



**INSURANCE INSTITUTE FOR
ASIA AND THE PACIFIC, INC.**

Basic Non-Life Insurance Course

Introduction to Insurance

Historical Background

- Old industry/practice, as old as civilization itself.
- The Code of Hammurabi is a well-preserved Babylonian law code, dating to ca. 1700 BC. It is one of the oldest deciphered writings of significant length in the world. The first Babylonian king, Hammurabi, enacted the code, and partial copies exist on a human-sized stone stele and various clay tablets.
- The Code consists of 282 laws, with scaled punishments, adjusting "an eye for an eye, a tooth for a tooth" as graded depending on social status, of slave versus free man.

Historical Background

- Nearly one-half of the Code deals with matters of contracts, establishing for example the wages to be paid to an ox driver or a surgeon.
- Reference to insurance:-
 - ❑ “If the robber is not caught, then shall he who was robbed claim under oath the amount of his loss; then shall the community, and . . . on whose ground and territory and in whose domain it was compensate him for the goods stolen.
 - ❑ If persons are stolen, then shall the community . . . pay one mina of silver to their relatives.”



Historical Background



The Code of Hammurabi in stone tablet.

Historical Background

- Bottomry Bonds (security on the ship/vessel) and Respondentia (security on the cargo) in the 12th century Italy.
- Forerunners of modern marine insurance.



Lloyd's of London

Originally a coffee shop in London owned by Edward Lloyd in the 1689 located on Tower Street, London.

Popular place for sailors, merchants, and ship owners to discuss deals among themselves, including insurance.

In 1691, it transferred to Lombard Street in London.

In 1719, participating members of the insurance arrangement formed a committee and moved to the Royal Exchange on Cornhill St., as the Society of Lloyd's.



THE OLD LLOYD'S COFFEE HOUSE



2/8/2017



LLOYD'S HEADQUARTERS ON LIME ST., LONDON



2/8/2017



Forerunners of Insurance in the Philippines

Paluwagan –

- Means pooling of money scheme
- The local concept of mutual fund
- Popular in the Phils. especially in the rural region
- Paid either daily, weekly or even monthly to the collector

Abuloy –

- Donation, collection or help-fund
- Offering, charity or alms share in a collective affair

2/8/2017



Insurance History in the Philippines

- Introduced in March 1829 when Lloyd's of London appointed Stracham, Murray & Co., as its local representative.
- In 1839, Russel & Sturgis was appointed by the Union Insurance Society of Canton as agents in Manila.
- In 1898, life insurance was introduced by Sun Life of Canada
- In 1906, Yek Tong Lin Fire and Marine Insurance Co., first domestic non-life company was established. It is now called Philippines First Insurance Co.
- In 1910, Insular Life Assurance Co., Ltd was organized



Important Words and Phrases

Definitions:

1. Insurance -

- “It is a social device which combines the risks of individuals into a group using funds contributed by members of the group to pay for losses.”
- “A device for reducing risk by combining a sufficient number of exposure units to make their individual losses collectively predictable. The predictable loss is then shared proportionately by all units in the combination.”



Important Words and Phrases

Definitions of Insurance

Most definitions of insurance include three important points:-

1. Transfer of risk from the insured to the insurer;
2. Insured contributes to a common fund to pay for future losses of members;
3. Insurer combines/pools a large number of separate exposure units.



Important Words and Phrases

2. Law of Large Numbers

- also known as “Law of Average” or “Law of Probability”
- “a mathematical law which states that when the number of similar exposures (risks) is increased, the relative accuracy of predictions about future outcomes (losses) is also increased.”
- theoretical basis of insurance.



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Important Words and Phrases

3. Risk

- Uncertainty concerning loss
 - Underwriters sometimes use the word risk to mean subject matter of insurance.
 - a. **Speculative Risk** – can result to either GAIN or LOSS
 - b. **Pure Risk** – can produce LOSS only
4. **Peril** – the cause of loss; a loss producing agent like fire, earthquake, collision, computer breakdown, terrorist attack



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Important Words and Phrases

- 5. Hazard** – condition that tends to create or increase the chance of loss from a given peril.

Examples:

- a. Low lying areas
- b. Storing flammable materials within building
- c. Open sided buildings
- d. Defective signal/tail lights



Important Words and Phrases

- 6. Physical Hazards** – objective characteristics that increase the chance of loss.

Examples:

- a. manufacturer of combustible goods
- b. “wet risks”

- 7. Moral Hazards** – subjective characteristics of the Insured.

Examples:

- a. dishonesty
- b. credit standing
- c. past losses



Important Words and Phrases

8. Morale Hazard – characterized by carelessness, or indifference to loss because of insurance coverage

Examples:

- a. poor housekeeping,
- b. lack of loss prevention

9. Chance of Loss – the long-run relative frequency of loss, expressed as a fraction or percentage. The probable number of losses is the numerator and the given number of exposures is the denominator.



Classification of Insurance

1. Life Insurance

2. Non-Life or General Insurance (also called Property and Casualty or **P&C** in many markets)

- a. Fire or Property** – insurance on buildings, contents, equipment and goods against fire, natural perils, etc.
- b. Marine** – insurance of hull/vessel, cargo, liability of ship owner to the crew, passenger or property of other third parties. Also includes “inland marine” which covers shipment of goods by trucks, railways or ferry.
- c. Casualty or Accident** – the broadest classification which includes those lines that do not fall under Fire and Marine, like Motor, Personal Accident, Crime, Liability and Workmen’s Compensation.



A House Burning Down... (Covered by Fire Insurance)



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A Ship Sinking with Cargoes... (Covered by Marine Insurance)



2/8/2017



**A Man Falling From a Stair...
(Covered by Personal Accident Insurance)**



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**A car in collision with another vehicle...
(Covered by Motor Car Insurance)**



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Types of Insurers

1. **Government** – GSIS and SSS fall under this type.
2. **Private**
 - a. **Proprietary Insurers** – organized and operated by stockholders mainly for profits.
 - b. **Cooperative Insurers** – operated to provide insurance at cost to members.



TYPES OF INTERMEDIARIES

- **Agent** – Represents the insurance company; enters into an Agency Agreement with the selected insurer and can represent 7 insurance companies
- **General Agent**- represents a specific insurance company; normally given underwriting and issuing authority but has to achieve a specific production goal
- **Broker** – represents the client; can represent unlimited number of insurance companies; must be incorporated and registered with the Securities and Exchange Commission. Appoints a Soliciting Official for its license.

Insurance and Society

Social Values of Insurance

1. It helps in the optimum use of factors of production (land, labor and capital).
2. It contributes to the economy by decreasing chance of loss through loss prevention activities.
3. Insurance contributes to social and business stability through indemnification.
4. It provides basis for credit system.
5. It reduces worry by reducing uncertainty.
6. It eases financial problems from industrial injury, disability and old age.
7. It serves as a source of capital funds for the economy.



Insurance and Society

Social Costs of Insurance

1. Causes fraudulent claims and losses.
2. Arson
3. Murder and suicide claims
4. Businessmen cashing in on their policies when sales are down
5. Lessened motivation to protect property and adopt loss prevention measures



Criteria of an Insurable Risk

Essential Characteristics

1. A large number of homogenous exposure units.
2. Small probability of many simultaneous losses.

Desirable Characteristics

1. Definite loss – loss must be difficult to fake
2. Loss accidental to the Insured
3. Large loss – insurance for small losses is not economical because of expense & profit margins
4. Economically feasible cost
5. Calculable chance of loss



Definition of Contracts

General Definition of a Contract (Art 305 of New Civil Code)

“A meeting of minds between two persons, whereby one binds himself, with respect to the other, to give something or to render service.”

Definition of Insurance Contract (Sec 2 of New Insurance Code)

“Any contract by which one of the parties for a valuable consideration, known as premium, assumes a risk of loss or liability that rests upon the other, pursuant to a plan for the distribution of such risk, is a contract of insurance whatever the form it takes or the name it bears.”



Essential Elements of an Insurance Contract

1. Agreement – there must be an “offer” by one party and “acceptance” by the other.
2. Competent Parties – parties must have the legal capacity to enter into a contract.

The Insurer is considered competent if it has a valid license to do business and acts within the limits of its articles of incorporation.

The Insured is considered competent if he is not:-

- a. Minor – less than 21 years old
- b. Mentally incompetent
- c. Public Enemy



Essential Elements of an Insurance Contract

3. Legal Purpose – illegal contracts and those that are contrary to public interest are not enforceable.
4. Consideration – the Insured must pay the premium, the Insurer promises to comply with certain obligations.



Categories of Defective Contracts

The 4 categories of defective contracts:-

1. Rescissible Contract
2. Voidable Contract
3. Unenforceable Contract
4. Void or Inexistent Contract

Categories of Defective Contracts

1. **Rescissible Contract** – has all the necessary elements of a valid contract but it may be rescinded in the interest of equity.
2. **Voidable Contract** – under Art 1390 of the Civil Code, the following contracts are voidable even though there may have been no damage to the contracting parties:-
 - a. where one of the parties is incapable of giving consent to a contract;
 - b. where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud

These contracts are binding unless annulled by a proper court action.

Categories of Defective Contracts

Annulment may be initiated within 4 years, which begins:

1. In case of intimidation, violence or undue influence – from the time the defect of the consent ceases.
2. In case of mistake or fraud – from the time of the discovery of the same.
3. In case of contracts entered into by minors or other incapacitated persons – from the time guardianship ceases.



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Categories of Defective Contracts

3. **Unenforceable Contract** – this cannot be enforced unless ratified, as distinguished from voidable contract which is binding unless annulled by proper court action.

A contract is unenforceable if “entered into the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers.” (Art 1403)



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Categories of Defective Contracts

- 4. Void or Inexistent Contract** – under Art 1409, the following contracts are inexistent and void from the beginning:-
- a. those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
 - b. those which are simulated or fictitious;
 - c. those whose cause or object did not exist at the time of the transaction;
 - d. those whose object is outside the commerce of men;
 - e. those which contemplate an impossible service;

Categories of Defective Contracts

- f. those where the intention of the parties relative to the principal object of the contract cannot be ascertained.
- g. those expressly prohibited or declared void by law. These contracts cannot be ratified; neither can the right to set up the defense of illegality be waived.

The Insurance Contract

Implied Conditions of Insurance Contracts

These conditions need not be specifically indicated in the policy but are nevertheless binding.

1. Insured and Insurer observe “good faith” both in making the proposal and in connection with any claim.
2. Insured has insurable interest in property insured.
3. Subject of insurance is in existence at the time the policy is effected.
4. In case of loss, the property destroyed is the property intended to be insured



Characteristics of Insurance Contract

1. Aleatory contract – “aleatory” means depending upon chance or luck.
2. Contract of adhesion – means that the Insured normally does not have participation in the preparation of a contract. The Insured merely has to “adhere” to the conditions of the policy.
3. Unilateral contract – most contracts are bilateral. Insurance is unilateral, as after the insured has paid the premium, the insurer is left alone to pay the losses. It is “executed” as to the Insured and “executory” on the part of the Insurer.



Characteristics of Insurance Contract

4. Conditional contract – the Insured has to satisfy certain conditions in the policy before he could collect from the Insurer.
5. Personal contract – both parties view with care the character, conduct and credit standing of each other. If ownership of the thing insured has changed, the insurance does not automatically pass to the new owner.
6. Utmost good faith – the greatest degree of good faith is required in the negotiations, wherein the Insurer is dependent on the information given by the applicant before the contract is finalized.



Rules of Construction (Interpretation)

1. The principal rule is that the intention of the parties must prevail.
2. In case of ambiguities, the terms “are to be construed strictly and most strongly against the Insurer, and liberally in favor of the Insured.
3. In case of contradiction between the “printed” and the “written” portions of the policy, the written part prevails because it expresses the true intention of the contract.
4. Phraseology of a policy must be interpreted in the plain, ordinary and popular sense. Technical terms must be given their strictly technical meaning.
5. Any express term overrides an implied term in case of inconsistency.
6. The “ejusdem generis” rule should be followed.



Rules of Construction (Interpretation)

“**Ejusdem Generis**” (of the like kind). Where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. Example: if a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, "vehicles" would not include airplanes, since the list was of land-based transportation.



The Policy Form

MAIN SECTIONS

- Preamble or Recital Clause
- Operative Clause or Insuring Clause
- Attestation Clause
- Conditions
- Schedule
- Endorsements



The Policy Form

Preamble or Recital Clause – this states the fact that there are 2 parties to the contract, and that the Insured has made a proposal to the Insurer.

Example 1:

“This Company, in consideration of the payment of the premium specified in the schedule at the back hereof, insures against loss, damage liability or expense, subject to the Terms and Conditions, Clauses, Endorsements, Special Conditions and Warranties printed or stamped hereof and/or attached hereto, in the manner specified in the Schedule.”



The Policy Form

Operative Clause or Insuring Clause – it sets out the perils insured against and the exception to the insurance.

Example 1:

“This insurance covers all risks of loss of or damage to the subject-matter insured except as provided in Clauses 4, 5, 6 and 7 below.”



The Policy Form

Attestation - This confirms that the insurers have authenticated the policy by signature.

Conditions – this includes the exclusions, duties of the Insured and the Insurer in case of claim, etc.

Schedule – This indicates the details which are special to a particular policy. It states the description of the subject-matter of insurance, including all other details such as premium, sum insured, period of insurance, and the name and address of the insured.

Endorsements - Standard policies often do not suit a particular need. Modifications are done via use of endorsements.

Examples:-

Endorsements for increasing the sum insured or inclusion of additional perils or extending the period of insurance.



Cover Notes

Cover Notes – are temporary contracts, pending the issuance of the policy. May be issued up to a period of 60 days. Any extension must have the approval of the Commissioner. (Sec 52 of Insurance Code). It is a simple and effective way of extending temporary coverage while the policy is being prepared. It also gives underwriters time to inspect the property to see if it meets the underwriting standards of the company.



Policy Analysis

To ascertain the protection given by an insurance policy, the following questions must be answered:

- **Is the peril covered?** A policy may cover only specific perils or may be a comprehensive policy.
- **Is the property covered?** The policy usually defines the property being insured, and those that are excluded. In motor car insurance, for example, accessories that are not factory-fitted are not covered unless specifically indicated in the policy.
- **Is the type of loss covered?** Losses can be classified into (a) direct - the physical loss of the object; (b) consequential - as in loss of income resulting from loss of use of the damaged property; and (c) extra-expenses losses - such as defending a lawsuit and paying the judgment, medical expenses following accident or illness, and cost of temporary facilities until the damaged property is restored.
- **Is the person covered?** Most policies cover only the named insured, while other policies include even the insured's family as in some accident insurance plans.



Policy Analysis part 2

To ascertain the protection given by an insurance policy, the following questions must be answered

- **Is the location covered?** Some policies cover one location only, as in ordinary fire insurance; others include off premises coverage.
- **Is the time period covered?** Most policies are issued on an annual basis; others for less than one year; some policies are issued for more than a year. Furthermore, policies vary as to the time of day they are effective. Fire policies take effect at 4:00 o'clock in the afternoon, Manila Standard Time; most other policies at 12:01 in the morning on the date they are in effect.
- **Are there hazards that exclude or suspend coverage?** Some policies have provisions designed to suspend or exclude coverage when the hazard is increased. For example, motorcar policies suspend coverage if the vehicle is used for car racing.
- **What is the amount of coverage?** Most policies have limitations which establish the maximum amount the insurer will pay for a loss. Some policies have deductibles while others have specific clauses (as in average clause) that reduce the amount of liability under certain conditions.



General Insurance Principles

1. Insurable Interest
2. Utmost Good Faith
3. Indemnity
4. Subrogation
5. Contribution
6. Proximate Cause



Principle of Insurable Interest

Insurable Interest – one’s legal right to insure.

It is necessary in every contract of insurance” (W.A. Dinsdale).

“The insured must have an insurable interest if the policy is to be valid” (A.H. Mowbray).

Where there is no insurable interest, no insurance may be affected.

According to the Insurance Code:

- for Property Insurance, insurable interest is “every interest in property, whether real or personal, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly indemnify the insured.” (Sec 13)



Insurable Interest

- for Life and Health, (Sec. 10), “every person has an insurable interest in the life and health:-
 - a. of himself, or his spouse and of his children
 - b. of any person on whom he depends wholly or in part for education or support, or in whom he has a pecuniary interest;
 - c. of any person under a legal obligation to him for payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and
 - d. of any person upon whose life any estate or interest vested in him depends.”



Insurable Interest

Measure of Insurable Interest

“The measure of insurable interest in property is the extent to which the Insured might be damnified by loss or injury thereof.” – Sec 17 of Insurance Code

For Life and Health, “unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity... is the sum fixed in the policy.” – Sec 183.

For Fire insurance, “if there is no valuation in the policy, the measure of indemnity...is the expense it would be to the Insured at the time of commencement of fire to replace the thing lost...” – Sec 171



Insurable Interest

Application of Insurable Interest

Insurable Interest must exist at all times except in the case of marine cargo insurance.

Marine Cargo Insurance – insurable interest must exist at the time of loss although not necessarily existing at the time insurance is effected.

Fire Insurance – insurable interest must exist “when the insurance takes effect and when the loss occurs”.

The following have insurable interest on the property aside from absolute owners:-

- a. Joint owners
- b. Mortgagor or mortgagee
- c. Executor or trustee
- d. Bailee, carrier or depository
- e. Lessor or lessee.



Insurable Interest

Assignment or Transfer of Insurable Interest

Refers to the assignment of a policy so that the benefits of insurance is transferred to another.

Marine (except cargo) and Life policies can be freely assigned (unless there is a restrictive clause in the policy), but assignments of Fire and Accident policies are not valid without the consent of the Insurers – except changes of interest by will or operation of law.



Principle of Utmost Good Faith

Utmost Good Faith

This principle means that all contracts of insurance must be negotiated with the utmost good faith which applies to both insurer and the proposer.

“It is an obligation of the insured to ***disclose material facts***, i.e., facts that would influence the insurer in deciding whether to accept the risk or in fixing the terms of the contract.”

“Good faith forbids either party, by ***concealing*** what he privately knows, to draw the other into a bargain from his ignorance of that fact and his believing the contrary.”

“The duty of good faith implies...that the Insurer will disclose to the proposer the terms upon which the risk is accepted.”



Utmost Good Faith

Concealment - is defined under Section 26 of our Insurance Code as “a neglect to communicate that which a party knows and ought to communicate.”

Representation – “is a statement made by the proposer during the negotiations in order to induce the insurers to enter into a contract.”

Misrepresentation – will exist “when the facts fail to correspond with its assertions or stipulations.”



Utmost Good Faith

Circumstances of Breaching Good Faith

1. Concealment will enable the injured party to rescind the contract. Omission or “unintentional concealment” is still concealment.
2. “If a representation is intentionally false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.”
3. In case of Life insurance, 2 years from the date of its issue or of its last rescindable by reason of the fraudulent concealment or misrepresentation of the Insured or his agent.” (Contestability Period)



Utmost Good Faith

Materiality of Concealment & Misrepresentation

1. To void a policy, concealment or misrepresentation must be material.
2. “A material fact is a fact which influences prudent underwriters in their decision to accept or decline a risk and if they accept, to fix the rate and impose special conditions, if necessary. These 2 factors (in underscores) determine the materiality of concealment or misrepresentation.



Utmost Good Faith

Information Exempted from Communication

If neither party asks, the following information does not have to be communicated:-

1. “Those which the other knows;
2. Those which, in the exercise of ordinary care; the other ought to know, and of which the former has no reason to suppose him ignorant;
3. Those of which the other waives communication;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and
5. Those which relate to a risk excepted from the policy and which are not otherwise material.” (Sec 30)



Indemnity Principle

Indemnity –

- payment made for a certain loss or damages.
- principle by which an insured is compensated for losses sustained and is placed as much as possible in the same pecuniary position as he occupied immediately before the misfortune.



Indemnity

Indemnity –

- With the exception of Life and Personal Accident, **all insurance contracts are contracts of indemnity.** This “means that the Insured, in case of loss...shall be fully indemnified up to the amount of loss, but shall never be more than the amount stated in the policy.



Indemnity

The **methods of indemnity** are usually the following:

- 1. Monetary payment** – payment of the cash equivalent of the property lost.
- 2. Reinstatement** – repair or restoration to the original state as closely as is humanly possible.
- 3. Replacement** – replacing the lost article with a similar article.

All the above methods are subject to the limitation of the extent of actual loss, and shall not be more than the limit of liability stated in the policy.



Indemnity

Deviation or Modification of the Indemnity Principle

In Property insurance:-

1. Valued policies or agreed value policies – for works of art, pieces of jewelry.
2. Reinstatement or replacement value policies – “new for old” policies, for buildings and machinery.
3. In Life and PA insurance, insurers limit their exposure based on the lost liberal estimate of the human value.



Subrogation

- the “right of one person to stand in the place of another and to avail himself of the latter’s right and remedies.
- If the insured possesses any rights against a third party in respect of a loss under the policy, the principle of indemnity does not permit the Insured to recover the amount of his loss twice-from the insurer and from the third party.”



Subrogation

When does Subrogation Rights Exist?

- Legally, subrogation rights **do not arise until after the indemnity has been paid**, unless the policy contains, as it often does, an express subrogation condition empowering the insurers, **even before they have paid the loss, to take action in the Insured's name.**
 - Why? In order to obtain evidence while the facts are fresh in the minds of witnesses, and this would not be possible without an express condition.



Subrogation

Extent of Insurers' Right of Subrogation

- "Insurers may enforce its right of subrogation only to the extent of the amount that it has paid. Otherwise, the Insurers stand to make a profit.
- If the Insured has received the full amount of his loss, any sum obtained from the third party belong to the Insurers up to the amount of their disbursement.
- If the amount paid by the Insurer in settlement of claim is less than a full indemnity, because of under-insurance, the rights and remedies are first to be exercised to enable the Insured to have his loss made good. The doctrine of subrogation is merely applied to prevent the Insured from obtaining more than what he had lost."



Subrogation

Elements of Subrogation

Subrogation has 2 elements:

1. Rights to what remains of the subject matter insured (salvage value)
2. Remedies in connection with the recoveries against third parties who may be held liable for whatever loss suffered



Subrogation

Application of the Subrogation Principle

1. The doctrine of subrogation applies “to all insurance contracts that are contracts of indemnity.”
2. Not applicable in Life and PA insurance and whenever lives and the limbs of human beings are the subject matter of insurance.



Contribution

- The Principle of contribution applies where there is more than one insurance in force covering the same subject-matter and the same interest, against the same peril.
- In case of loss, the insurers will pay proportionately to the loss.
- If one insurer pays the whole amount or a substantial portion of the loss, he has the right to recover from all other interested up to the extent of their interest.
- “Double insurance” means it is the insurance that is doubled and not the sum insured.



Contribution

- Contribution will only arise when insurances cover the same **s**ubject matter of insurance, the same **i**nterest and the same **p**eril or risk. This may be remembered as SIP, or in the case of Fire insurance, same **p**roperty, same **i**nterest, same **p**eril or PIP.

Example:

	Sum Insured	% Share	Claim of 150,000
Insurer A	500,000	50%	pays 75,000
Insurer B	300,000	30%	pays 45,000
Insurer C	200,000	20%	pays 30,000
TOTAL	1,000,000		



Contribution

Contribution

- Ensures the equitable distribution of losses as between or among insurers.
- Prevents the Insured from recovering more than full amount of loss and thus supports the principle of Indemnity.



Contribution

Contribution Condition of Insurance Contracts

- The Insured “may claim payment from the insurers in such order as he may select, up to the amount for which the insurers are severally liable under their respective policies.”
- To simplify, most insurance contracts carry “Contribution Condition”.
- A typical condition is the one in our standard fire policy:
“If at a time of any loss...there be any other insurance covering the same loss, damage or liability the company shall not be liable to pay or contribute more than its ratable proportion of any loss....”



Contribution

Over-Payment to the Insured

If the Insured should receive or collect any sum in excess of the amount of full indemnity from several insurers without their knowledge, the Insured is required to turn over such sum to the Insurers in order that they may pro-rate the same among themselves.



Contribution

Right of Contribution

- It is the right of the Insurer even if the policy does not carry a Contribution Clause
- In the absence of a Contribution Clause, the Insured has the power to select who among his Insurers will pay the claim. The Insurer can then exercise his right to contribution and go after the other insurers and claim
- With a Contribution Clause, this power of the Insured to select the insurer who will pay his claim, disappears.



Contribution

Contribution Clauses Cannot Cancel Each Other

Sometimes a contribution clause of Type A policy may provide that liability will attach only *if the same risk is not covered* under Type B policy, and Type B policy also provides that such risk will be claimable only *if the loss is not collectible* under Type A policy. In other words, the provisions of the two policies cancel each other out and leave the insured with an empty bag to hold.

- The Fire policy carries a condition (no. 9) which says:-
"This insurance does not cover any loss...which, at the time of the happening of such loss or damage, is insured by or would, but for the excess beyond the amount...would have been payable under the Marine policy...had this insurance not been affected."
- The inclusion of the above "Marine Clause" has been resented by marine underwriters, and they have responded with a similar clause in certain policies to the effect that the fire risk after warehousing has taken place, shall be paid by the Fire policy and not by Marine policy.



Contribution

Application of Contribution Principle

- Similar to the principles of Indemnity and Subrogation, the principle of Contribution *does not apply to Life and PA insurance* or on whatever kind of insurance under which the subject matter of insurance are the lives and limbs of human beings.



Proximate Cause

What is Proximate Cause?

- the direct cause, the immediate cause and the cause proximate in efficiency or the real cause which is opposite to remote cause
- “the active, efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source.”
- “Proximate cause is the cause proximate in efficiency, and not necessarily the cause nearest in time.”
- “The proximity to the loss is judged not by the time but by effectiveness.”



Proximate Cause

The doctrine of **Proximate Cause** is important because losses are recoverable only when the proximate cause of such losses is one of the risks or perils insured against.

This doctrine is founded at root on convenience and common sense so that a line may be drawn between losses for which Insurers may be held liable and those from which they may be exempted.



Proximate Cause

An Example of Proximate Cause

Where an operation becomes necessary on an accident victim and whilst under the anesthetic, the surgeon decides to extract certain defective teeth and as a result hemorrhage sets in and the person dies, then the death in this case is not due to accident but to the hemorrhage due to teeth extraction which represents a new and intervening cause.



Proximate Cause

Another Example of Proximate Cause

If, as a result of a fall downstairs, a man breaks his legs, is taken to the hospital, contracts a highly infectious disease from the patient in the adjoining bed and dies. Now, the probable and natural outcome of a broken leg is not the highly infectious disease and therefore the death in this instance is due to disease - the accident being merely the remote cause, even though but for the accident, the deceased would not have been taken to hospital if not for the accidental fall.



Proximate Cause

Application of Proximate Cause

- The doctrine of Proximate Cause is important and applicable to almost all kinds of insurance, except Life.
- In Life insurance, proximate cause is not of much practical importance because the Insurer will have to pay in case the Insured dies, irrespective of the cause of death. In case of double benefits due to accidental deaths, then the Insurer will investigate if such death is accidental.



Proximate Cause

Simplifying Proximate Cause

- a. Where the loss is caused by the operation of one peril insured against, there is liability under the policy.
- b. Where two or more causes are in operation, and the final cause is a risk covered by the policy, the underwriters are liable.
- c. Where several risks are in operation, and the dominant or paramount cause is a risk covered by the policy, the underwriters are liable.



OIC Supervision

The Insurance Code & the Commissioner

- The Insurance Code, PD 612 replacing RA No. 2427 was promulgated in December 1974.
- Sections 305, 414 & 415 authorize the Insurance Commissioner to supervise not only insurance companies but also agents, general agents and brokers.
- The Commissioner is also authorized to issue rulings, instructions, order and decisions, as he/she may deem necessary to secure the enforcement of the provisions of the Code, subject to the approval of the Secretary of the Department of Finance.



OIC Supervision

- Insurance Code Provisions for Agents & Brokers
- Definitions of Agent, General Agent and Insurance Broker
- Qualifications



Agents' Ethics

Agents' and Brokers' Ethics

1. No defamation of other insurance companies.
2. No defamation of other insurance agents or brokers.
3. No competition in rebates.
4. No underrating or breaches of tariff.
5. No misrepresentations of terms and conditions of the policies being sold.
6. No conversion of premium held in fiduciary capacity.
7. No malpractices of any kind.
8. Protect not only the interest of the Insured but that of the company as well.
9. Comply with the instruction of the company that one represents.
10. Compete in rendering services, technical or otherwise.



**INSURANCE INSTITUTE FOR
ASIA AND THE PACIFIC, INC.**

End

Thank you.

