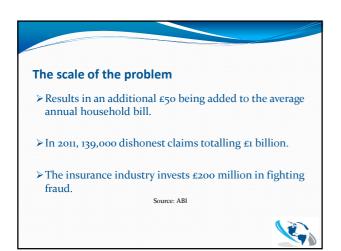


Learning outcomes

- Identify the key elements of the fraudulent claims rule and its historical development.
- Understand the relevant provisions of the Insurance Act 2015 and how these will impact on how an insurer may deal with fraudulent claims, as well as the remedies available to an insurer.
- Apply the knowledge gained from the seminar to deal more effectively with, and find practical solutions to, the types of fraudulent claims that are typically encountered by an insurer.

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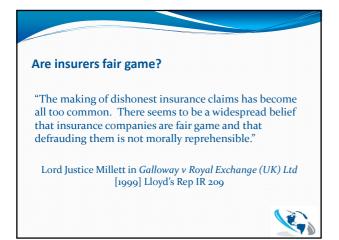
 Critically analyse the current state of the law relating to fraudulent claims and find novel solutions to any remaining grey areas.

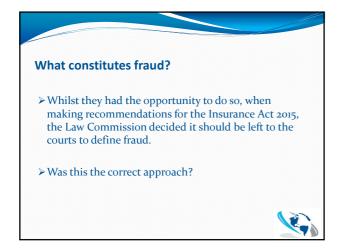




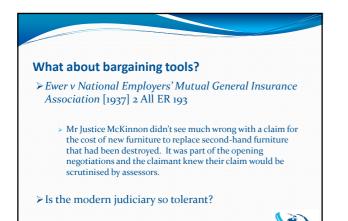
- According to BBC reports in 2014, since its formation in 2011, the Insurance Fraud Enforcement Department has prosecuted 85 people.
- > Is the civil law rather the criminal law being relied upon as a mechanism to deter and counter insurance fraud?

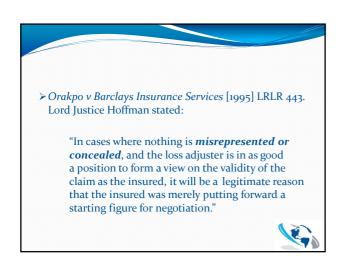




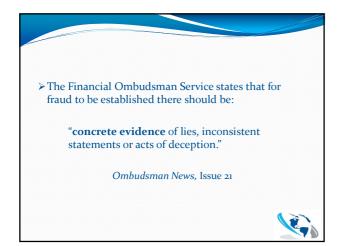


The words of Lord Herschell have stood the test of time. Fraud will be proven when "a false representation has been made: 1) knowingly, or 2) without belief in its truth, or 3) recklessly, careless whether it be true or false." Derry v Peek (1889) 14 App. Cas. 337





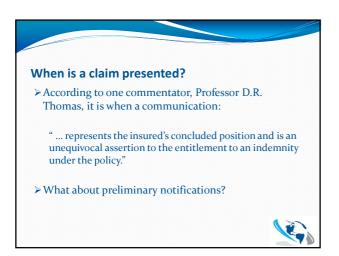




How the courts have categorised claims

- Wilful misconduct on the part of the insured, where the insured deliberately causes the loss and then makes a claim under the policy. 1)
- Losses which are invented by the insured when there has been no loss. 2)
- Presenting a claim to an insurer in a way that seeks to conceal the fact that the insurer may have a defence. 3)
- 4) Exaggerating a claim that has arisen from a genuine loss. 5) Using a fraudulent device to improve the prospects of success in a claim where a genuine loss has occurred.

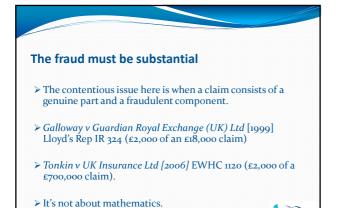
Source: Macdonald Eggers P., Good Faith and Insurance Contracts, 3rd Ed, (London: Lloyd's List Group, 2010)

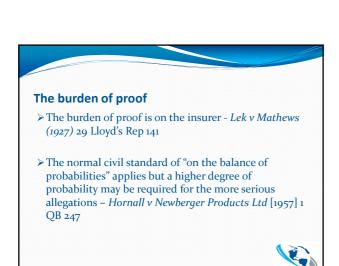


- The duty not to present a fraudulent claim arises at the point the claim is presented and ends when court proceedings are commenced. At this point, the court rules will apply – *The Star Sea* [2001] UKHL 1
- > What about forged documents submitted after settlement terms have been agreed? See Direct Line Plc v Fox [2009] EWHC 386

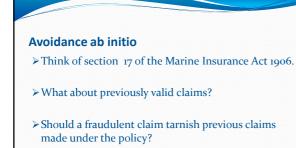


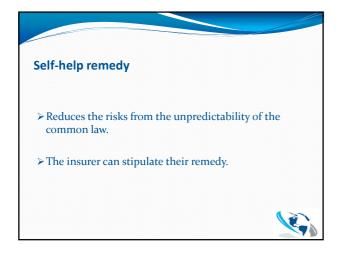
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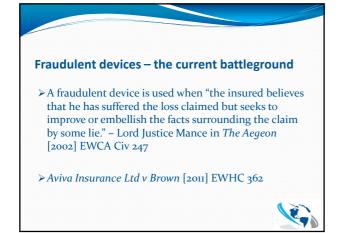




The insurer's remedy The common law remedy is forfeiture of the entire claim presented by the fraudulent insured. The insured is required to repay interim payments – *Axa v Gottlieb* [2005] Lloyd's Rep IR 369



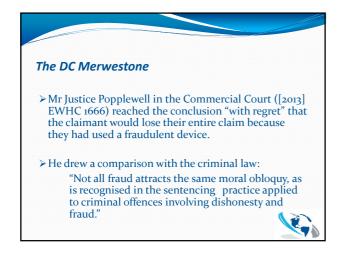






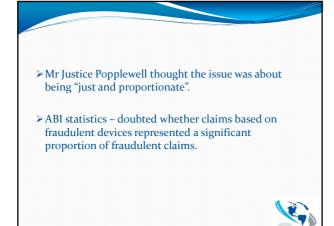
I the logic is simple. The fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain; if it is unsuccessful, I will lose nothing." – Lord Houbhouse in *The Star Sea* [2001] UKHL 1

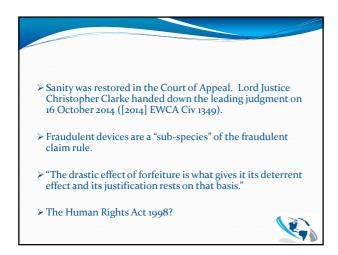
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- Mr Justice Popplewell also sought to rely on the judgment of Lord Justice Clarke from Fairclough Homes Ltd v Summers [2012] UKSC 26
 - A distinction between first party claims and third party claims.







- This didn't last long. The Supreme Court handed down its judgment on 20 July 2016.
- Lord Sumption gave the leading judgment. By 4-1 the Supreme Court held that the 'fraudulent device rule' does not apply to "collateral lies".
- The lie must go to the recoverability of the claim on the true facts as found by the court.
- The opinion was that forfeiture of the entire claim is not a proportionate sanction – it is possible for there to be a situation where a lie is dishonest but a claim isn't!
- Lord Mance dissented he preferred a test of whether the lie yielded "a significant improvement of the insured's prospects" at the time the lie was told.

Fundamental dishonesty

- > CPR 44.16 exceptions to qualified one-way costs shifting.
- Gosling v Screwfix Direct Ltd the dishonesty must go to the "whole or a substantial part of the claim". "Incidental" or "collateral" dishonesty are excluded, though it need not relate to the entire claim.
- Section 57 of The Criminal Justice and Courts Act 2015. Applies to all personal injury claims where issued after 13 April 2015 and allows a defendant to seek dismissal of a claim where the claimant has an entitlement to damages (CPR 44.16 remains as an alternative).
- The court does not have to dismiss the claim if it would result in a "substantial injustice" (not defined). However, where the case is struck out, it is the entire claim, not just the dishonest part.
- The court will assess the amount it would have awarded had the claim not been dismissed and that amount is then deducted from the defendant's costs.



