Marine Cargo Insurance

LIFM 6.5.0

Elements of a Contract

- Offer and Acceptance
- Consideration
- Capacity to contract
- Legality
- Good Faith

Fundamental Principles

- Insurable Interest
- Utmost Good Faith
- Proximate Cause
- Indemnity
- Subrogation and Contribution

Elements Of Contract vs Insurance Principles

Why is good faith in contract not good enough for insurance contract?

- Offer and Acceptance
- Consideration
- Capacity to contract
- Legality
- Good Faith

- Utmost Good Faith
- Proximate Cause
- Insurable Interest
- Indemnity
- Subrogation and Contribution

Insurance

What is insurance?

- It is a legal contract
- It is used to share risk
- Activates only ***after*** something has gone wrong

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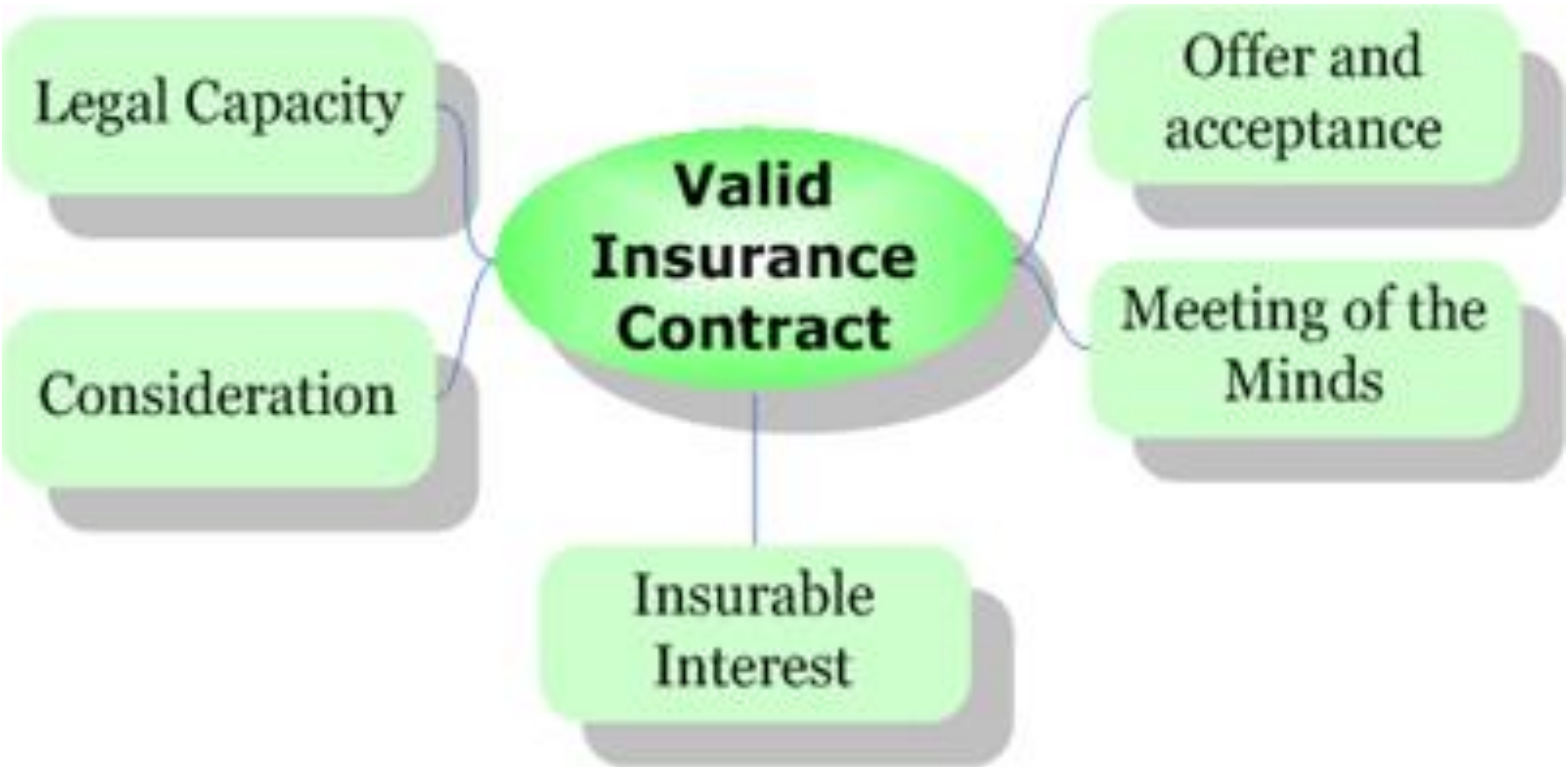
Fundamental Principles



Fundamental Principles

- Utmost Good Faith
- Insurable Interest
- Indemnity
- Proximate Cause
- Subrogation and Contribution

Fundamental Principles

Principles of Insurance

- Utmost Good Faith
- Insurable Interest
- Principle of Indemnity
- Principle of Contribution
- Principle of Subrogation
- Principle of loss Minimization
- Principle of 'CAUSA PROXIMA'

- Why is it so easy to get?

✓ Everything can be insured.

- Why is it hard to keep?

✓ It is a price for peace of mind.

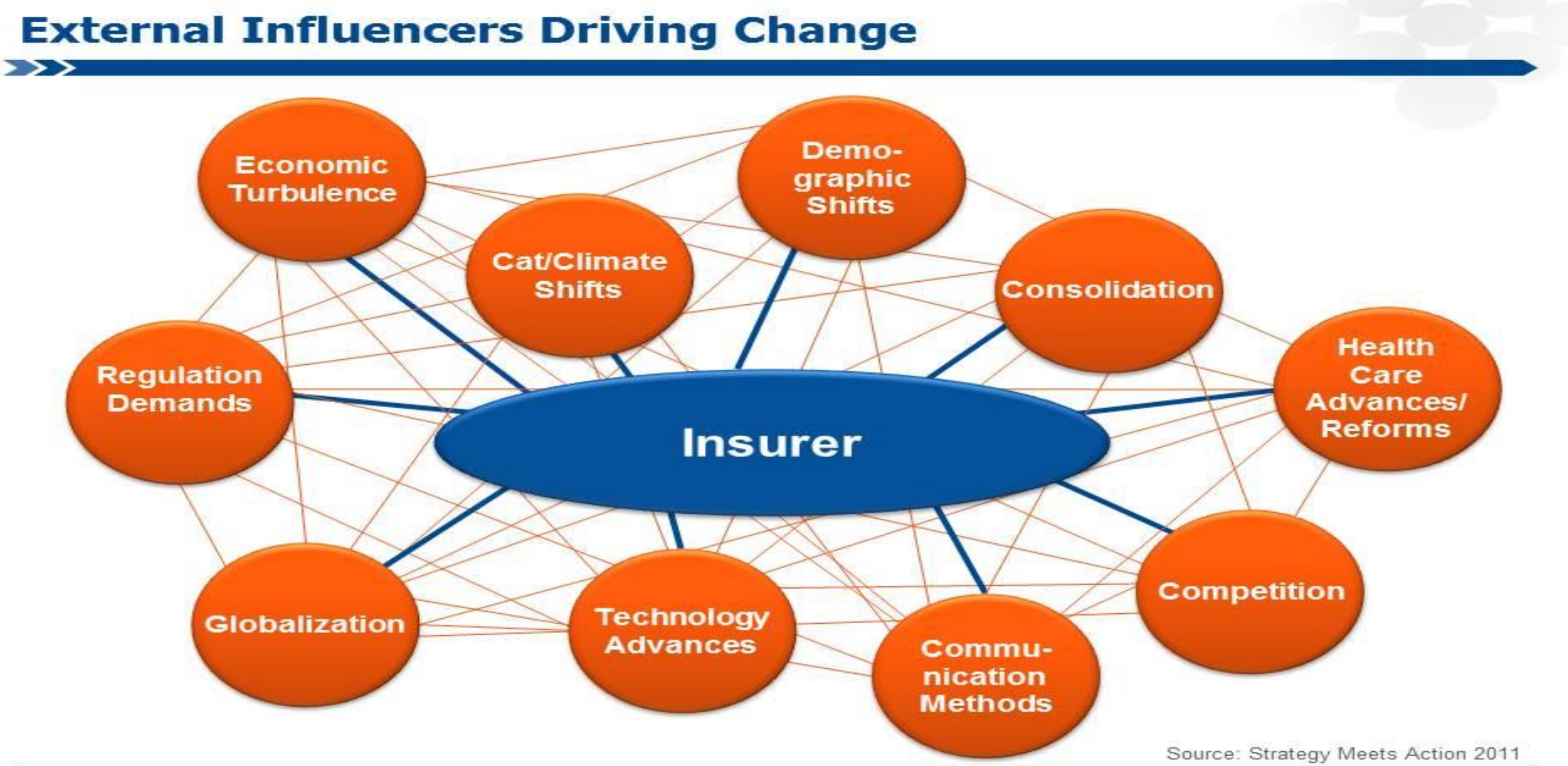
- What is the trouble with insurance?

✓ Pays only when something has gone wrong.

What is risks?

- It is about RISKS?
- Take a Risk?
- Is that Gambling?
- Or is that Insurance?

What is Risk?


External Influencers Driving Change
Economic Turbulence
Demo-graphic Shifts
Cat/Climate Shifts
Consolidation
Health Care Advances/ Reforms
Regulation Demands
Insurer
Globalization
Technology Advances
Commu-nication Methods
Competition
Source: Strategy Meets Action 2011

What is the odds?

- Both Gambling and Insurance involve the transfer of risk and reward
- Gambling creates Loser and Winner
- Insurance offers to replace loss and not to create Pure Gain.

What is the odds?

- Gamblers can continue spending, buying more risks than they can afford
- Insurance buyers are risks avoiders, transfer their needs to reduce exposure to Large losses

What is the odds?

- Gambling is designed so that odds are not affected by players conduct or behaviour
- Insurance requires policy holders to conduct risk mitigation practices such as installing fire sprinklers, fire proof materials to reduce odds of loss
- Insurers specialize in rehabilitation to minimize the risk of Total Loss

Who will pay?

The burden of financial loss

Who will replace the Boeing 747?

Who must now support the widow and her 3 children?

Who will restore the embezzled funds?

Where will the money come from to rebuild the house?

What about the medical expenses of injured pedestrian?

What happens when the ship and its cargo does not arrive at destination?

Who will pay?

- Disasters are an ever present hazard
- Financial losses can be transferred to professional risk-takers
- Insurance plays a vital part in international trade and economic progress

What is risk management?

Risk Management

	Low Likelihood	High Likelihood
Minor Consequences	**A** Risks that can be safely ignored	**B** Risks that can be mitigated through simple changes in behavior
Major Consequences	**C** Risks that can be mitigated through insurance	**D** Risks to actively identify, monitor, and mitigate

Sustainable Human Resource Development in logistics services for ASEAN Member States

Where does insurance fit in?

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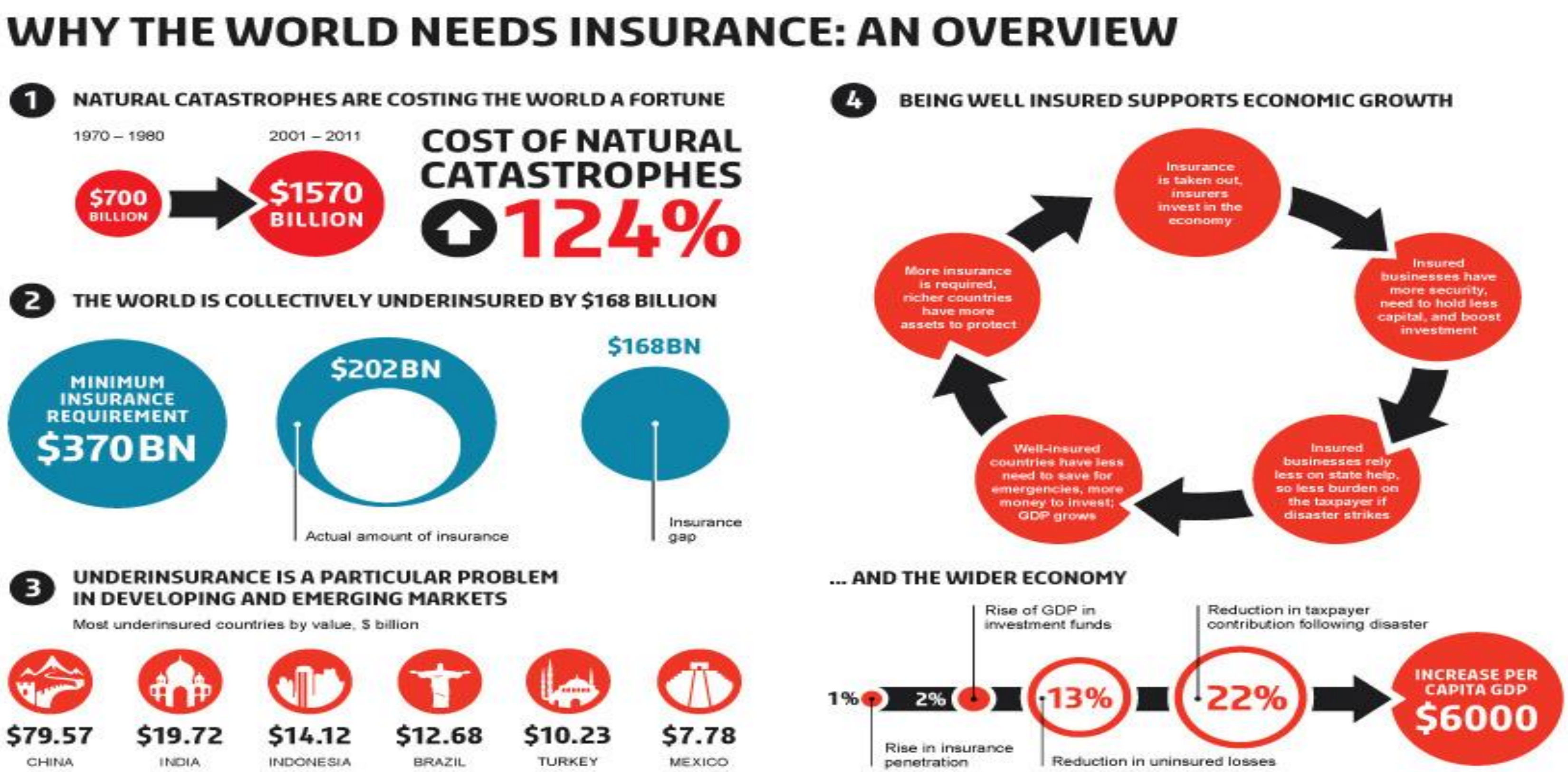
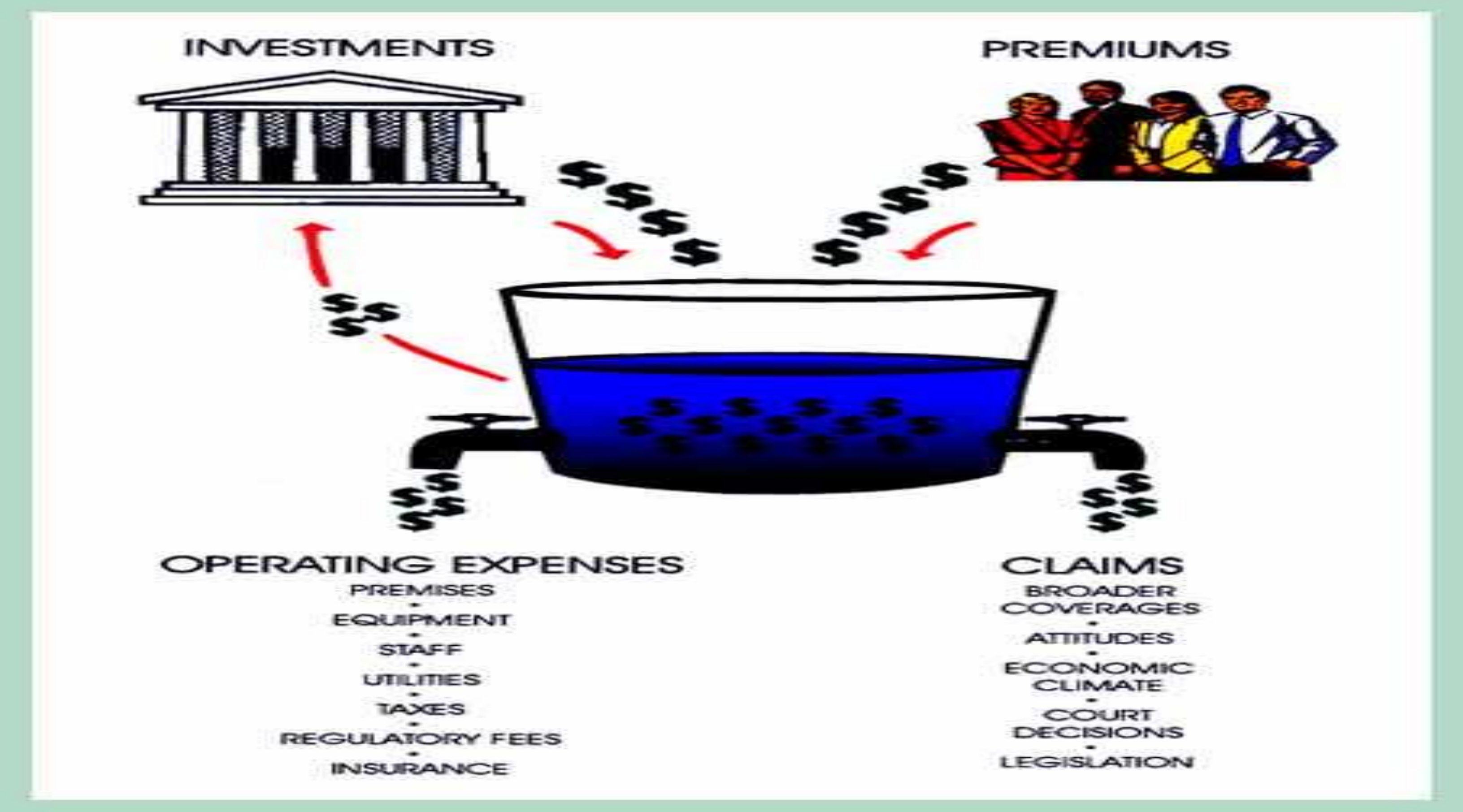
Insurance


WHY THE WORLD NEEDS INSURANCE: AN OVERVIEW
1 NATURAL CATASTROPHES ARE COSTING THE WORLD A FORTUNE
1970 – 1980
2001 – 2011
$700 BILLION
$1570 BILLION
COST OF NATURAL CATASTROPHES
124%
2 THE WORLD IS COLLECTIVELY UNDERINSURED BY $168 BILLION
MINIMUM INSURANCE REQUIREMENT $370BN
$202BN
Actual amount of insurance
$168BN
Insurance gap
3 UNDERINSURANCE IS A PARTICULAR PROBLEM IN DEVELOPING AND EMERGING MARKETS
Most underinsured countries by value, $ billion
$79.57 CHINA
$19.72 INDIA
$14.12 INDONESIA
$12.68 BRAZIL
$10.23 TURKEY
$7.78 MEXICO
4 BEING WELL INSURED SUPPORTS ECONOMIC GROWTH
Insurance is taken out, insurers invest in the economy
Insured businesses have more security, need to hold less capital, and boost investment
Insured businesses rely less on state help, so less burden on the taxpayer if disaster strikes
Well-insured countries have less need to save for emergencies, more money to invest; GDP grows
More insurance is required, richer countries have more assets to protect
... AND THE WIDER ECONOMY
Rise of GDP in investment funds
Reduction in taxpayer contribution following disaster
1%
2%
13%
22%
INCREASE PER CAPITA GDP $6000
Rise in insurance penetration
Reduction in uninsured losses

Insurance Market



Insurance Market

- Who are the players?

➢ The insured/assured (buyer)

➢ The underwriter (seller)

➢ The insurer/insurance company

➢ The insurance broker (intermediary)

➢ The loss adjusters

Shifting the burden by law

- Common Law or Civil Law
- Statute or Criminal Law
- Statutory Insurance

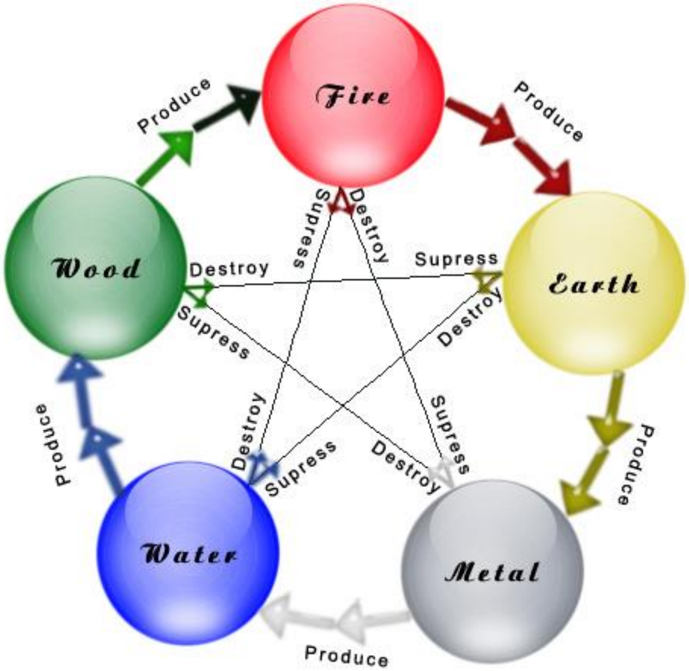
Insurance Premium

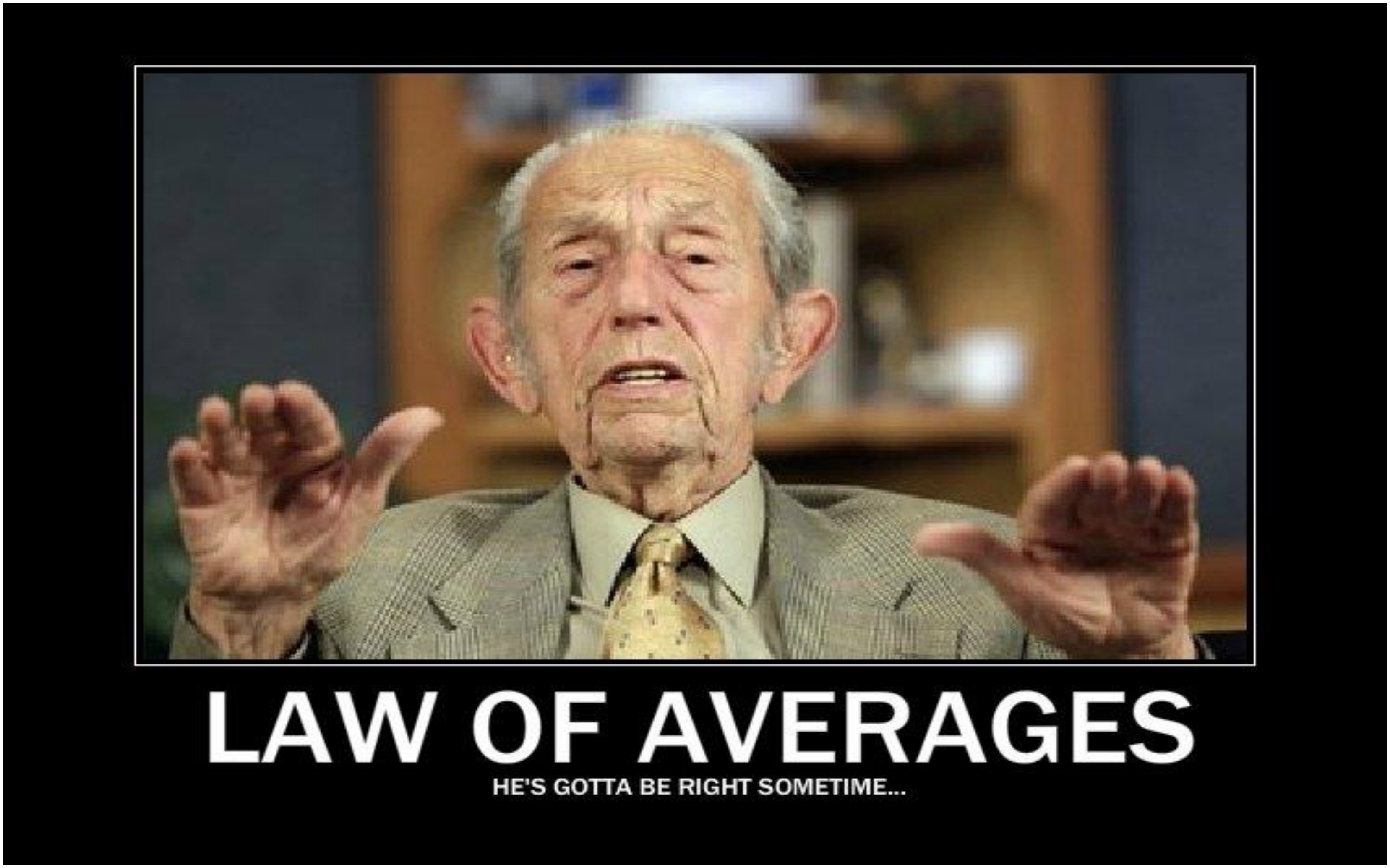
2 parties to an insurance contract

1. Insurer agrees to pay claims according to the contract
2. Insured agree to pay premium or consideration for the performance

Elements of Insurance

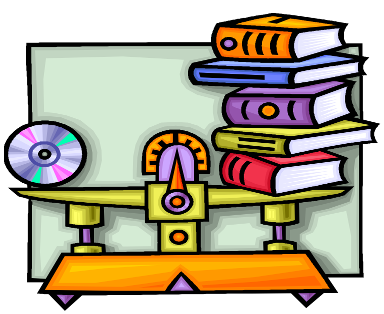
- Insured must be subject to a real risk
- Risk must be important enough
- Cost of insurance must not be prohibitive




LAW OF AVERAGES
HE'S GOTTA BE RIGHT SOMETIME...

Law of Averages…consequences

Law of Large Numbers

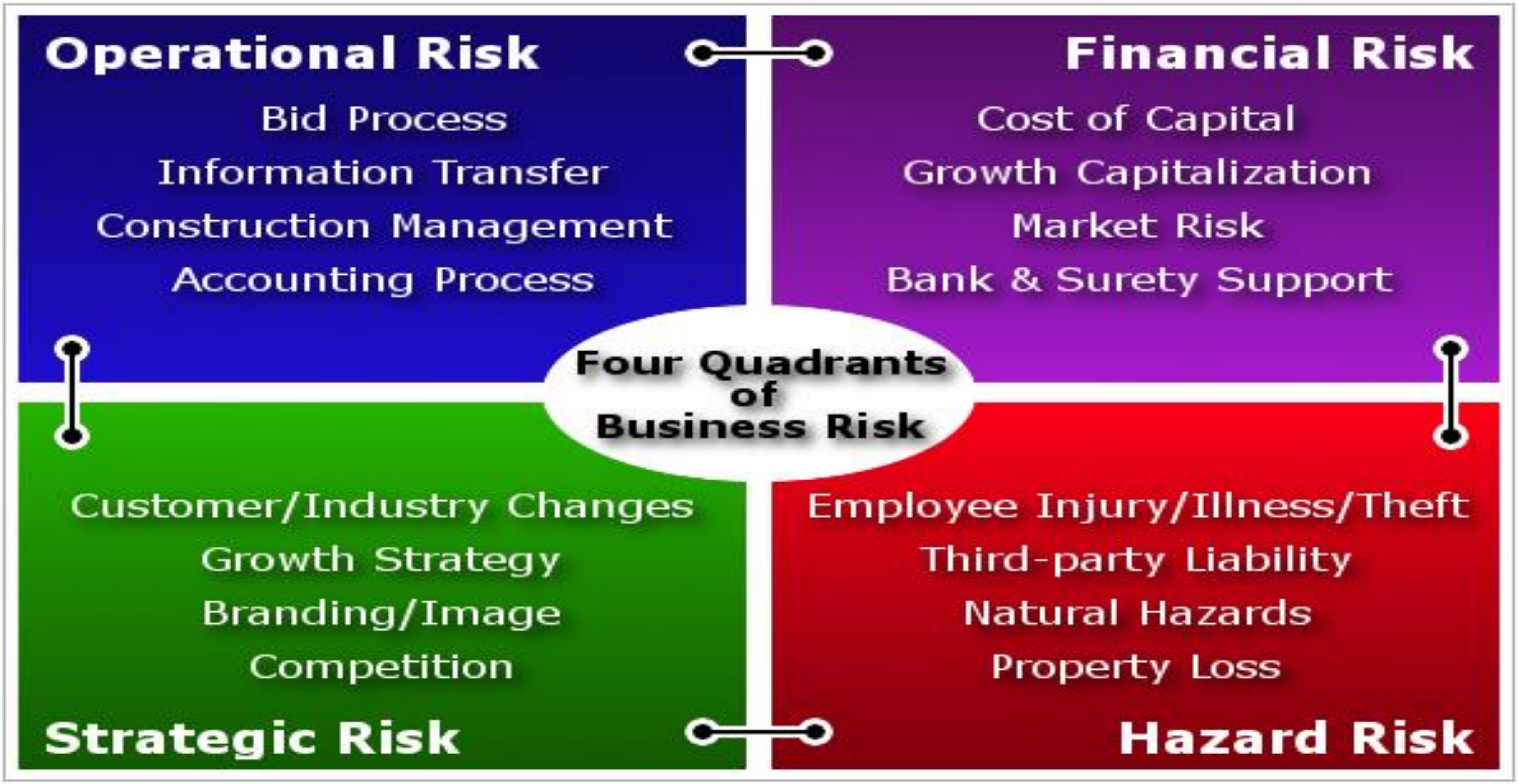


- Exact opposite of gambling
- Preeminently social in nature
- Accumulation of large funds
- Catastrophes prevent proper working of law of average
- Size of individual risk do not vary greatly
- Random selection of risks

Insurable Risks…7 common characteristics

- Law of large numbers
- Definite Loss
- Accidental Loss
- Large Loss
- Affordable premium
- Calculable Loss
- Limited risk of catastrophically large loss

Business Risk



Insurable Interest

Indemnity

Principle of Indemnity

- Indemnity means a guarantee or assurance to put the insured in the same position in which he was immediately prior to the happening of the uncertain event. The insurer undertakes to make good the loss.

- It is applicable to fire ,marine and other general insurance.

- Under this the insurer agrees to compensate the insured for the actual loss suffered.

Insurable interest

What is it that is insured in a fire policy?

Not the bricks and materials used in building the house, but the *interest* of the insured in the subject matter of insurance.

Court of Appeal in the case of ***Castellain v. Preston (1883)***

Utmost Good Faith

Uberimae Fidei

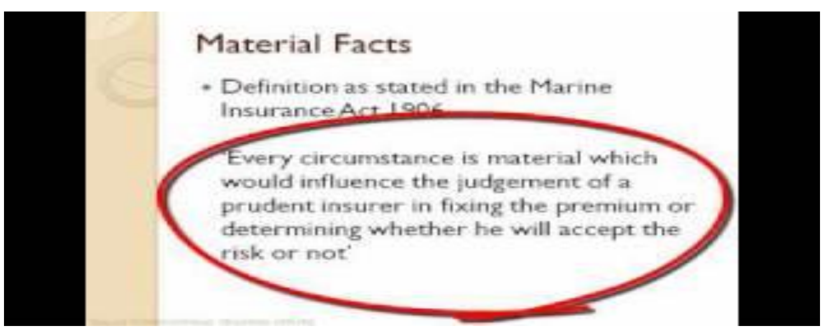
'As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured…to make a full disclosure to the underwriter without being asked of all the material circumstances. This is expressed by saying it is a contract of the utmost good faith.'

(Rozanes v. Bowen (1928)

Material Facts

Legal definition contained in the Marine Insurance Act 1906 s.18 (2):

'Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.



Representations

Written or oral statements made during the negotiations for a contract are termed 'representations'. Some of these statements will be about material facts and others will not. Those which are material must be substantially true or true to the best knowledge or belief.

Warranties

Fundamental conditions and a breach allows the aggrieved party to repudiate the contract. It is an undertaking that something shall or shall not be done or that a certain state of affairs exists, or does not exist.

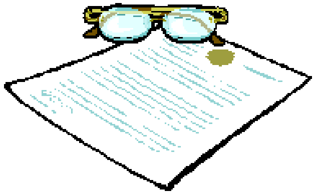
Comparison

Representations

1. Need only be substantially correct
2. A breach (misrepresentation) must be material to allow repudiation
3. Do not normally appear on the policy

Warranties

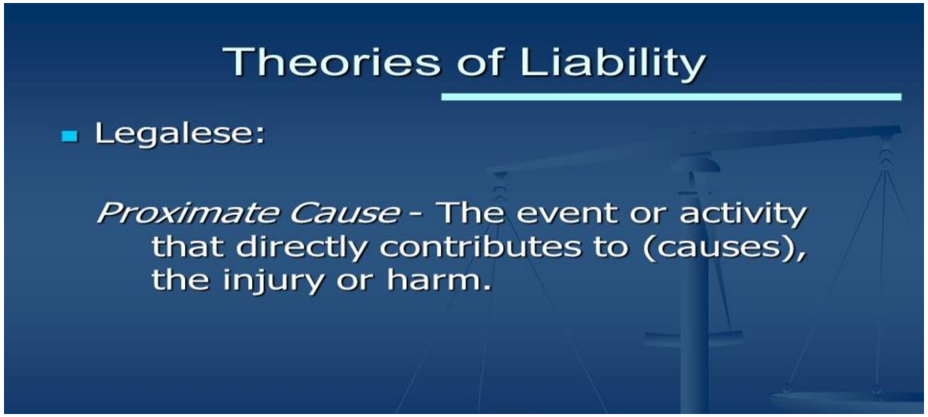
1. Must be strictly and literally complied with
2. Any breach gives the right to repudiate
3. Are written into the policy except for implied warranties. (There is no legal requirement to do this directly as the proposer may be asked to sign a warranty on the proposal form and the policy states it as basis of contract).

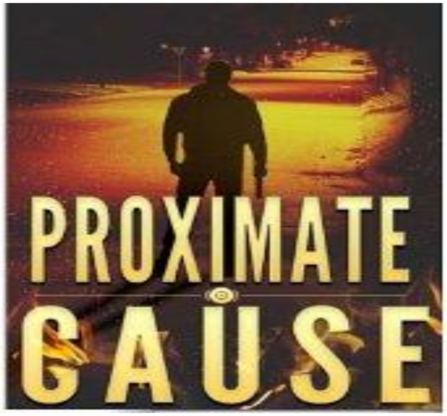


Proximate cause

'Proximate cause means the active, efficient cause that sets in motion a train of events which bring about a result, without the intervention of any force started and working actively from a new and independent source.'

The standard legal case of Pawsey v. Scottish Union and National (1907)





Proximate cause (contd)

The proximate cause is not the first cause,

nor the last cause, **it is the dominate cause**

(Leyland Shipping Co. v. Norwich Union (1918)

or the efficient or operative clause

(P. Samuel & Co. v. Dumas (1924)

"The patient in the next bed is highly infectious. Thank God for these curtains."

Proximate cause (contd)

Pink v. Fleming (1890) on Delay

There was an insurance on a cargo of oranges and was warranted free from partial loss or damage unless such loss or damage was consequent on collision with any other ship. There was a collision during the voyage and the vessel had to be put into port for repairs. In order to make repairs the cargo had to be discharged into lighters and subsequently reloaded. When the vessel arrived at destination, it was found that the fruit was considerably damaged partly due to handling and partly from natural decay owing to the delay in voyage.

Question is was the damage to the cargo a result of or caused by the collision within the meaning of the policy?

The COURT held that the loss was not recoverable. The proximate cause was due to delay and not the collision. Delay is a policy exclusion.

Indemnity

Lord Justice Brett, in the case of Castellain v. Preston (1833) define indemnity for the purposes of insurance contracts as '***exact financial compensation sufficient to place the insured in the same financial position after a loss as he enjoyed immediately before it occurred***.'

Methods of Indemnity

- Payment of cash
- Repair
- Replacement
- Reinstatement

Subrogation

Is the right of one person to stand in the place of another and avail himself of all the rights and remedies of that other, whether already enforced or not.

In the case of Burnand v. Rodocanachi (1882)

The fundamental point is that the insured is entitled to indemnity but no more than that. It allows the insurer to <u>recoup any profit the insured might make</u> or reduce the loss from an insured event.

Subrogation

Subrogation

Contribution

Contribution

Is the right of an insurer to call upon others similarly, but not necessarily equally liable to the same insured to share the cost of an indemnity payment.

Leading cases in contribution

North British & Mercantile v. Liverpool & London & Globe (1877)

Scottish Amicable Heritable Securities Association v. Northern Assurance Co. (1883)

Glasgow Provident Investment Society v. Westminster Fire Office (1887)

Case Study 1

- A Thai exporter has his factory in Bangkok and he has entered into a sale contract to ship a consignment of rice with a buyer whose premises are located in Hongkong

- Discuss the liability and responsibility of the buyer and seller as regards to risk and insurance if the terms of sale are
  - CIF
  - FOB

Case Study 2

- A buyer in Australia has agreed to buy 500 washing machines under EXW terms. The goods are made available at the seller's premises in China from 1st July 2007 and for two weeks.
- On 1st July, the seller informs the buyer that the goods are ready for taking over. On 12th July thieves break into the premises and the washing machines are stolen.
- Discuss the liability and responsibility of the buyer and seller as regards risks and insurance.