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Principles of Retrospective Risk and Speciality Risk

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Summary

This article focuses on the principles of retrospective risk and speciality risk having, as a starting point, the specific duties established in recognised insurance law. We have analysed some aspects of how they feature in the doctrine, and in well-known insurance contract law.

Key Words

Risk, retrospective risk, duty to inform, assumption, speciality risk, objectivity, "lex contractus", restrictive interpretation, vulnerability protection.

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Princípios da Anterioridade e Especialidade do Risco

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Resumo

Este artigo tem por objeto o princípio da anterioridade do risco e o princípio da especialidade do risco, a partir de deveres específicos, previstos em conhecidas leis de seguro. Analisamos alguns aspectos de como se apresentam na doutrina e em conhecidas leis de contrato de seguro.

Palavras-Chave

Risco, anterioridade, dever de informação, pressuposição, especialidade, objetividade, "*lex contractus"*, interpretação restritiva, tutela da vulnerabilidade.

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Principios de la Anterioridad[1] y Especialidad[2] del Riesgo

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Resumen

Este artículo se centra en el principio de la anterioridad del riesgo y en el principio de la especialidad del riesgo, a partir de deberes específicos, previstos en las conocidas leyes de seguros. Analizamos algunos aspectos de cómo se presentan en la doctrina y en conocidas leyes del contrato de seguro.

Palabras-Clave

Riesgo, anterioridad, deber de información, presuposición, especialidad, objetividad, "*lex contractus*" interpretación restrictiva, tutela de la vulnerabilidad.

Sumario

[1] N.T. En Brasil este principio está regulado por el Art. 150, Ítem III, de la Constitución Federal, el cual determina que ningún tributo se cobrará antes de transcurrir un cierto periodo de tiempo. Fuente: http://pt.wikipedia.org/wiki/Princípio_da_anterioridade_

[2] N.T. De acuerdo con la legislación brasileña, el principio de la especialidad o individualización es el objeto de los derechos reales, que debe ser una cosa cierta y determinada. Fuente: http://pt.wikipedia.org/wiki/Direito_das_coisas

1. Introduction

This article analyses two principles of great importance to the insurance contract: the principle of retrospective risk and the principle of speciality risk.

Both result from improvements in insurance activity and include recognised standards in insurance contract law.

We shall start by looking at retrospective risk and the forecast of the circumstances in the contract, then move on to the principle of speciality risk, by presupposing the existence of those circumstances in the contract, and offering a restrictive interpretation of the contract.

The discussion is supported by some references in a book published by FUNENSEG – "Princípios Jurídicos do Contrato de Seguro" ("Legal Principles of the Insurance Contract") – and examines how those principles are applied in law and doctrine, along with principles of private autonomy, interest, good-faith, mandatory binding, trust, fairness, indemnity and compensatory principles, and subrogation on the part of the insurer.

To address the request by the Revista Brasileira de Risco e Seguro (RBRS) (Brazilian Journal of Risk and Insurance), we opted for an analysis of how these two principles are related to risk. We proceed by analysing them in the context of Brazilian law, and modern insurance laws in Europe and Latin America.

2. The Principle of Retrospective Risk

The risk is a causal element of the insurance contract[3]. It is at the root of this type of contract, along with interest, legitimacy and other requirements necessary for the purchase of insurance.

In the insurance business, the concept is identified with the *"periculum"*[4] risk state, which is the possibility of occurrence of the event related to the insurance coverage.

[3] About the risk as a cause of the contract: URIA, Rodrigo. Derecho mercantil. 25th Ed., Madrid, Marcial Pons Ediciones Jurídicas y Sociales, 1998, p. 777. SÁNCHEZ CALERO, Fernando (Director), Francisco Javier Tirado Suárez, Alberto Javier Tapia Hermida y José Carlos Fernández Rozas. *Ley de contrato de seguro.* Pamplona, Editora Aranzadi, 1999, p. 114; DIEZ-PICAZO, Luis. Fundamentos del Derecho Civil patrimonial. Vol. 1 Introducción. Teoria del Contrato. Quinta edición. Madrid: Editorial Civitas, 1996, p. 224. JIMÉNEZ SÁNCHEZ, Guillermo J. (Coordinador) Leciones de Derecho Mercantil – 4th Ed. Madrid, Tecnos, 1999. p. 501.

[4] Cf. GARRIGUES. Joaquin. *Contrato de seguro terrestre*. Imprenta Aguirre, Madrid, 1973. p. 14. BIGOT, Jean. (direcion) *Traité de droit des assurances, Tome 3, Le contrat d'assurance*. Avec la colaboration de Jean Beauchard, Vincent Heuzé, Jérôme Kullmann, Luc Mayaux e Véronique Nicolas.L.D.G.J – Librarie Générale de Droit et de Jurisprudence, EJA, 2002, p. 37.SÁNCHEZ CALERO, Fernando *Op. cit.* p. 32 and 114. SANTOS, Amilcar. *Seguro – doutrina, legislação, jurisprudência.* Rio de Janeiro, Récord Editora, 1959, p. 41. MARTÍNEZ ESCOBAR, Manuel. *Los seguros.* La Habana, Editora Cultural, 1945, p. 2. MAGEE, John. *Seguros generales.* 2th Ed. Traducción: Carlos Castillo. Mexico. Union Tipografica Editorial Hispano-Americana, 1947, p. 126. LOPES, Miguel Maria de Serpa. *Curso de direito civil: fontes das obrigações: contratos*. Volume IV, 5th Ed. Rio de Janeiro, Freitas Bastos, 1999, p. 429. TZIRULNIK, Ernesto; CAVALCANTI, Flávio de Queiroz B.; PIMENTEL, Ayrton: *o contrato de seguro de acordo com o novo Código Civil Brasileiro.* 1st Edition. São Paulo, Editora Revista dos Tribunais, 2003, p. 37.

Generally speaking, risk is a future and uncertain event, which is beyond the control of the parties, justifying the need for the contract.

In the absence of risk, save in exceptional circumstances, the insurance contract is null[5]. With the exception of cases established by the law, the absence of risk is a causal defect, being an obstacle to the creation or existence of the insurance contract.

Insurance would be void of meaning if there were no essential factual support for its creation, and without risk, insurance would have no reason to be, according to the law.

In other words, in order to be insured, the risk must be effective and pre-established by the law or by the terms in the contract.

According to the principle of retrospective risk, it is assumed that the parties have an idea of the conditions in the contract. Moreover, taking into consideration that the risk may change during the period between the proposal and the issue of the policy, or even after that, any changes in circumstances during its term should be informed, especially pertaining to changes that affect the risk, such as its aggravation or reduction[6].

Within the perspectives of the contracting process, this precedence and fidelity of information allows us to understand the rights and obligations of the parties, establish the insured interests, and individualise the covered and excluded risks, according to the possible causes and spatial and temporal limitations[7].

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[5] Spain: LCS, *"Artículo 4. El contrato de seguro será nulo, salvo en los casos previstos por la Ley, si en el momento de su conclusión no existía el riesgo o había ocurrido el siniestro"* Portugal: Decree 72 / 2008, "Art. 44, Items 1 to 6, Inexistência do Risco." *"1. Salvo nos casos legalmente previstos, o contrato é nulo se, quando da celebração, o segurador, tomador do seguro ou o segurado tiver conhecimento que o risco cessou".* Argentina: LS – *"Inexistencia de riesgo Art. 3. El contrato de seguro es nulo si al tiempo de su celebración el siniestro se hubiera producido o desaparecido la posibilidad de que se produjera. Si se acuerda que comprende un período anterior a su celebración, el contrato es nulo sólo si al tiempo de su conclusión el asegurador conocía la imposibilidad de que ocurriese el siniestro o el tomador conocía que se había producido."* Italy: *"Art. 1895 Inesistenza del rischio. Il contratto è nullo (1418 and seguenti) se il rischio non è mai esistito o ha cessato di esistere prima della conclusione del contratto."* Mexico: "*Artículo 88.- El contrato será nulo si en el momento de su celebración, la cosa asegurada ha perecido o no puede seguir ya expuesta a los riesgos. Las primas pagadas serán restituidas al asegurado con deducción de los gastos hechos por la empresa. El dolo o mala fe de alguna de las partes, le impondrá la obligación de pagar a la otra una cantidad igual al duplo de la prima de un año."* Chile: *"Art. 521. Requisitos esenciales del contrato de seguro. Nulidad. Son requisitos esenciales del contrato de seguro, el riesgo asegurado, la estipulación de prima y la obligación condicional del asegurador de indemnizar. La falta de uno o más de estos elementos acarrea la nulidad absoluta del contrato. Son nulos absolutamente también, los contratos que recaigan sobre objetos de ilícito comercio y sobre aquellos no expuestos al riesgo asegurado o que ya lo han corrido."*

[6] Brazil: C.c. art. 768 and art. 769. Spain: LCS, arts. 11 to 13. Portugal: DL 72/2008, art. 78, 79, 91, 92, 93 and 94; France: CA, 113-2, 2nd. Italy: C.c. art. 1,897 and 1,858. Argentina: LS art. 34, 35, 38-45. Mexico: LS, art. 88. Chile: C.com. Art. 526 and 1,176.

[7] About the delimitation of the risk, see: SÁNCHES CALERO, Fernando. *Op. cit.* p. 116-117.

It is common for insurance contract law to require the assumption of risk, on condition that the contract can guarantee the interest against predetermined risks. In such cases, the principle of retrospective risk is expressed positively in the general part of important insurance contract law[8].

The imagined risk is the situation contemplated in the contract[9], following the requirement of prior definition for the contractual conditions, which are subject to restrictive interpretation[10], and according to the covers suggested by the insurers without arbitrariness or additions.

This is an essential element in the insurance contract and for insurance activity. Its management requires expertise, technical skills, and financial strength from the insurer or reinsurer, who must define these guidelines with discretion and professionalism[11].

From the insurer's perspective, its capacity and limitations should be taken into account, and it should be operating in the areas or branches of insurance that its skills permit[12], according to the private insurance system of each nation.

Furthermore, insured individuals should evaluate the need to purchase the contract assuming the existence of risk, defining it according to its constituent or essential elements[13], while refraining from purchasing the insurance if they know of the impossibility or absence of risk.

When purchase takes place without the occurrence of risk, Brazilian law assumes the existence of an error, or immoral wrongdoing. In the case of the insurer being at fault, he shall pay double the amount of the stipulated premium, legislated by Art. 773 of the 2002 Brazilian Civil Code, based on Art. 1,446 of the 1916 Code. According to Clovis Bevilaqua, author of the project, Brazilian Law had as a precedent drawn from Art. 511 of the Zurich Code[14].

In addition to the factual characteristics and incidence of risk, it is the insurer's duty to assess its technical capacity and the need for co-insurance or reinsurance, in order to transfer risks it has no capacity to support, or to preserve margins and technical reserves[15].

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[8] Brazil: C.c. art. 757. Spain: LCS art. 1st. Portugal: DL 72/2008, art. 24. Argentina: LS Art. 1. México: LS art. 8 to10. Chile: C.com. Art. 524 and 525.

[9] Cf. URIA, Rodrigo. *Op. cit.* p. 777.

[10] Cf. JIMÉNEZ SÁNCHEZ, Guillermo J. (Coordinator) *Lecciones de Derecho Mercantil* – 4th Ed. Madrid, Tecnos, 1999. p. 501. MARTINS, João Marcos Brito. *O contrato de seguro: comentado conforme as disposições do novo Código Civil.* Rio de Janeiro, Editora Forense, 2003, p. 43.

[11] Portugal: Decree 72/2008, Art. 29.

[12] Brazil: Decree 73/66, art. 73. Spain: Real Decree 6/2004, art. 5, 7. Portugal: Decree 72/2008, art. 16, 1 and 2. Argentina: Law 20,091 / 73, art. 7 and 8. Mexico: LS, art. 2.

[13] On that note: about the definition by the insurance company and previous examination of its constitutive elements, see: STIGLITZ, Rubén S. Derecho de Seguros. 5th Ed. Buenos Aires: Law, 2008. 1st Edition, 1997, p. 22.

[14] Brazil: Cc 773. See: BEVILAQUA, *Código civil dos Estados Unidos do Brasil, comentado por Clovis Bevilaqua. Historical edition. Rio de Janeiro, Ed. Rio, 1979* p. 575.

[15] Cf. VIVANTE, Cesare. *Trattato di diritto commerciale*. Volume IV. 3rd Ed. Milano. Casa Editrice Dottor Francesco Vallardi. 1954, p. 483 and 506. GARRIGUES, Joaquin. *Op. Cit.* p. 14.

Among other applications, risk assessment is an essential part of the insurance activity. This is a task normally performed by the insurer, whose business duties involve the regular undertaking a large number of risks, which are handled with professionalism.

Because its activity implies a certain amount of expertise with regard to supplying the public with products, the insurer has the special duty of information with regard to risk, covers, premium, duration, and other contractual conditions, prior to the signing of contracts.

Depending on the nature of each type of insurance, there may be intense declaratory activity in this regard, where the insurer is required to request necessary data for risk assessment[16], and the policyholder or insured is required to respond accordingly.

Additionally, before the contract is signed, the legislation in Article 22 of Decree 72 / 2008, originally from Portugal, establishes the obligation on the part of the insurer to comply with the "special duty of clarification". In cases where the insurance type makes it justifiable or possible, the insurer must inform the purchaser about the modalities and conveniences associated with the product. The proposed coverage must also be clarified, drawing attention to exclusions and waiting periods[17].

Once large risks or cases that need the support of mediators have been properly evaluated, the insurer has the duty to assist and provide specialised information in the pre-contractual phase, given that technical skills and professional guidance are needed to weigh them out.

Modern insurance law reinforces the guiding role of the insurer, insurance broker and agent, and the relationship between the answers given by the policyholder or insured and the questionnaires or forms provided by the insurer[18].

The quality of the information provided is a pre-contractual duty, according to the requirement in Art. 10 of the LCS 50 / 1980 from Spain:

> *"Art. 10. The policyholder has the duty, before the conclusion of the contract, of declaring to the insurer, according to the questionnaire that the latter gives him, all circumstances known by him that may influence the assessment of the risk."*

[16] Cf. BIGOT, Jean. *Op. cit*. pp. 691-702. SANCHES CALERO, Fernando. *Op. cit*. p. 194.

[17] Portugal: Decree 72/2008: "*Article 22. Special Duty of clarification 1 – As long as the complexity of the coverage and the premium to be paid, or the sum insured, justifies it, and the means of purchase permits it, the insurer should clarify to the policyholder what types of insurance are convenient, amongst those offered, for the specific coverage required, before the contract is signed,. 2 – During the process referred to in the preceding paragraph, it is the insurer's responsibility not only to respond to all requests for information made by the policyholder, but also to call attention to the scope of the proposed coverage, including exclusions, waiting periods and rules for the termination of the contract if the insurer so wishes, and also in cases of succession or modification of contracts, for the risks involving the breach of covers. 3 – In insurance contracts, where there are coverage proposals for different types of risk, the insurer shall provide detailed explanations about the relationship between the different covers. 4 – The special duty to provide clarification in this Article shall not apply to contracts for large risks, nor to those whose negotiation or agreement involves the participation of an insurance mediator, irrespective of the specific duties incumbent on the latter, according to the legal system of access and exercise of the insurance mediation activity".*

[18] Spain: LCS, art. 10. France: CA, art. L. 113-2.

When asked, they should respond appropriately as regards the circumstances of risk of which they are aware, in a clear manner[19], and according to the insurer's questions or questionnaires.

False statements, omissions or reluctance with regard to the declaration of the risk, before or during the contract term, are subject to sanctions, including loss of the guarantees, invalidity of the contract, or its termination by the insurer[20].

Through this communication process, the declaratory function of the policyholder or insured is also relevant[21]. By contractual and mutual duty, those parties have the obligation to cooperate and provide adequate information about what they understand to be significant when the insurer assesses the risk.

The same principle applies to the aggravation of risk during the period between the proposal and the underwriting process. Normally, the underwriting of the risk, done by the insurer, is preceded by a proposal to the potential policyholder. During this period, an aggravation of risk may occur, in which case both the insured and the policyholder have the duty to inform the aggravation, if it becomes known by either of them[22].

Yet, in the context of exceptionalities, there are risks that are beyond the perception or knowledge of the parties, as in cases of putative risk where the parties may be ignorant of the existence of risk, or of the fact that a loss has occurred.

It is possible that a mistake regarding the existence or occurrence of risk may occur, especially with insurance involving services, equipment, goods subject to degradation or corrosion[23], risks of new technologies, environmental risks, among others.

In such cases, examination of the putative risk that does not exist at the time the contract is drawn up deserves attention, according to Jean Bigot *un risque imaginaire qui doit exister dans l'imagination des deux parties*[24].

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[19] Spain: LCS, *"Art. 10. El tomador del seguro tiene el deber, antes de la conclusión del contrato, de declarar al asegurador, de acuerdo con el cuestionario que éste le someta, todas las circunstancias por él conocidas que puedan influir en la valoración del riesgo."* Portugal: Decree 72/2008, art. 21 and Items. Argentina: LS, art. 48.

[20] Spain: LCS, art. 10 paragraph 2 and 3. Portugal: Decree 72/2008, art. 23 and items. France: CA, L'article L. 113-2-2 and 3 Italy: C.c. art. 1,892 and 1.893. Argentina: LS, arts. 6 to 8 and Items. Mexico: LS, art. 47. Chile: C.com. Art. 525.

[21] France: CA, L 113-2-2 Portugal: *a exposição do Decreto 72/2008 destaca que o risco é um elemento essencial do contrato, cuja base tem de ser transmitida ao segurador pelo tomador do seguro, atendendo as diretrizes por aquele definidas. Argentina: LS, arts. 44, 46.*

[22] Cf. LÓPEZ SAAVEDRA, Domingo H. *Ley de Seguro 17.418 comentada y anotada.* 1st Ed. Buenos Aires: La Ley, 2009, p. 44-45.

[23] Cf. SAINRAPT, Christian. *Dictionnaire général de l'assurance.* Éditions Arcature, 1996, 85bis, route de Grigny 91130 Ris-Orangis, P. 1.241.

[24] Cf. BIGOT, Jean. *Op. cit.* p. 769.

Similar to the tradition of marine insurance policies, insurance contract law also admits the putative risk in land insurance[25], with exceptions to the retrospective risk requirement: "the insurance contract is void when there is no risk at the time of purchase, with the exception of cases provided by law[26]".

Uncertainty or false notion of risk is included in this reference to exceptionalities, such as when the parties agree that the cover should encompass risks that predate the signing of the contract[27], with resulting retroactive effects[28], a circumstance with peculiar complexity with regard to knowledge of the loss[29].

There is also an exception in cases where the risk happens subsequently, such as in open policies[30], by means of registered addendums to the policy or periodic statements, in which the parties agree that the coverage will guarantee future risks, previously stated.

This is a common practice in transport insurance, where policies usually remain open during the contractual term (open policy) for the period of journeys or for a specified amount of time, forcing the insured to attach addendums to it in the case of shipments[31], under penalty of termination of the contract, or loss of the right to the coverage.

However, in this type of contract there is a prior definition of the insurer's obligations, with regard to specifying coverage and limits for insured sums. In these contracts, the nature of the risk is identified according to the type of transport, cargo, price, salvage, loss of vehicle etc. Moreover, as suggested by Rodrigo Uria, although insurance is based on the principle of universality of risk, the policies usually establish exclusions that define limits to that universality[32].

[25] Cf. SÁNCHES CALERO, Fernando. *Op. cit.* p. 117. BIGOT, Jean. *Op. cit.* p. 769-777.
[26] Spain: LCS, art. 4; C. Com. Art. 784 and 785 – seguros marítimos. France: CA, art. L.172-4. Portugal: Decree 72/2008 art. 44, 2. Mexico: LS. Art. 82.
[27] Portugal: Decree 72/2008, art. 42, 2.
[28] Spain: LCS, art. 73.
[29] On the issue of retroactive insurance, Halperin comments on a case where the insured knows the loss before the contract is signed; a case where only the insurer knows about it; and a case where both knew about the occurrence of the loss, a situation in which there is no effective contract and the insurer is not entitled to collect the premium, "*because there is no risk to be undertaken*" HALPERIN, Isaac. *Seguros. Exposición crítica de las Leyes 17418, 20091 and 22400.* 3rd Ed. Updated and extended by Nicolás H. Barbato. Buenos Aires, Depalma, 2001, 1st Ed. 1970, p. 340-341.
[30] France: CA, art. L 173-17. See: *"police flottante"*: SAINRAPT, Christian. *Op. cit.* p. 980. Spain: LCS, art. 8, Second paragraph. Argentina: LS, art. 123.
[31] On the subject of open policies or "*de abono*", Lopez Saavedra comments that they are a way of purchasing out insurance to cover the transport of goods through a single policy, encompassing several shipments during its term, within the limits set out therein, with reference to the type of goods, loading and unloading places, transportation means, journeys to be made, coverage and limits conditions, exclusions, applicable premiums. *Op. Cit.* p. 242.
[32] URIA, Rodrigo. *Op. Cit.* p. 796.

As for the delimitation of risks in the contract, the insurance activity uses a recognised range of contractual documents through which the contract provides adequate information[33] and is a form of proof, thereby complying with the legal requirement and vulnerability protection.

The documentation fulfils the function of specifying individuals, covered and excluded risks, duration and the insurance premium, among other elements, which must be notified to the insured[34].

The insurance proposal[35], with precedence from the moment the contract was signed, is an instrument typically used for information prior to the purchase. It must include risk and covers. Incidentally, the technique practiced by the insurer of using a printed form annexed to the request for insurance or to the proposal, in order to classify adequately the risk[36], is an old one.

In turn, the policy, although it may be issued subsequently to the contract term, is also subject to the guidelines of minimum content, especially with regard to the risks it is supposed to cover, and includes the establishment of temporal delimitation and exclusions.

It is certainly necessary for there to be consistency between the proposal content and the policy. This is a logical correspondence that should preserve the agreement relating to the wishes of both parties.

Besides providing legislation concerning the issuance, modern insurance law determines that the policy must be physically delivered to the insured[37], and there must be evidence of that delivery[38].

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[33] Brazil: C.c. art. 766, Sole paragrapph. Spain: LCS, Arts. 10, 11, 12, 16, 60. France: CA, art. L 112-3. Portugal: DL 72/2008, art. 18, 21, 22, 36 and 37. Mexico: LS, art. 24-26. Chile: C.com. Arts. 514 and 518.

[34] Spain: LCS, *"Artículo 3. Las condiciones generales, que en ningún caso podrán tener carácter lesivo para los asegurados, habrán de incluirse por el asegurador en la proposición de seguro si la hubiere y necesariamente en la póliza de contrato o en un documento complementario, que se suscribirá por el asegurado y al que se entregará copia del mismo. Las condiciones generales y particulares se redactarán de forma clara y precisa. Se destacarán de modo especial las cláusulas limitativas de los derechos de los asegurados, que deberán ser específicamente aceptadas por escrito. Las condiciones generales del contrato estarán sometidas a la vigilancia de la Administración Pública en los términos previstos por la Ley."* Argentina: LS, Art. 12. "*Póliza – El asegurador entregará al tomador una póliza debidamente firmada, con redacción clara y fácilmente legible. La póliza deberá contener los nombres y domicilios de las partes; el interés la persona asegurada; los riesgos asumidos; el momento desde el cual éstos se asumen y el plazo; la prima o cotización; la suma asegurada; y las condiciones generales del contrato. Podrán incluirse en la póliza condiciones particulares. Cuando el seguro se contratase simultáneamente con varios aseguradores podrá emitirse una sola póliza.*

[35] France: CA, "*Article 6 : Proposition d'assurance, modification de contrat. ... L'assureur doit obligatoirement fournir une fiche d'information sur les prix et les garanties avant la conclusion du contrat. Avant la conclusion du contrat, l'assureur remet un exemplaire du projet de contrat et de ces pièces assurées ou une notice d'information sur le contrat qui décrit précisément les garanties assorties des exclusions ainsi que les obligations de l'assurée."*

[36] MANES, Alfredo. *Tratado de seguros. Teoria general del seguro* – 4th Ed. Translation Fermín Soto. Madrid, Editorial Logos Ltda., 1930, p. 207.

[37] Brazil: C.c. Art. 759, 760 e 761. Spain: LCS, Art. 3, 8, 2, 3 e 4. Portugal: Decree 72/2008, art. 18, Art. 25 and Art. 37, *items* and paragraphs. Argentina: LS. Art. 11. France: CA, art. L. 112-3. Mexico: LS art. 20. Chile: C.com. Art. 519.

[38] About the delivery of the policy: Rubén S. Stiglitz. *Op. cit.* p. 743-744.

This type of legislation also has the purpose of promoting knowledge about the contractual conditions to the policyholder. Thus, according to Fernando Sanchez Calero, it ensures transparency, consumer protection, and guarantees that the insured is provided with adequate information *"antes de que llegue la perfección del contrato"*[39] *"before the contract is signed"*.

There are normative statements in the policy that provide details about the characteristics of the business, especially the risk, a relevant element for the elaboration of the contract, contributing to its *normative*[40] and probative function.

With these legal guidelines, apart from some exceptions referred to in this paper, the insurance documentation strengthens the principle of retrospective risk, presupposing a prediction of the contractual conditions.

Several rules in Insurance Law, as well as certain uses of the insurance activity, convey the implicit or explicit principle of retrospective risk. This could not have been any different given that the risk coverage is the central function of this contract[41] and stands as a reference for other duties.

In this sense, the risk finds limits in the law and in the insurance contract. Moreover, it presupposes that the parties involved, especially the insurer who is responsible for the mutualism of premiums, knows the dimension of the risk[42], and how to address it in the policies.

It is common knowledge that the proportionality of the obligations is established based on the notion of risk and on the statements by the parties, before and in the course of the contractual term, and that proportionality may increase or reduce the insurance premium, or even the insured value, according to the attenuation or aggravation of this causal element.

Therefore, an important positive principle in insurance contract law, but with some exceptions, is that parties are supposed to analyse, specify and know the risk involved in the circumstances which precede the elaboration of the contract and which are essential to it.

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[39] Cf. SANCHEZ CALERO, Fernando. *Op. cit.* p. 73-113.

[40] Função normativa da apólice (Normative function of the policy): SÁNCHEZ CALERO, *Op. cit.* p. 166.

[41] "*La cobertura del riesgo como función del contrato*". (In. SÁNCHEZ CALERO, Fernando *Op. cit.* p. 31). BIGOT, Jean. «*"L'objet essentiel – sinon exclusif – cette activité est de garantir des risques*."» *Op. cit.* pp. 22 ss.

[42] According to Ricardo Bechara Santos, the risk can have different forms and must be "pre-determined and defined in the contract with legal certainty". He points out that: "In order to operate its coverage, tax it, price it, constitute it, share it, the insurer must predetermine and define the risk in the contract. There must be legal certainty that the maximum limit of guarantee or limits of the legitimate interest of the insured is not exceeded, which is, after all, the object of the insurance contract, whether it is a damage or a personal contract. "SANTOS, Ricardo Bechara. *Interest insured and the principle of pre-determining the risk*. In. Estudos de Direito do Seguro em Homenagem a Pedro Alvim / Angélica L. Carlini and Ricardo Bechara Santos / org /. Rio de Janeiro: Funenseg, 2011, p. 120.

Reflecting upon these questions, it appears that the existence and prediction of risk are essential factors if the insurance contract is to be based on fairness, also taking into account the wishes of both parties, and assuming that there was adequate information and freedom in the purchase agreement.

3. Principle of the Speciality of Risk

Due to its nature, the insurance contract aims at guaranteeing interests against predetermined risks, which presupposes the cause for the contract[43].

Based on this objective view of risk and its relationship with the contracted guarantee or coverage, we will proceed by analysing this principle, its origins and legal implications.

Rodrigo Uria, whose doctrine led to this study, states that risk cannot be just any possibility of a damaging event, but rather the possibility provided for in the contract[44], and for the purposes of each individual contract.

Similarly, following Isaac Halperin, the contractual risk is that which was individualised, according to the causal, temporal, local, and objective connections that set the limits, scope, and manner of its occurrence[45].

In this objectification of circumstances, the *normative function of the policy*[46] is used to establish the scope of the contract and, in particular, the covered and excluded risks.

Since the times of our past masters of Insurance Law, private autonomy has been regarded as the main source of insurance, and in addition to its uses, the policy conditions are one of its main expressions. According to Garrigues, these principles stem from the need for clearer rules for insurance contracts and since the legal basis was defective and the old codes lacked rules, those principles came into being[47].

Certain aspects of the insurance activity, its general conditions in particular, started to include a normative content that was more complete than the legal one, functioning as standards to regulate the insurance relationship that connected the parties[48].

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[43] Cf. Chapter II – Princípio da Anterioridade do Risco (Principle of the Retrospective of Risk); and Chapter V – Princípio do Interesse (Principle of the Interest).

[44] URIA, Rodrigo. *Op. cit*. p. 777.

[45] HALPERIN, Isaac. *Op. cit*. p. 342.

[46] Função normativa da apólice (Normative function of the policy): SÁNCHEZ CALERO, Fernando (Director), *Op. Cit*. p. 166. GARRIGUES, Joaquin. *Op. cit*. p. 10.

[47] Cf. GARRIGUES, Joaquin. *Op. cit*. p. X e 9.

[48] DONATI, Antigono. *Los seguros privados*. Manual de derecho. Traducción por Arturo Vidal Solá. Barcelona, Librería Bosch, 1960. *La edición original de esta obra ha sido publicada en italiano por "Dott. A. Giuffrè – Editore" de Milan con el título de Manuale Di Diritto Delle Assicurazioni Private,* 1956, p. 29.

Technically, on the side of the law, each insurance line started to function based on predetermined risk established in the general conditions of the policy *'lex contractus',* and according to its provisions.

Therefore, a counterpoint to the universality of the risks was established, and the technical delimitation allowed the insurer to select the risks it could support[49], preserving the balance of his insurance portfolios.

These conditions, in turn, had to meet mass contractual requirements, setting rights and obligations for the parties, and respective limits of the contract.

Consequently, the limitation of the effects of the contract is one of the distinctive principles of the speciality of risk, which requires the description of covers and the resulting predictability of the object in the policy [50].

The requirement for adequate information[51] is inherent to the insurer's role of a provider of guidance[52], and in the principle of retrospective risk. This commitment to providing adequate information starts before the elaboration of the contract, extends until its termination, and includes the obligation to inform the insurer about the transfer of the insurance object[53].

Once the contracted risks and guarantees have been established, losses caused by different factors different to those listed are not covered in the contract.

[49] GARRIGUES, Joaquin. *Op. cit.* p. 9 -11.

[50] See: "...*la presupposizione è quindi técnica fondamentale per la ripartizionde del risco contrattuale"* ROSSELLO, Carlo. *"l'interpretazione del contratto, I orientamenti e tecniche della giurisprudenza."* A cura di Gido Alpa. Dott. A. Giufreè Editore – Milano – 1983, p. 434.

[51] Brazil: C.c. art. 766, Sole paragraph. Spain: LCS, Arts 8, 10, 11, 12, 16, 60. Portugal: Decree 72/2008, art. 25, Items 1 to 5; 26 and Items and Art. 29.

[52] Portugal: Decree 72/2008: "Portugal: Decree 72/2008: "*Article 22. Special Duty for clarification 1 – As long as the complexity of the coverage and the premium to be paid, or the sum insured, justifies it, and the means of purchase permits it, the insurer should clarify to the policyholder what types of insurance are convenient, amongst those offered, for the specific coverage that is being required, before the contract is signed,. 2 – During the process referred to in the preceding paragraph, it is the insurer's responsibility not only to respond to all requests for information made by the policyholder, but also to call attention to the scope of the proposed coverage, including exclusions, waiting periods and rules for the termination of the contract if the insurer so wishes, and also in cases of succession or modification of contracts, for the risks involving the breach of covers. 3 – In insurance contracts, where there are coverage proposals for different types of risk, the insurer shall provide detailed explanations about the relationship between the different covers. 4 – The special duty to provide clarification in this Article shall not apply to contracts for large risks, nor to those whose negotiation or agreement involves the participation of an insurance mediator, irrespective of the specific duties incumbent on the latter, according to the legal system of access and exercise of the insurance mediation activity".*

[53] Spain: LCS, art. 34. Portugal: DL, 95, 2 Argentina: LS, art. 82. Mexico: arts. 106, 107 and 108. Chile: C.com. Art. 522.

That is how the provisions of recognised insurance law and contractual hermeneutics are articulated. Following those guidelines, dogmas related to the subjective element of personal interests are left out in order to identify the object of the contract related to the presupposition of risks and their limits.[54]

As we have seen, the notion of covered and excluded risks is the very essence of private insurance. Its technique, connected to the nature of the insurance contract, presumes the guarantee of certain categories of risks for individual covers[55], which are subjected to strict interpretation[56].

Therefore, the hermeneutics of a contract does not involve flexibility of interpretation or integration to the point of asserting circumstances not covered by contractual clauses. Subjective interpretation is rejected and, instead, an understanding based on the terms of the law and contractual documentation is preferred, especially when these are accurate and comprehensible *interpretatio cessat in claris.*

Although the concept of clarity is relative[57], the interpretation should be restricted to the limits of the contract, avoiding the creation of new rights that were not provided[58]. Any generalities of terms in a contract shall not include things or cases that differ from what the parties have agreed to in the contract[59].

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[54] Brazil: Cc "Art. 757. Through the insurance contract and payment of the premium, the insurer assumes the responsibility of guaranteeing the legitimate interest of the insured, with regard to the person or thing, against predetermined risk". Spain: LCS, *"Artículo 1. El contrato de seguro es aquel por el que el asegurador se obliga, mediante el cobro de una prima y para el caso de que se produzca el evento cuyo riesgo es objeto de cobertura a indemnizar, dentro de los límites pactados, el daño producido al asegurado o a satisfacer un capital, una renta u otras prestaciones convenidas".* Portugal: Decree 72/2008, Art 24, Items 1 to 4. *Initial Statement of the Risk. "1. The policyholder or the insured is obliged, before the contract is signed, to declare with accuracy all the circumstances he or she knows that may reasonably be deemed significant for the assessment of risk by the insurer".* Argentina: LS, *"Artículo 1. Hay contrato de seguro cuando el asegurador se obliga, mediante una prima o cotización, a resarcir un daño o cumplir la prestación convenida si ocurre el evento previsto".* México: LS, *"Artículo 1° – Por el contrato de seguro, la empresa aseguradora se obliga, mediante una prima, a resarcir un daño o a pagar una suma de dinero al verificarse la eventualidad prevista en el contrato".* See: Art. 86 and 145. Chile: C.com. Art. 512, 548 and 572.

[55] SANCHEZ CALERO, *Fernando. Op. cit.* p. 31.

[56] Cf. JIMÉNEZ SÁNCHEZ, Guillermo J. *Op. Cit.* p. 501. MARTINS, João Marcos Brito. *O contrato de seguro: comentado conforme as disposições do novo Código Civil (The insurance contract: commented according to provisions of the new Civil Code).* Rio de Janeiro, Editora Forense Universitária, 2003, p. 43. *On that note, the text of Art. 1,460 of the 1916 Brazilian Civil Code was also relevant, with copious jurisprudence to grant the grounds that the insurer's responsibility is limited to the risk assumed. Thus, as stated by Clovis Bevilaqua, fire insurance for a building does not include compensations in case of public need, earthquake or bombing* See: BEVILAQUA, Clovis. *Civil code of the United States of Brazil commented by Clovis Bevilaqua.* Rio de Janeiro, Francisco Alves Bookstore, 1919, p. 588.

[57] About the relativity of restrictive interpretation: MAXIMILIANO, Carlos. Hermeneutics and application of the law. Rio de Janeiro, Editora Forense, 2000, p. 33-39.

[58] France: C.c. 1.157 and 1.158. Italy: C.c. Art. 1367.

[59] Spain: C.c. art. 1.283. Italy: C.c. Art. 1364.

In that sense, the documentation is a reference of the interpretative unit. Through documents of private insurance, along with legal and regulatory infra-legal provisions, the specific objectives of each contract are established.

The previous definition of risk is the essence of the insurance business. Through these documents, insurer and reinsurer[60] try to control the accumulation of risks and maintain the balance of their operations.

Therefore, classes of risks are defined in law and in insurance techniques, with subdivisions and rates using positive lists to describe what is included, or exclusion lists to enunciate uninsurable risks.

Some exclusion categories should be the responsibility of the legislator, as suggested by Cesare Vivante, in order to classify as separate from insurance those risks related to war, riot, earthquake, or hurricane, which cannot be estimated by statistical procedures because of their intensity and abnormality[61].

Currently, this list is extended to exclude coverage for risks related to criminal liability, abduction, kidnapping, drug trafficking, death of children under 14 years old[62], even if those risks are already subsumed under violation of the general principles of public order and morality[63].

Other exclusions may be of a contractual nature, such as criterion of risk management, presupposing the definition of the nature of the covered event, in its spatial and temporal limits[64].

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[60] About reinsurance coverage and exclusion lists, see: MELLO, Sergio Ruy Barroso. Reinsurance contract. Rio de Janeiro: National School of Insurance – Funenseg, 2011, pp. 170-201.

[61] Cf. VIVANTE, Cesare. *Trattato di diritto commerciale.* Volume IV. 3rd Ed. Milano. Casa Editrice Dottor Francesco Vallardi. 1954, p. 406.

[62] Brazil: Cc " *Art. 762. The contract for risk guarantee, derived from wilful act from the part of the insured, beneficiary or representative of one or the other is deemed null. "*Portugal: Decree 72 / 2008 " *Article 14 – Prohibited Insurance Covers. 1 – Without prejudice to the general rules on the legality of the business content, the insurance contract must not cover the following risks: a) Criminal liability, against national or disciplinary action; b) Abduction, kidnapping and other crimes against personal freedom; c) Possession or transport of stupefying substances or drugs whose consumption is prohibited; d) death of children under the age of 14 years or of those who by mental disorder or any other cause, are incapable of governing their lives. 2 – The prohibition referred to in letter (a) above cannot be extended to any civil liability associated to it. 3 – The prohibition referred to in letters (b) and (d) of Item 1 does not encompass the compensation payments benefits strictly. 4 – Coverage for the risk of death is not prohibited when purchased by educational, or sporting institutions, or by organisations of a similar nature since they do not appear as beneficiaries.* Mexico: LS "*Artículo 60.- En los casos de dolo o mala fe en la agravación del riesgo, el asegurado perderá las primas anticipadas."* Chile: C.com. *"Art. 526 … Salvo en caso de agravación dolosa de los riesgos, en todas las situaciones en que, de acuerdo a los incisos anteriores, haya lugar a la terminación del contrato, el asegurador deberá devolver al asegurado la proporción de prima correspondiente al período en que, como consecuencia de ella, quede liberado de los riesgos."*

[63] «*Assurabilité et ordre public classique».* Luc Mayaux. BIGOT, Jean. (direcion) Traité de droit des assurances, Tome 3, Le contrat d'assurance. Avec la colaboration de Jean Beauchard, Vincent Heuzé, Jérôme Kullmann, Luc Mayaux e Véronique Nicolas.L.D.G.J – Librarie Générale de Droit et de Jurisprudence, EJA, 2002, p. p. 810.

[64] Delimitation of risk: SÁNCHES CALERO, Fernando. *Op. cit.* pp. 116-117.

From the perspective of risk objectivity, insurance law usually defines the duty of minimum content of the policy[65], proposal and other contractual documents, especially in the context of covered risks, which are not always addressed by the Law[66] and may include exclusions and limits for the insured object[67].

Moreover, from the consumer relations perspective, the presupposition of risks is an instrument to protect the vulnerable[68] and preserve public trust and diffuse interests, acknowledged in this form of mass purchase.

In brief, the principle of speciality of risk has to do with the notion of objectivity that this type of contract requires. It is not an absolute value and isolated in itself, but should be assessed in a systematic manner, in the context of other values and rules applicable to private insurance contracts.

4. Conclusions

On closer examination, modern legal systems display a large number of regulations that require volatility in order to reach their objectives.

That is how many legal principles are applied. Invariably, they are standards that, while indicating a specific purpose, make use of open concepts, whether in an implicit or positivistic manner such as the principles of good faith, interest, trust, private autonomy, among others.

The principles of retrospective risk and speciality risk examined here fall within that genre of open standards or delegation[69]. Although they are general and broad, they are also concrete, given the legal guidelines that reinforce their meaning.

The sensitivity of the legislator, in certain cases, recommends an intermediate position between deterministic rules, rigid prevision, and equity systems, in a completely open manner.

This balanced combination makes it possible to keep certain orientations flexible and effective, especially when incorporated into the positive order, as in the laws examined here.

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[65] Brazil: C.c. art. 759, 760 and 761. SUSEP Circular 491/2014. Spain: LCS, art. 3, 8, Items 2, 3 and 4. Portugal: Decree 72/2008, Art. 18, Art. 25 and Art. 37, *Items* and letters. Argentina: LS, art. 11. Mexico: LS, Art. 20. Chile: C.com. Art. 514, 518.

[66] Cf, SOTO, Héctor Miguel. Contrato, celebración, forma y prueba (com especial referencia al contrato de seguro). Buenos Aires, Editora La Ley S.A., 2001, p. 41.

[67] Brazil: C.c. art. 759, 760 and 761. Spain: LCS 50/1980, art. 8, Items 2, 3 and 4. Portugal: Decree 72/2008, art. 18, Art. 25 and Art. 37º, Items and letters.

[68] See Chapter 10 – Princípio da Tutela Compensatória no Direito dos Seguros (Principal of Compensatory Protection in the Insurance Law).

[69] See: CANARIS, Claus-Wilhelm. *Pensamento sistemático e conceito de sistema na ciência do direito (Systematic thinking and system concept in the science of law).* 2nd Ed., Lisbon, Fundação Calouste Gulbenkian, 1996, p. 143.

Following that reasoning, the legal principles of retrospective risk and speciality risk guide the production and application of insurance law as a recurring instance of cognition, starting from the genesis of legal texts, and extending to the interpreter's performance and application of the Law.

These two cases under analysis display principles of considerable potential in private insurance law, the authority of which is externalised in a uniform and lasting manner, and with technical practicality.

Historically, people are familiar with the relevance of risk as a causal element of the insurance contract, and its resulting consequences.

It seems reasonable to suggest that lawyers and other professionals of private insurance should persevere in the study of its principles and extract some of its meanings and derivations.

5. Index of Abbreviations

CA – Code des Assurances (France)
Cc – Civil Code
C.Com. – Commercial Code
FC – Federal Constitution
CPC – Consumer Protection Code
CCP – Code of Civil Procedure
CCPCom – Código Civil Procesal y Comercial De La Nacion (Argentina)
DL – Decree-Law 72/2008 (Portugal)
LSC – Lei de Contrato de Seguro, 50/1980 (Spain)
LDC – Ley de Defensa del Consumidor (Argentina – Ley 24240)
CPL – Consumer Protection Law (Portugal – Law 24/96)
LGDCU – Ley General of Consumers and Users 26/1984 (Spain)
LS – Ley de Seguros 17,418 (Argentina)
LS – Ley Sobre el Contrato de Seguro, last modified on 04/04/2013 (Mexico)
C.Com. Chile – Ley 20,667, modifies the Book II of the Commercial Code
REsp – Special Appeal (Superior Court of Justice – Brazil)
STJ – Superior Court of Justice (Brazil)
EU – European Union

6. Bibliographical References

ALVIM, Pedro. *O contrato de seguro.* 3ª ed., Rio de Janeiro, Editora Forense, 1999. 1ª ed. 1983.

ÁVILA, Humberto. *Teoria dos princípios: da definição à aplicação dos princípios. 2ª* Edição: São Paulo: Malheiros Editores, 2003.

BARROSO, Luis Roberto. *Interpretação e aplicação da constituição: fundamentos de uma dogmática constitucional transformadora. 3ª edição.* São Paulo: Saraiva, 1999, p. 215.

BETTI, Emilio. *Teoría general del negocio jurídico*. Traducción y concordancia con el derecho español por A. Martins Perez. 2ª ed., Editorial Revista de Derecho Privado, Madrid, 1959. Edição original 1943.

BEVILAQUA, Clovis. *Código civil dos Estados Unidos do Brasil comentado por Clóvis Bevilaqua.*. Rio de Janeiro, Livraria Francisco Alves,1919.

BIGOT, Jean. (direcion) *Traité de droit des assurances, Tome 3, Le contrat d'assurance*. Avec la colaboration de Jean Beauchard, Vincent Heuzé, Jérôme Kullmann, Luc Mayaux e Véronique Nicolas.L.D.G.J – Librarie Générale de Droit et de Jurisprudence, EJA, 2002.

CANARIS, Claus-Wilhelm. *Pensamento sistemático e conceito de sistema na ciência do direito.* 2ª ed., Lisboa, Fundação Calouste Gulbenkian, 1996.

DIEZ-PICAZO, Luis. *Fundamentos del Derecho Civil patrimonial. Vol. 1º Introducción Teoria del Contrato.* Quinta edición. Madrid: Editorial Civitas, 1996.

DONATI, Antigono. *Los seguros privados*. Manual de derecho. Traducción por Arturo Vidal Solá. Barcelona, Librería Bosch, 1960. p. 14. La edición original de esta obra ha sido publicada en italiano por "Dott. A. Giuffrè – Editore" de Milan com el título de Manuale Di Diritto Delle Assicurazioni Private, 1956.

GARRIGUES. Joaquin. *Contrato de seguro terrestre.* Imprenta Aguirre, Madrid, 1973.

HALPERIN, Isaac. *Seguros. Exposición crítica de las Leyes 17418, 20091 y 22400.* 3ª Ed. Actualizada y ampliada por Nicolás H. Barbato. Buenos Aires, Depalma, 2001, 1ª ed. 1970.

LÓPEZ SAAVEDRA, Domingo H. *Ley de Seguro n. 17.418 comentada y anotada.* 1a. ed. Buenos Aires: La Ley, 2009, p. 44-45.

MANES, Alfredo. *Tratado de seguros. Teoria general del seguro* – 4ª ed. Tradução Fermín Soto. Madrid, Editorial Logos Ltda.,1930.

MAXIMILIANO, Carlos. *Hermenêutica e aplicação do direito.* Rio de Janeiro, Editora Forense, 2000.

NICOLAS, Veronique, *Essai d'une nouvelle alalyse du contrat d'assurance.* Bibliothéque de Droit Privé, Tome 267, Dirigée por Jaques Ghestin, pp. 21-102.

PICARD, Maurice et André Besson. *Traité genéral des assurances terrestres en droit français.* Paris. Librairie Générale de Droit et de Jurisprudence. 1938.

PLANIOL, Marcelo. RIPERT, Jorge. *Derecho civil francés.* Traducción Española Dr, Mario Diaz Cruz con la colaboración del Dr. Eduardo le Riverend Brusone. Tomo XII, Los contratos civiles. Segunda Parte, con el concurso de ANDRES ROUAST, RENE SAVATIER y JEAN LEPARGNEUR. Editorial Cultural,

Habana, 1946.
SÁNCHEZ CALERO, Fernando (Director), Francisco Javier Tirado Suárez, Alberto Javier Tapia Hermida y José Carlos Fernández Rozas. *Ley de contrato de seguro.* Pamplona, Editora Aranzadi, 1999.

SAVIGNY, Friedrich Karl von, 1779-1861. *Metodologia jurídica. Trad. J.J.Santa-Pinter e Hebe A.M. Caletti Marenco;* Campinas – SP: Edicamp, 2001.

STIGLITZ, Rubén S. *Derecho de seguros*. 5ª ed. Buenos Aires: La Ley, 2008. 1ª Ed., 1997.

URIA, Rodrigo. *Derecho mercantil.* 25ª ed., Madrid, Marcial Pons Ediciones Jurídicas y Sociales, 1998.

VASQUES, José. *Contrato de seguro – notas para uma teoria geral.* Coimbra Editora,1999.

VIVANTE, Cesare. *Trattato di diritto commerciale.* Volume IV. 3ª ed. Milano. Casa Editrice Dottor Francesco Vallardi. 1954.