurance Policy

¹⁵ Traffic and Safety Act Cap 361

1.2. Statement of the Problem

A survey by the Uganda police department shows that every year, more than 2000 Ugandans are killed in traffic accidents. An estimated 32 out of every 100,000 Ugandans are involved in a motor accident every year.¹⁶

According to the **Motor Vehicle Insurance (third party risks) Act Cap 214**, the policy of motor vehicle insurance is one which insures such a person or persons or classes of persons as may be specified in the policy in respect of liability which may be incurred by him or her or them in respect of death or bodily injury to another person (third party) caused by or arising out of the use of a vehicle on the road.¹⁷

If one were to cause an accident, that person's policy would pay the injuries incurred by the owner of the car or policy to third parties.

The motor third party insurance is a basic insurance that will cover the damages caused due to your fault to another vehicle and its passengers. Under this kind of a plan, your vehicle will not be covered.¹⁸

Certain classifications of this insurance will also assist with legal fees arising from a suit filed against the policy holder and this depends largely upon both the individual insurer and the amount the policy holder invests in the policy.

Motor third party insurance is paid on a yearly basis. The law requires that the policy be renewed every year. The law requires that a person must not use or permit any other person to use a vehicle on the road without a valid motor vehicle insurance third party cover.¹⁹ One can be penalized for driving without valid cover insurance.

In an interview with the independent newspaper **Uganda**, the **Uganda Insurers Association technical manager, David L. Tumuhaise** submitted that people

¹⁶ Uganda police traffic department report , ira Co. Ug

¹⁷ S.3(6) Motor Vehicle Insurance (third party risks) Act

¹⁸ www.moneycontrol.com

¹⁹ S.2(1) motor vehicle insurance (third party risks) Act

needed to understand the insurance industry and the intention of the UIA is to translate some policies especially Motor third party into major local language so that people can understand it better.

He further submitted that most people do not understand what insurance is all about so they do not yearn for it and that in general most people think that insurance companies are thieves and will not compensate them when they suffer loss.²⁰

Many motor vehicle owners do not understand what motor third party insurance is all about in Uganda. They perceive it to be comprehensive insurance.

Comprehensive motor insurance covers damages caused to the third party vehicle as well as your vehicle, in addition to damages caused to the passengers in both vehicles. Motor vehicle owner's car is also covered for any damage resulting from fire, theft, accident, natural calamities and so on.²¹

Both private car owners and commercial car owners complain that insurers do not compensate them when they are involved in an accident; they submit that insurance companies find a reason not to indemnify them even if they notify them.

Commercial car owners do not understand motor third party insurance. Most of them submit that perceive it as comprehensive insurance.

1.3. Objectives of the study

A legal analysis of motor third party insurance in Uganda. Specific objectives;

- a) To assess the legal frame work of motor vehicle third party insurance.
- b) To determine the knowledge and awareness of motor vehicle owners on motor vehicle third party insurance.
- c) To determine motor vehicle users attitude on motor third party insurance

²⁰ The state of Insurance in Uganda today April 02, 2012 by Julius Busingye, the Independent Newspaper Uganda.

²¹ www.money.control.com

- d) To determine the willingness of insurance companies to indemnify or compensate policy holders in case of an accident.
- e) To determine the circumstances under which insurance companies may not compensate policy holders.
- f) To determine what happens if the insurance company does not indemnify or compensate the policy holder in case of an accident.

1.4. Research questions

1. What is Motor vehicle third party insurance?
2. Under what circumstances should an insurance company compensate a policy holder?
3. What are the possible recommendations to have on the legal framework of Motor Third Party Insurance?

1.5. Purpose of the research

Motor third party insurance is a compulsory type of insurance required by the law to cover the liability of a vehicle owner to a third party injury.

Policy holders perceive motor vehicle third party insurance to mean insurance that covers liability for both vehicle owner including the person(s) in his car and damage to his car and third party injury. In other words, policy holders understand motor third party insurance to mean comprehensive car insurance.

The research gives the meaning and components of motor vehicle third party insurance.

Both insurance companies and vehicle owners have to know their standing in the law.

Both policy owners and vehicle owners need to know their rights under the law.

The research shows the gaps in the law governing motor third party insurance in Uganda and the possible recommendations to fill the gaps in the law.

CHAPTER TWO

2.0. Literature review

2.1. Meaning of Motor Vehicle Third Party Insurance

Motor vehicle third party insurance is a type of insurance policy which pays the legal liabilities of a motorist to the third party bodily injuries including death while the vehicle is being driven on the road.²²

Motor third party insurance or third party liability cover, which is sometimes also referred to as the "act only" cover is a statutory requirement under the **Motor vehicle insurance (third party risks) Act Cap. 214**.

It is referred to as a "third party" cover since the beneficiary of the policy is someone other than the two parties involved in the contract (the car owner and the insurance company). The policy does not provide any benefit to the insured. However, it covers the insured legal liability for death/disability of third party loss or damage to third property.²³

Under the **Motor Vehicle Insurance (third party risks) Act Cap 214**, It is unlawful for any person to use or to cause or to permit any other person to use, a vehicle on the road, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance in respect of third party risks that complies with the motor vehicle insurance (third party risks) Act Cap 214²⁴. However, motor third party insurance does not apply to a vehicle owned by the government of Uganda as per **section 2(2)**²⁵ where a person contravenes with S.2(1) above, he or she commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding two years or both, such a fine and imprisonment under S.2(3). Furthermore, a person convicted under S.2 (3) of the Act unless court for special reasons thinks fit to order otherwise

²² Definition by United Assurance Policy (UAP)

²³ <http://economictimes.indiantimes.com >ET HOM C> definitions > insurance>

²⁴ S.2(1) motor vehicle insurance (third party) risks Act

²⁵ Motor vehicle insurance (third party risks) Act Cap 214

and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving permit for twelve months from the date of conviction, in addition to the penalties that may be imposed under S.2 (3).²⁶

2.2. Types of vehicles insured under motor third party insurance

A vehicle refers to a device or structure for transporting persons or things, a conveyance or self-propelled conveyance that runs on times a motor vehicle.

A vehicle is defined to include a machine or implement of any kind drawn or propelled along roads whether by animal, mechanical, electrical or any other motive powers.²⁷

Vehicles insured include salon wagons; small vehicles used for official, social, domestic and pleasure purposes, commercial vehicles, pick-ups, trucks, lorries, van and minibuses not excluding motor cycles used for official business, social and domestic purposes.

Vehicles which are not insured under motor third party insurance include government vehicles.

Under section 2 of the motor vehicle insurance (third party risks) Act unlawful for any person to use, or to cause or to permit any other person to use a vehicle on the road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be a policy of insurance in respect of third party risks. S. 2(s) excludes vehicles owned by the government of Uganda.²⁸ With this lie see government vehicles are not among the type of vehicles insured under motor third party insurance.

Government cars do not buy third party because government provides a fund to cater for losses and damages caused by its vehicle. If a government vehicle knocks you, you

²⁶ Motor Vehicle Insurance (third party risks) Act

²⁷ S.2 (sss) Traffic and Road Safety Act Cap. 361

²⁸ Motor vehicle insurance (third party risks) Act Cap 214

secure compensation through the Attorney general who will process the necessary compensation.²⁹

2.3. Legal framework of motor vehicle third party insurance

In Uganda, the major legislation governing insurance is the **insurance Act Cap. 213**.

No person, other than a person licensed to operate under the insurance Act shall use the word "insurance", assurance or "reinsurance" or any derivations in English or any other language as part of his or her business name.³⁰

Furthermore, no person other than a person licensed as an insurer under the insurance Act shall issue any insurance policy on:³¹

- a) A person who at the time of effecting a contract are residents of Uganda.
- b) Goods or assets situated in Uganda
- c) Ships, aircraft or other vehicles registered in Uganda
- d) Goods imported from other countries except personal effects and donations.

Under section 4 of the insurance Act insurers are required to be a body corporate. As no person shall carry on insurance business in Uganda except;

- a) A company incorporated under the companies Act.
- b) An insurance corporation established by law
- c) A cooperative insurance society registered under the cooperative societies Act; or
- d) A mutual insurance company.³²

Section 5(ix) of the Insurance Act Cap 213 stipulates that insurance business shall comprise of... (ix) Motor Vehicle Insurance.

²⁹ New Vision Archive (third party insurance: do you know your rights? Publish date. November 06,2009

³⁰ S.3(1) Insurance Act Cap 213

³¹ S.3(2) Insurance Act Cap 213

³² S.4 Insurance Act Cap 213

2.3.1. Motor Vehicle Insurance under the Motor Vehicle Insurance (Third party Risks) Act Cap 214

Section 2 of the motor vehicle (third party risks) Act Cap 214 makes it compulsory for vehicles to be insured against third party risks. Section 2(1) provides that it shall not be lawful for any person to use, a vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person at the case may be, a policy of insurance in respect of third party risks that complies with the requirements of the Act³³. Any person who contravenes with S.2(1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding two years or both such fine and imprisonment.³⁴ Court may order a person convicted under S. 2(3) to be disqualified from holding or obtaining a driving permit for twelve months from the date of conviction in addition to fine and imprisonment.³⁵

Scope of third party insurance

The policy of motor third party insurance must be a policy which;

- a) Is issued by an insurer holding a license issued by the commissioner under the insurance Act.
- b) Insures such a person or persons or classes of persons as may be specified in the policy in respect of liability which may be incurred by him or her or them in respect of death of or bodily injury to another person caused by or arising out of the use of vehicle on the road.

Policy does not cover liability in respect of the death of or bodily injury to a person arising out of and in the course of employment of the person by a person insured under the policy.³⁶

³³ S. 4 Insurance Act Cap. 213

³⁴ S.2(1) motor vehicle insurance (third party risks) Act

³⁵ S.2(3) motor vehicle insurance (third party risks) Act

³⁶ S.3. motor vehicle insurance (third party risks) Act

Under section 4, any person who for the purposes of obtaining a policy of insurance makes any false statement in consequences of which the policy is liable to be avoided, or willfully does any act which disentitles him or her to drive under the policy, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding two years or to both such fines and imprisonment.

The Act further provides that any condition in a policy of insurance providing that no liability shall arise under the policy or that any liability so arising shall cease in the event of some specified thing being done or being omitted to be done after the happening of the event giving rise to a claim under the policy shall as respect each liabilities as are required under section 3(60) to be covered by a policy be of no effect³⁷.

The motor vehicle insurance (third party risks) Act however stipulates under section 5(2) that nothing in section 5 (supra) shall be taken to render void any provisions in a policy requiring the person insured to repay to the insurer any sums which the insurer may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

Section 6 requires that where a certificate of insurance has been issued to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the person insured by reference of:

- a) The age, physical or mental conditions of persons driving the vehicle
- b) Condition of the vehicle
- c) The number of persons that the vehicle carries
- d) The weight or physical characteristics of the goods that the vehicle carries.
- e) The times of which or the areas within which the vehicle is used.
- f) The horse power or value of the vehicle.

³⁷ S.5(1) Cap 213

- g) The carrying on the vehicle of any particular apparatus.
- h) The carrying on the vehicle of any particular means of identification shall as respect the liabilities required to be covered by a policy of section 3(6) be of no effect.³⁸ The insurer may recover from the insured any sum paid in or towards the discharge of liability incurred by virtue of section 6.³⁹

Certificate of insurance

The certificate of insurance is issued by the insurer to the person by whom a policy of insurance is effected at the same time as the cover note is issued.⁴⁰

The certificate shall be in a prescribed form and shall contain such particulars of any conditions subject to which the policy is issued and of any matters as may be prescribed and different forms and different particulars may be prescribed in relation to different cases or circumstances.⁴¹

Section 8(1) requires that no vehicle in respect of which a policy of insurance is required under the motor vehicle insurance (third party risks) Act shall be used on a road unless a legible certificate of insurance is displayed on the vehicle on a conspicuous manner.

The section further requires that a person who is using a vehicle on a road in contravention of section 8(1) is required by a police officer to produce his or her certificate of insurance for purposes of determining whether the vehicle was or was not being driven in contravention of section 2, shall within seven days from the date of the request, produce to the police officer or the nearest police station the certificate or such other evidence as may show that there is a policy or insurance in force.⁴²

³⁸ S.6(1) motor vehicle insurance (third party risks) Act

³⁹ S.6(2) Motor Vehicle Insurance (third party risks) Act

⁴⁰ S7(1) Motor vehicle insurance (third party risks) Act

⁴¹ S7(2) Motor vehicle insurance (third party risks) Act

⁴² S.8(2) Motor vehicle insurance (third party risks) Act

Under section 8(3), a person who does not comply or contravenes with section 8(1) and (2) commits an offence.

Policy holder's obligations / duty

In the event of an accident affecting a vehicle, in resulting in the death of or bodily injury to any person, the owner shall forthwith after the accident, or if the owner was not in charge of the vehicle at the time of the accident, give notice in writing to the insurer of the fact of the accident, with particulars as to the date, nature and circumstances of the accident with particulars as to the date, nature and circumstances of the accident.⁴³

The vehicle owner has a duty to give all such other information and take such steps as the insurer may reasonably require in relation to the accident whether or not any claims have actually been made against the owner on account of the accident.

Section 9(2) requires that the article in writing of every claim made or action brought against the owner, or to the knowledge of the owner made or brought against any other person on account of the accident be given to the insurer and the owner must give such other particulars as the insurer may require.

The insurer is entitled to recover from the owner as a debt such amount as the court having regard to all the circumstances of the case thinks fit, not exceeding an amount equal to the total amount, including losses, incurred by the insurer as a result of non-compliance with the requirements section 9⁴⁴.

Utmost good faith (uberrima fides) as a requirement in the contract of insurance

Utmost good faith (**uberrima fides**) sometimes seen in its genitive form uberrima fides (literally means, "most abundant faith") it is the name of a legal doctrine which governs insurance contracts.

⁴³ S.9(1) motor vehicle insurance (third party risks) Act

⁴⁴ S.9(3) motor vehicle insurance (third party risks) Act

This means that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal. This contrasts with the legal doctrine *caveat emptor* (let the buyer be aware).⁴⁵

Thus the insured must reveal the exact nature and potential of the risks that he transfers to the insurer, while at the same time the insurer must make sure that the potential contract fits the needs of and benefits, the assured.

A higher duty is expected from parties to an insurance contract than from parties to most other contracts in order to ensure the disclosure of all material facts so that the contract may accurately reflect the actual risk being undertaken.

The principles underlying this rule were stated by Lord Mansfield in the leading and often quoted case of **Carter V. Boehm**⁴⁶ that, "insurance is a contract of speculation.... The facts upon which the contingent chance is to be computed, lies most commonly in the knowledge of the insured only: the underwriter trusts to his representation and proceeds upon confidence that he does not keep back any circumstances in his knowledge to mislead the underwriter into a belief that the circumstance does not exist... good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary".

The fact that the contract is one of utmost good faith does not however mean that it gives rise to a general fiduciary relationship. The relationship between insured and insurer is not a kin to the relationship between say, guardian and ward, principal and agent, or trustee and beneficiary. The insurer-insured relationship is contractual; the parties are parties to an arms-length agreement.⁴⁷

The principle of *uberrima fides* does not affect the arms-length nature of the agreement, and cannot be used to find a general fiduciary relationship. The insurance contract imposes a certain specific obligations on its parties.

⁴⁵ en.wikipedia.org/wiki/uberrimafides

⁴⁶ (1766)97 ER 1162, 1164

⁴⁷ *Uberrima fides* and concealment in the marine policy application from the maritime law association of United States.

In Uganda it is a requirement of the law that insurance contract be a contract of utmost good faith. In the case of **Jubilee insurance Co. Ltd Vs. John Sematengo**⁴⁸, the plaintiff insurance company filed a suit against the defendant insured for a declaration that the company was entitled to avoid a motor insurance policy issued to him on the grounds that the same was obtained by non-disclosure of material facts and by misrepresentations of facts which were false in some material particular. For the defendant it was submitted that having regard to the provisions of S.104(1) of the traffic ordinance, 1951, the action was not maintainable in law because no action had been taken nor judgment obtained against the defendant against which the defendant could claim to be indemnified by the plaintiff company. The trial judge found that the insurance policy was obtained by the non-disclosure of material fact and by a representation of a material fact which was false in some particular. The court held that the purpose and intent of the provisions of S.104(4) of the traffic ordinance, 1951 is to enable an insurance company to avoid an insurance policy on the ground of non-disclosure of a material fact on misrepresentation of fact which is false in some material particular, regardless of any provisions on the insurance policy.

It is the burden of proof of the insurer to show that there was a misrepresentation or non-disclosure of a material fact.⁴⁹

Good faith on the part of the insurer and remedies for breach of good faith

The insurer also has a duty to act in good faith towards the insured

In the case of **Banque financier De La Cite Sa Vs. West Gate Insurance Company Ltd**⁵⁰ where the H.O.L accepted that there was a duty of good faith on the part of the insurer but the breach of which simply entitled the insured to avoidance of the contract and return of premiums and not damages.

⁴⁸ 1967EA 223

⁴⁹ Stebbing Vs. Liverpool and London globe Insurance Company Ltd (1916-17) ALLER 248

⁵⁰ (1991)2 Ac 249

Generally where there is a breach of duty of utmost good faith by the insured the insurer is entitled to avoid the contract. On the other hand, where the insurer breaches the duty of good faith the contract may be rescinded and hence the premiums returned to the insured. The rationale for these positions is based on the fact that the insurance contract was void abinitio since it was based on dishonesty and no whether parties intended.

In the event that the insurer discovers that the insured is guilty of fraudulent misrepresentation or disclosure, the law permits the insurer to avoid the contract. However what happens if the insured has been promptly paying the premium agreed upon, does the insured keep the premium or does he reimburse it to the insured? If the insurer retains the premium, doesn't that amount to unjust enrichment: in the case of **Chapman and Ors, Assignees of Kennet Fraser**⁵¹, the court was of the view that in the event of any fraud by the insured the insurer is entitled to keep the premium.

OTHER DUTIES AND OBLIGATIONS OF INSURER AND INSURED UNDER THE MOTOR VEHICLE INSURANCE THIRD PARTY RISKS ACT.

Vehicle owner/insured has a duty to give information as to the insurance as required by the law when a claim is made against him or her in respect of any liability as required under S.3 (b) to be covered by a policy of insurance shall, on demand by or on behalf of the person making the claim, state whether or not he or she was insured in respect of that liability under any policy.⁵²

Under **section 10(2)** any person who without reasonable excuse fails to comply with section 10 or willfully makes any false statements in reply to any such demand as aforesaid, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

⁵¹ BR Trin 33 600(1)

⁵² S.10(1) motor vehicle insurance (third party risks) Act Cap 214

The government of Uganda supervises the operations of insurance companies and their representatives because insurance business exists to serve the public it is therefore charged with public interest.

The insurance act gives the insurance commission a function of establishing standards for the conduct of insurance and reinsurance business.⁵³

An insurance company may fix different rates of insurance premium in respect of different purposes for which a vehicle may be used. The amount of premium paid by a vehicle owner which was fixed by the government is 60,000/= however insurance companies are allowed to for any rates as long as the charge does not exceed 100,000/=

Under section 11(1) subject to policies of the commissioner under the insurance Act but subject to the motor vehicle insurance (third party risks) Act, an insurer may fix different rates of insurance premium on respect of different purposes for which a vehicle may be used⁵⁴.

Where the premium has been so fixed in respect of a vehicle, the owner of the vehicle shall not use it or permit it to be used for a purpose other than that for which the rate of insurance premium has been fixed, unless the full amount of the insurance premium has been paid, but failure by an owner to comply with the requirements of section 11(2) shall not affect the rights of a third party.⁵⁵

Furthermore, where an owner of a vehicle uses or permits such a vehicle to be used in contravention with section 11, the insurer shall be entitled to recover from him or her as a debt the different between the premium paid and the premium properly payable.⁵⁶

⁵³ S.15(2) (a) Insurance Act Cap 213

⁵⁴ Motor Vehicle Insurance (third party risks) Act Cap. 214

⁵⁵ S.11(2) Motor Vehicle Insurance (third party risks) Act

⁵⁶ S.11(3) Motor Vehicle Insurance (third party risks) Act

Insurer's duty to settle claim

Under section 12(1) an insurer that is a party to a policy under the motor vehicle insurance (third party risks) Act may at any stage undertaken on behalf of the insured or any other person that the insurer is liable indemnify under the policy.

- a) The settlement of any claim against the insured or other person and;
- b) Any proceedings or enforcement of any claim or the settlement of any issue arising from a claim.

Where the insurer undertakes the conduct or defence of any proceedings. Under section 12(1), it shall indemnify the insured or other person against all costs and expenses of and incidental to those proceedings.⁵⁷

The insured or other person shall sign all such warrants and authorities as the insurer may require for the purpose of enabling the insurer to have the conduct or defence of any such proceedings.⁵⁸

In some circumstances the law allows a third party to sue the insurer directly and if the said insurer is found liable the insurer would be required to pay the damages according to the provisions of statute or law.

In the case of **Njiruzawo Chingaibe, Sofia Katongole, F. Chingaibe (nextfriend) Vs National Insurance Company and Anor**⁵⁹. The plaintiffs Njiruzawochingaibe and Sofia Katongole who were infants suing through a nextfriend F. Chingaibe commenced an action against the national insurance company claiming inter alia, against the defendant general damages for personal injuries sustained on a road accident on 14th May 1999 involving the defendant minibus Reg. No. MN 1671.

The plaintiff stated that the defendant was at all material times the insurer of minibus Reg. No. MH 1671 Toyota Hiace under certificate of insurance No. ASS 374 issued on

⁵⁷ S.12(2) Motor Vehicle Insurance (third party risks) Act

⁵⁸ S.12(3) Motor Vehicle Insurance (third party risks) Act

⁵⁹ Civil cause No. 66 of 2000

3/5/1999 to 12/3/2000 which was at the material times being driven by Chipiliro. At the hearing of the summons for directions, before the deputy register on 28th June 2000, it was prayed for by the defendant and ordered amongst other orders that the following question of law be tried vis a viz the preliminary issue.

Whether regard being had to S.148 of the road traffic act the defendant would in law be liable to the plaintiff for damages in respect of injuries sustained by the plaintiff in a road accident on 14th May 1999 in view of the fact that the driver of the motor vehicle here in did not have a valid driving licence contrary to the contract of insurance and the road traffic Act. The trial judge held that S.148 is intended to offer third party protection. He further held that even though the driving of a motor vehicle by a person who had no valid driving license at all in an unlawful Act still the insurer would be liable to third parties notwithstanding the clause in the insurance contract disclaiming liability and the right to proceed against the insurer directly is purely a statutory provision given to a claimant who issues process in respect of a statutory policy.⁶⁰

Circumstances may arise where under a policy of insurance a person insured against liabilities to third parties which he or she may incur then in the event insured becomes bankrupt or making a composition or arrangement with his or her creditors: or in the case of the insured being a company in the event of a winding up order being made, or a resolution for a voluntary winding up being passed with respect to the company, or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken, by or on being duly appointed or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the charge, if either before or after that event such liability as aforesaid is incurred by the insured, his or her rights against the insurer under the policy in respect of the liability shall, notwithstanding anything in any law to the contrary, be transferred to and vest in the third party to whom the liability was incurred.⁶¹

⁶⁰ Civil cause No. 66 of 2000

⁶¹ S.13(1) (a) and (b) motor vehicle insurance (third party risks) Act

In any proceedings or any claim against an insured or an insurer under the motor vehicle insurance (third party risks) Act in respect of an accident causing death of or bodily injury to any person being at the time of the accident a passenger for hire in the vehicle, it shall not be a defence that the contract of carriage had excluded or modified the liability of the insured or of any person from paying or to pay damages in respect of accidents due to the negligence or willful default of the insured.⁶²

Liability where a vehicle is unidentified or uninsured and the owner is unidentified
Where the death of or bodily injury to any person is caused by or through or in connection with the use of a vehicle and the identity of the vehicle cannot be established after reasonable inquiries have been made or the vehicle is uninsured and the identity of the owner or driver of the vehicle be established after reasonable inquiries have been made any person who could have obtained a judgment against the owner or driver of the vehicle on respect of that death or bodily injury way obtain against the council the judgment which in the circumstances he or she could have obtained against the owner or driver of the vehicle.⁶³

Under section 33(1) where liability has been incurred by the owner or driver of an uninsured vehicle, in respect of the death of or body injury to any person caused by the use of that vehicle on the road and the liability is one for which the owner would have been indemnified if there has been a policy of insurance in force as required under the motor vehicle insurance (third party risks) act in respect of that vehicle, then subject to this section, the amount of any judgment obtained by any person against the owner or driver in respect of the liability shall be paid to that person by the council⁶⁴.

⁶² S.14 Motor vehicle insurance (third party risks) Act

⁶³ S.32(1) Motor vehicle insurance (third party risks) Act

⁶⁴ Motor Vehicle insurance (third party risks) Act

OTHER REQUIREMENTS UNDER THE MOTOR VEHICLE INSURANCE (THIRD PARTY RISKS) ACT

Section 38 requires that every insurance company issued with a license under the insurance Act shall be required to carry on the business of underwriting third party risks; and where the commissioner is not satisfied that an insurance company is carrying on a reasonable amount of such business he or she may refuse to issue or renew the licence of that insurance company.

Under section 39, it is a requirement that in all third party claims in respect of damages of property of, the death of or bodily injury, to any person, arising from any accident, the third party shall proceed against the owner, or the driver or the council as the case may be and not the insurer.

Relevance of motor third party insurance to the vehicle owners

Motor vehicle third party insurance provides compensation to third parties for bodily injury or death caused by a motor vehicle.

Motor vehicle or death caused by a motor vehicle.

Motor vehicle insurance is of great importance because it relieves a vehicle owner of any liability to third party. On the side of third parties, then when they incur any body injuries.⁶⁵

An accident can happen to anyone even if the drive of the car is not at fault. This may result into a lot of damages caused in person as well as to the car. Motor vehicle third insurance turns to be beneficial under such circumstances. If the driver is liable for an accident which results in bodily injuries to a third party, then the expenses have to be done by the owner of the car. In such cases motor vehicle third party insurance saves from a devastating financial blow.⁶⁶

⁶⁵ United Assurance Policy

⁶⁶ <http://www.n.insure.in/learning>

CHAPTER THREE

3.0. Methodology

3.1. Study Design

A legal analysis on motor vehicle third party insurance carried out on 70 motor vehicle owners (both private and commercial vehicle owners) and 7 insurance companies in Uganda.

3.2. Study Area

Study was conducted in Kampala. On particular Insurance companies such as National Insurance Company, Jubilee Insurance, Pax insurance company, legacy insurance consultants, excel insurance company, Rio Insurance company, and APA insurance company and 70 motor vehicle owners/users including motorcycle owners.

3.3. Study Population

The study targeted motor vehicle owners (users) and the insurance companies they have a policy with and insurance companies and their customers.

3.4. Sampling Procedures

Systematic random sampling method was used and this involved a selection of participants who consented to the study like commercial vehicle or motor cycle owners and private vehicle owners, not excluding insurance companies that give motor vehicle third party insurance.

3.5. Sample size determine

To obtain sample size, Fischer et al 1990 formula was used

$$N = \frac{z^2 P O}{D^2}$$

Where:

N = Derived sample size

Z = Standard normal deviation taken as 2.0 at a confidence level 95%

P = Proportion of target population estimated to have similar characteristics

If there is no measurable estimate, 50% (constant) or 0.5 is used therefore P = 0.5 therefore;

Q = is standardized as 1-0 = p = 0.5

D = Degree of accuracy desired 0.05 or 5%

In this case, 95% confidence level has 5% errors. Therefore 0.05 is a level of significance.

$$N = \frac{2^2 \times 0.5 \times 0.5}{(0.05)^2}$$

$$N = 400$$

Given a limited period and funds a sample size of 7 insurance companies and 70 motor vehicle users were considered.

3.6. Data Collection Tools

A pre-test questionnaire was used. The questionnaire contained both closed and open ended questions. The questionnaire aimed at obtaining information from motor vehicle users and insurance companies in Kampala.

3.7. Quality control

Data collection tools were tested for accuracy, relevance and quality of data; five questionnaires were pretested on five motor vehicle users prior to the beginning of the proposed study. Necessary amendments were made after the exercise before finally collecting data for the study.

Informed consent was sought from each participant by explaining the purpose of the study, the benefits and assuring them of the confidentiality of the collected personnel bio data.

3.8. Data Analysis

This was done with the aid of a sample manual calculator to complete additions and percentages. Frequency distribution tables, short statements, pie charts and bar graphs were used to summarize the data.

3.9. Ethical Consideration

An introductory letter from the Dean of the School of Law was presented to the motor vehicle owner and insurance company explaining the purpose and aim of the study to enhance privacy and confidentiality.

3.10. Limitations of the Study

- Some motor vehicle owners (commercial, taxi, drivers) did not understand English and questions were asked in a native languages.
- Commercial car drivers (taxi drivers) i.e. a good number of them drive cars owned by their employers and they are not the ones that paid for the insurance.
- Most insurance companies declined to participate in the study
- Limited time and funds were a major limitation to the study.

CHAPTER FOUR

4.0. Study findings

Presented below are the findings from a sample of 7 insurance companies and 70 motor vehicle owners. Data was analyzed in terms of percentages and frequency distribution tables, short statements, pie-charts and bar graphs.

4.1. Demographic Data

Table 1: Motor vehicle owners interviewed n = 70

Variable (car owners)	Frequency	Percentages
Taxi operators	20	28.5
Private car owners	20	28.5
Motor cyclists (commercial purposes)	15	21.4
Truck drivers (owners)	10	14.2
Motorcyclists (private use)	5	7.1
Total	n = 70	100

The table above shows a number of vehicle owners who were interviewed 20(28.5%) were taxi operators that is to say passenger vehicle carriers 20(28.5%) were private car owners that is to say those that owned cars that are for private use and used for non-commercial purposes but for social purposes. 15(21.5%) were motorcyclists that is to say those that own a two wheeled motor vehicle resembling a heavy bicycle used for commercial purposes 5(7.1%) were motorcyclists who owned a two wheeled motor vehicle resembling a heavy bicycle for private use. 10(14.2%) were truck owners that is those that own a four wheeled vehicle, in particular a undercarriage with four to six wheels which is in various forms of vehicle for carrying goods and materials, usually consisting of a single self-propelled unit but also often composed of a trailer vehicle hauled by a tractor unit.

**Table 2: Knowledge of car owners on motor vehicle third party insurance
n=70**

Variable (car owners)	Frequency	Percentages
Taxi operators	5	7.1
Private car owners	13	18.5
Motorcyclists (commercial purposes)	9	12.8
Motorcyclists (private purpose)	3	4.2
Truck owners	6	8.5
Total	n = 70	n=100

The table above shows the knowledge of vehicle owners on motor vehicle third party insurance. Out of 20 taxi operators (drivers/owners) 5(7.1%) of the taxi operators had some knowledge on motor vehicle third party insurance. 13(18.5%) of 20 private vehicle owners had knowledge of motor third party insurance. The table further shows that out of 15 commercial motorcycle owners, 9(12.8%) had knowledge on motor vehicle third party insurance. 3(4.2%) of five private motorcycle owners had knowledge on motor vehicle third party insurance. And 8.5% of truck drivers (owners) had knowledge on motor third party insurance.

4.2. Reaction of vehicle owners at the occurrence of an accident

Insurance companies in Uganda require that in case of an accident resulting in death of or injury/bodily harm of a third party, a vehicle owner/policy holder must;

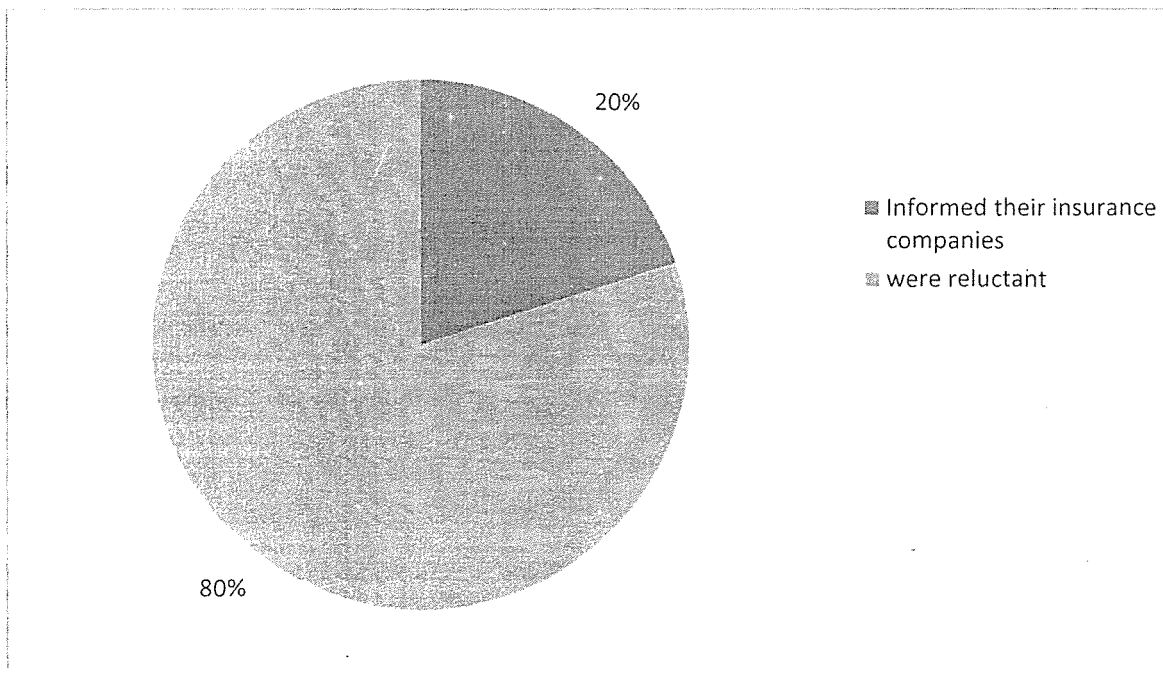
- a) Have a valid policy
- b) The policy holder must immediately report to the police
- c) He or she must contact his or her relatives
- d) Notify the insurer about the claim via different means of communication like sms, email, walking to the treasurer's office.
- e) Present a police report to his or her insurers
- f) Present a medical report of the third party to the insurer.

g) In case of death of the third party present a post mortem report to his or her insurance company.

Most motor vehicle owners interviewed showed reluctance to contact their insurance companies at the time they had an accident.

Taxi owners submitted that they were reluctant to contact their insurance companies as they did not understand what motor vehicle third party insurance is all about one Mathew Sempala, submitted that since the law required that motor vehicle third party insurance had to be acquired by every vehicle owner he had no problem with it (the law on motor third party insurance but to just pay for it yearly but however did not understand what it was all about and did not know that he had to make a claim to his insurance company. Another Kinyale submitted that he only paid for a third party insurance policy to shield himself from traffic officers.

Figure 1: A pie chart showing the reaction of motor vehicle owners to their insurance companies when involved in an accident



4.3. Motor vehicle owners that perceived motor vehicle insurance as comprehensive insurance

Table 3: Motor vehicle owners that perceive motor third party insurance

n = 70

Variable (car owners)	Frequency	Percentages
Taxi operators	8	11.4
Private car owners	4	5.7
Motorcyclists (commercial)	6	8.5
Motorcyclists (private purpose)	2	2.8
Truck owners	4	5.7
Total	n = 70	n=100

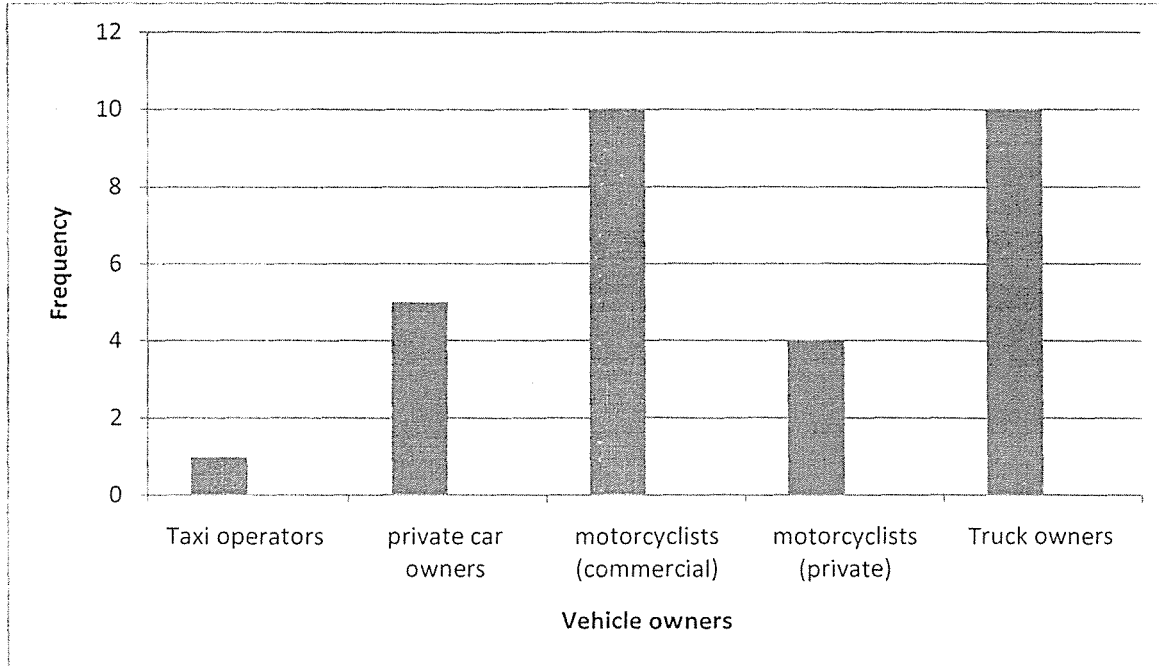
The table above shows the perception of motor vehicle owners on motor third party insurance. Out of 20 taxi operators interviewed (questioned), 8(11.4%) perceived motor vehicle insurance as comprehensive insurance.

In a total of 20 private car owners interviewed, 4(5.7) perceived motor third party insurance as comprehensive insurance.

Furthermore, out of 15 commercial motor cyclists interviewed (questioned) 6(8.5%) perceived motor vehicle third party insurance as comprehensive insurance and out of 5 private motor cycle owners 2(2.8%) perceived motor third party insurance as comprehensive insurance. And finally out of 10 truck owners, 4(5.7%) perceived motor third party insurance as comprehensive insurance.

4.5. Motor vehicle owners that submitted that they had given their insurance company notice of claim but company did not cover liability

Fig 2: Bar graph showing how insurance companies reacted when vehicle owners gave them notices of the claim



Vehicle owners

The bar graph above shows how the insurance companies reacted towards the vehicle owners when they (insurance companies were given notice of the claim in terms of refusal to indemnify the vehicle owners of third party claims.).

Out of 20 taxi operators 1(1.42%) submitted that he contacted his insurance company, provided the necessary documents required but was not indemnified of third party liabilities.

Out of 20 private car owners, 5(7.1%) submitted that any contacted their insurance companies immediately after the accident provided the necessary documents but were not compensated indemnified of third party liabilities.

Out of 15 motorcyclists using their motor cycles for commercial purposes 10(14.2) submitted that they were not compensated and in a total 05 motorcyclists using their motorcycles for private purposes 4(5.7%) submitted that they were not indemnified

when they gave their insurance company notice of the claim. Out of ten truck owners (drivers) interviewed 10(14.2%) submitted that they were not indemnified by their insurance companies of third party liabilities.

4.6. Insurance companies

All seven insurance companies submitted that they consider the following in order to compensate a policy holder.

- a) Police report.
- b) Validity of third party.
- c) Circumstances under which the accident occurred e.g. was the driver drunk
- d) Medical report.
- e) Post mortem in case of death of third party.
- f) Notification of the claim.
- g) Death certificate as per Kakeeto Vincent of Jubilee insurance.

4.7. What the insurance companies consider in order not to compensate or indemnify policy holder of third party liabilities.

Kakeeto Vincent of jubilee insurance submitted that they do not indemnify the policy holder of third party liabilities when;

- i) No claim has been notified by the policy holder
- ii) When there is no proof of accident such as police report, medical report and post mortem and death certificate.

Ssempeera John of Pax Insurance Company submitted that they (pax) do not indemnify policy holders of third party liabilities. In circumstances when

- i) When the policy holder gives notice of claim but not for third party bodily injuries. That is to say when policy holder makes a claim not in connection to the contract of insurance.

KAWEMBA JACOB an underwriter of national insurance corporation limited submitted that where the claim is not payable as per the contract of insurance, then the policy holder is not indemnified of third party liabilities. A similar submission was made by Didas Mwesigwa an assistant operations manager of legacy insurance services Ltd.

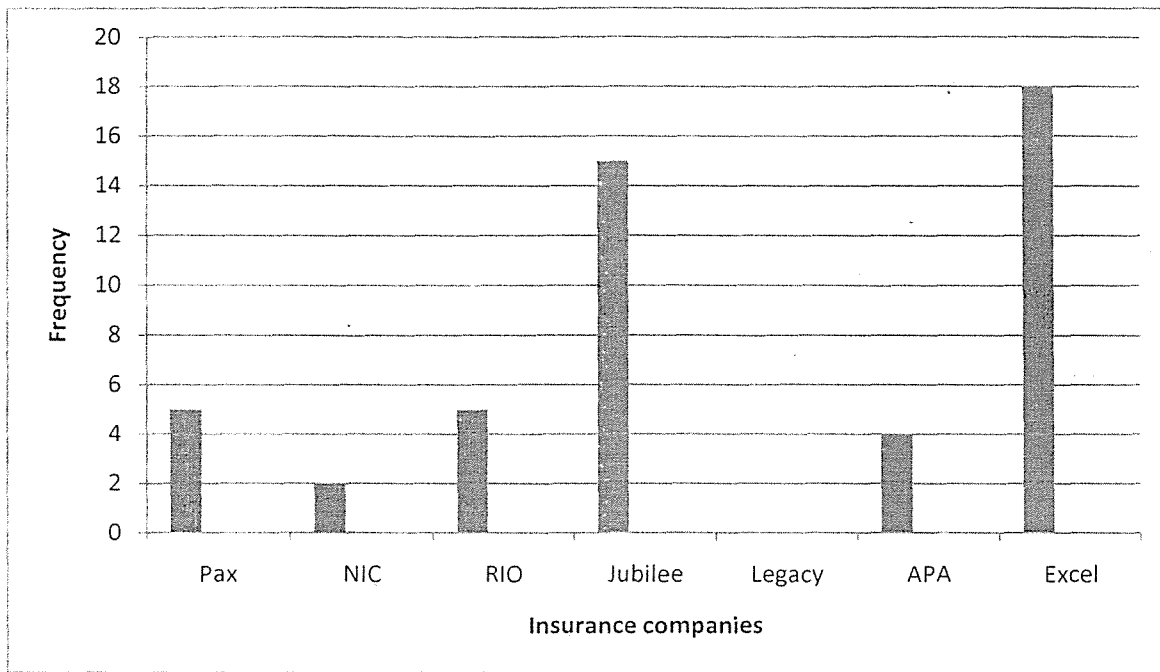
Sara of Excel insurance company Ltd submitted that a policy holder can only be indemnified of third party liability when the accident happened within the policy period and the premium was fully paid.

Further submissions were made by Mutumba John of Rio Insurance company limited and Brenda of APA that validity of the policy, police report, medical report bills and in case of death a post mortem report and that a policy holder may not be compensated or indemnified when;

- i) The policy is not valid i.e. before the time of the accident.
- ii) when the claimant is a fake or a fraud
- iii) When no medical report, post mortem bills have been presented to the company
- iv) When no police report has been made or given to the company and;
- v) When no claim has been made

Some insurance companies like Excel and jubilee insurance submitted that their certificate of insurance was being forged.

Fig 3: Bar graph showing insurance companies that complained that their certificate of insurance was forged



Bar graphs show the insurance companies and the rate at which their certificate of insurance is being forged with jubilee and excel insurance companies with highest complaints of forgery of their certificates.⁶⁷

⁶⁷ Statistics by insurance companies respectively

CHAPTER FIVE

5.0. Discussion

Sample size of 70 motor vehicle owners and 7 insurance companies were interviewed to be precise 20(28.5%) taxi operators, 20(28.5%) private car owners, 8(7.1%) private motorcycle owners, 15(21.4%) commercial motor cycle owners, 10(14.2%) truck owners were interviewed to know their knowledge and perception, on motor vehicle third party insurance study was also carried out on vehicle owners to know their attitude and awareness of motor vehicle third party insurance.

7 Insurance Companies say;

1. Jubilee insurance company limited
2. National Insurance Corporation limited
3. Rio Insurance company limited
4. Excel insurance company limited
5. APA
6. Legacy insurance service limited
7. Pax insurance company

These companies were selected to determine what they consider in order to compensate or indemnify their policy holders of third party liabilities. And also to determine under what circumstances policy holders are not indemnified of third party liabilities.

5.1. Motor vehicle owners knowledge on third party insurance

5(7.1%) of 20 taxi operators had some knowledge on motor third party insurance. 13(18.5%) of 20 private car owners had some knowledge on motor vehicle third party insurance. 9(12.8%) of 15 commercial motor cycle owners had some knowledge on motor third party insurance. 3(4.2%) private motor cycle owners had knowledge on motor third party insurance and 6(8.5%) of 10 truck owners had knowledge on motor vehicle third party insurance. 80% of the 70 motor vehicle owners interviewed

submitted that they were reluctant to notify their insurance companies of the claim when the accident occurred while 20% said that they notified their insurance company of the claim.

5.1.1. Motor vehicle owners' attitude and perception on motor vehicle third party insurance

8(11.4%) of 20 taxi operators perceived motor third party insurance as comprehensive insurance. 4(5.7%) of 20 private car owners perceived motor vehicle third party insurance as comprehensive insurance. 6(8.6%) of 15 commercial motorcycle owners perceived motor vehicle third party insurance as comprehensive insurance. 2(2.8%) of 5 private motor cycle owners perceived motor vehicle third party insurance as comprehensive insurance. 4(5.7%) of 10 truck owners/drivers perceived motor vehicle third party insurance as comprehensive insurance.

5.1.2. Extent to which insurance companies have indemnified motor vehicle of third party liabilities

1(1.42%) of 20 taxi operators (owners) interviewed submitted that, the insurance company did not indemnify him of third party liabilities upon giving the company notice of claim and required documents.

5(7.1%) of 20 private car owners submitted that upon giving notice of claim and required document to their insurance companies, companies did not indemnify them. 10(14.2%) of 15 commercial motorcycle owners submitted that upon giving the company notice of claim and required documents, they were indemnified of third party liabilities. 4(5.7%) of 5 private motorcycle owners submitted that upon giving notice of claim and required documents to their insurance companies, they were not indemnified of third party liabilities. 10(14.2%) of 10 truck drivers submitted that upon giving notice of claim and the required documents to their insurance companies, they were not indemnified of third party liabilities.

5.1.3. Insurance Companies Submissions

a) Considerations in order to cover liability

These include;

- Valid contract of insurance
- Driving permit (valid one)
- Notification of the claim
- Circumstances under which the accident occurred e.g. was the driver drunk?, was the vehicle in good condition?, was the driver reckless?.
- Police report
- Medical report and bills in case of bodily injury
- Post mortem in case of death

c) When is the vehicle owner not indemnified of third party liabilities?

These circumstances include;

- No police report
- When there is no claim made
- When there is no valid contract of insurance
- When there is no medical report / bill in case of bodily injury of third party
- When there is no post mortem report in case of third party's death.

5.2. Conclusions

From the study findings, the following conclusions were made;

- Most of the motor vehicle owner's knowledge on motor vehicle third party insurance is limited.
- Since it is a statutory requirement that every vehicle owner must have motor third party insurance most vehicle owners have it because it is required by law and do not read what the policy is all about.
- Most vehicle owners purchase third party insurance in order to avoid inconvenience of the traffic police.

- Since the procedure for making a claim of motor third party insurance is quite lengthy most vehicle owners are reluctant to give their insurance companies notice of claim in case an accident occurs which involves death of or bodily injury of third party.
- Almost a quarter of vehicle owners interviewed perceive motor third party insurance as comprehensive car insurance.
- The increased fear that motor vehicle insurance is a statutory requirement could lead to high increased forgery of the certificate of insurance.
- With reference to the motor vehicle owners that were not compensated by their respective insurance companies, the vehicle owners do not know the body to go to with regards to getting redress.
- Most motor vehicle owners especially commercial owners complained that the fee paid is quite expensive.
- Most vehicle owners complained that they are paying for what they have no knowledge of.

5.3. Recommendations

For the government

- ❖ The motor vehicle insurance (third party risks) Act Cap 214 does not provide for a period in which the insurance company should indemnify the policyholder of third party liabilities.
- ❖ There should be a period (time limit) in which the insurance company should indemnify the policy holder of third party liabilities and a penalty if the period lapses.
This will be to ensure policy holders are indemnified of third party liabilities after notice of claim has been made known to the insurance company (insurer).
- ❖ The procedure for applying for indemnity should be simplified.

- ❖ The Act should put a specific premium for the respective car owners e.g. one for truck drivers, taxi operators)
- ❖ There should be in the Act a penalty for forgery of a certificate of insurance.
- ❖ There should be in the Act a provision for no claims bonuses where careful drivers are given a gift say for not causing accidents and driving carefully some of the premium be returned.

For the insurance regulatory body (IRA) and Uganda Insurers Association

- ❖ There should be days where the vehicle owners are given an education about motor third party insurance since most of them had little knowledge of motor third party insurance.
- ❖ The insurance regulatory body should make itself be known to the public in case any of the two insurance company and insured needs to report any difficulty or problem.

Vehicle owners

- ❖ There should be avoidance of policy lapses
- ❖ Vehicle owners should carefully read the terms of the policy and ask for interpretation where it's needed.
- ❖ Notice of claim should be given to the insurer in case of bodily injury or death of third party in case of an accident.
- ❖ Faulty claims and declarations should not be given to the insurer.

Insurance companies

- ❖ Importance of third party insurance should be explained to the vehicle owner i.e. its benefits.
- ❖ An explanation of the meaning of motor third party insurance should be given to the motor vehicle owner while he or she is purchasing the policy to avoid future misunderstandings.

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QUESTIONNAIRE SEEKING TO FIND THE CHALLENGES FACED BY INSURANCE COMPANIES IN MOTOR THIRD PARTY INSURANCE.

This is a descriptive study and on motor third party insurance any information given will be confidential.

Insurance company's Name:.....

Name of person interviewed.....

1. What is motor third party insurance?

Type of insurance policy which pays legal liabilities of a motorist to third party bodily injuries including death while vehicle is being driven on the road.

Type of insurance policy which pays legal liabilities of a motorist in case of car damage.

2. What is a policy holder supposed to do in case he is involved in an accident?

Notify the concerned insurance company on time

Notify his/her relatives

Notify the police, insurance company and relatives

3. What do you consider in order to compensate the policy holder

Circumstances involved before the accident e.g. drunken driving

Valid insurance contract

Medical report, police report and valid insurance contract

4. What circumstances do you not compensate the policy holder

When he/she is fraudulent

Absence of a valid contract, police and medical report