

**THE POOR MATCH BETWEEN
THE COVERED RISK
AND
THE INSURED'S REQUIREMENTS**

INSURANCE INTERMEDIARIES

UE directive 2002/92/CE of 9 December 2002 on insurance intermediaries)

Article L.520-1 French Insurance Code :

II –“Before concluding any contract, the intermediary must:

...

2° Specify the requirements and needs of the possible policyholder and the reasons for the advice provided in respect of a specific insurance product. This information, which is based in particular on information communicated by the possible policyholder, is adapted to the complexity of the insurance contract offered”.

PRINCIPLES OF EUROPEAN INSURANCE CONTRACT LAW

PEICL, ARTICLE 2:202 - DUTY TO WARN ABOUT INCONSISTENCIES IN THE COVER

(1) When concluding the contract, the insurer shall **warn** the applicant of **any inconsistencies between the cover offered and the applicant's requirements** of which the insurer is or ought to be aware, taking into consideration the circumstances and mode of contracting and, in particular, whether the applicant was assisted by an independent intermediary.

(2) In the event of a breach of para. 1

(a) the insurer shall indemnify the policyholder against all losses resulting from the breach of this duty to warn unless the insurer acted without fault, and

(b) the policyholder shall be entitled to terminate the contract by written notice given within two months after the breach becomes known to the policyholder.

FRENCH EXAMPLE

Personal Insurances for borrowers

BORROWER

=

INSURED



**Insurance in case of
Death or Disability**



LOAN

**INTERMEDIARY
(broker)**



INSURANCE COMPANY



GROUP INSURANCE CONTRACT

BENEFICIARY
In case of borrower's
death or disability

THE WOODMAN'S STORY

The spark that ignited the fire

Group Insurance contract





???

Insurance Contract – Definitions « Disability »

***« To find it absolutely impossible
to be in gainful employment »***

1) Bank : Duty #1 : Duty to inform

Insurance contract

Disability : Definition

« *To find it absolutely impossible to be in gainful employment* »

Judge : CLEAR

2) Bank : Duty #2 : Duty to advice

- to take an insurance : **DONE**

- to propose an insurance contract : **DONE**

Judge : No liability of the Bank

End of the story : no coverage for the woodman

Revolution

Plenary Assembly of the Cour de cassation 2 March 2007



2007



Duty #1 : Duty to inform
Duty #2 : Duty to advice

3) BANK: Duty #3
Duty to warn !



WARNING



The poor match between the covered disability and the insured's requirements

« The contractual definition of the disability, proposed by the bank, is unsuited to the personal situation of the borrower »

Example #1 : Borrower's Job

Policeman working in a dangerous area

Insurance contract : only *partial temporary* disablement

Personnal requirement : *total permanent* disability



Example #1 : Borrower's Job

Truck Driver

Insurance contract : absolute impossibility of being
in **gainful or non gainful** activity

Personnal requirement : impossibility of being a truck driver



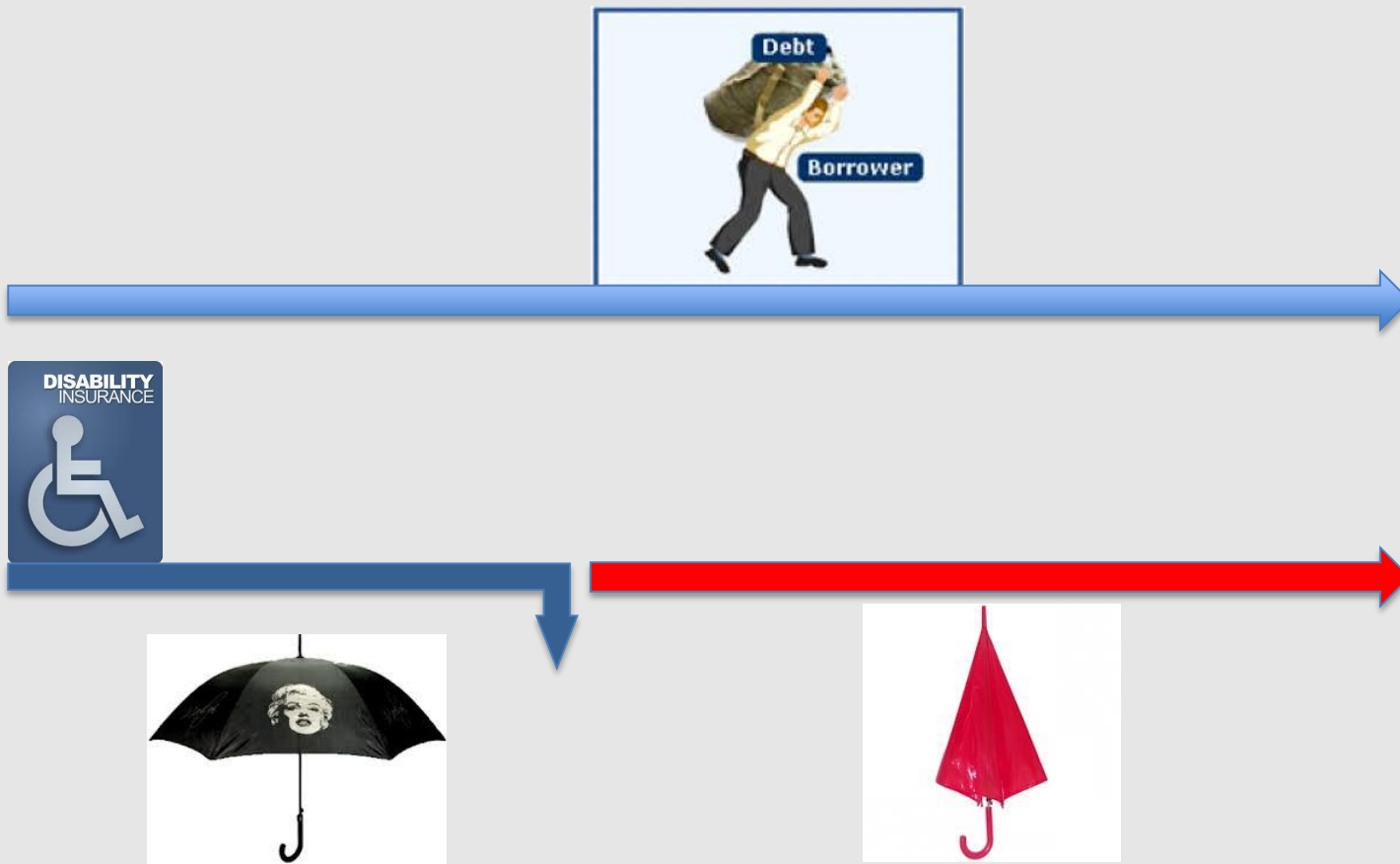
**Clause known as
*The Coma Clause***

Example #2 : Borrower's Age

Borrower : 58 years old / Loan : 20 years

Insurance contract : disability insurance *stops at 65*

Personnal requirement : insurance for the *duration of the loan*



Last question

Is the bank obliged to **propose** an insurance **matching** the insured's requirements and needs?

Only One decision of the French Cour de cassation : proposing a non matching insurance is a fault !

All other decisions : only duty to warn

No warning is a fault