1.0 GENERAL

There are certain basic principles in General Insurance, which are applicable in almost all underwriting departments. These are frequently referred to in various discussions, particularly in chapters involving technical departments. Therefore, it would be more useful to discuss these principles and other basic matters in a single chapter, so that repetitions can be avoided.

1.0.1 BASIC PRINCIPLES

General Insurance contracts follow a few basic principles. Generally, these principles are applicable for most of the General Insurance Policies. But, it must be remembered that there are exceptions. That is to say, a particular principle may not be applicable to a specific contract. Such exceptions would be mentioned in relevant portion of *'Learning Material-2015*'.

The basic principles are:

a Insurable Interest: Which means that in case of loss of or damage to the property/subject matter, the proposer must suffer financial loss. This gives the proposer **legal right to insure** the property/subject matter.

One can have insurable interest in a property for any one/more of the following reasons:

i. Ownership

ii. Bailer/Baillie

iii. Leaser/Lessee

iv. Mortgagor or Mortgagee (*e.*g. Banker's interest in protecting properties of loanees)

v. Goods held in trust/by agreement (*e.g*. A dry-cleaner's responsibility in safeguarding customers' clothes under his custody)

Did you know….

Generally, Insurable Interest must exist both at the time of issuance of Policy as well as at the time of occurrence of loss. Carefully note the situation in Marine Policy.

'Insurable Interest' may arise out of relations also. E.g. Parents have insurable interest in health or life of their children and vice versa. This is true between spouses also.

b. Indemnity: According to Legal Dictionary, 'Indemnity' means

1. Protection or security against damage or loss.
2. Compensation for damage or loss sustained.
3. Something paid by way of such compensation.
4. Protection, as by insurance, from liabilities or penalties incurred by one's actions.

The principle of Indemnity therefore ensures that the insured gets only the **'compensation' for the loss incurred by him**. He should never stand to gain financially through settlement of any insurance claim. Please note that, the 'monetary cost' of one's life cannot be evaluated. It is assumed to have infinite value to oneself. Hence, strictly speaking, this principle is not applicable for Policies covering life.

c. Utmost Good Faith: The Principle of Utmost Good Faith states that a contract "*in which knowledge of the material facts generally lies with one party alone; that party is under a duty to make a full disclosure of these facts, and failure to do so makes the* ***contract*** *…*"[1]

d. Subrogation : 'Subrogation' means transfer of right from Insured to the 'Insurer'. When a loss or damage takes place, and if such loss is indemnifiable by others as per law or contract, Insurers (after indemnifying the insured) exercise their right to recover the loss from persons/organization responsible for indemnifying such loss. It is clear that, in absence of this principle, Insured may gain financially out of settlement of a claim. Therefore, principle of subrogation is essentially a corollary of the principle of Indemnity.

e. Proximate Cause : 'Proximate Cause' can be formally defined as *"active, direct, and efficient cause of loss in insurance that sets in motion an unbroken chain of events which bring about damage, destruction, or injury without the intervention of a new and independent force"* [2]

Often, the Latin phrase 'Uberrimae Fidei' meaning 'Utmost Good Faith' is used in Insurance Vocabulary. Most other ordinary commercial contracts are based on the principle of 'Caveat Emptor' which means 'Let the Buyer Beware'.

(1) Source : Legal Dictionary : Chitty on Contracts —29th edition

(2) Businessdictionary by WebFinance, Inc.

'Proximate Cause' is also referred to as '**Direct cause**'. According to Insurance Expert Eric Novinson[3] "*Proximate cause refers to the first event, or first peril, in a series of events that causes damage in an insurance claim. The proximate cause itself may not do any direct damage…..*" The doctrine of Proximate Cause is equally applicable in property insurance as well as life insurance. However, it is common source of dispute in Insurance Claims and matters often get referred to the court of law. There are landmark judgments delivered by various courts in this matter.

f. Contribution : 'Contribution' arises when there is more than one insurance policy which can cover the same loss. It is generally applicable for property insurances. The usual practice is to share the loss on proportionate basis between the Policies. Careful study would reveal that 'Contribution' clause is also a corollary of the basis principle of Indemnity.
'Contribution' clause is not applicable for Policies covering life e.g. Personal Accident Policy.

Did you know….

If a claim is payable under both 'Fire' and 'Marine' Policy, the Fire claim will not be paid.

1.0.2 COMMON EXCLUSIONS

In Most of the Contracts of General Insurance, various perils are excluded from the scope of different policy coverage. Some exclusions are very common and applicable to almost all policies with very few exceptions. Take a note of the following common exclusions, which will be frequently referred to in subsequent sections of this reading material without further elaboration:

Did you know….

'War' risk is coverable under certain policies like Marine Transit and Hull.

(3) Contributor to Insurance section of eHow

- Loss or damage directly or indirectly caused by War, Invasion, act of foreign enemy, hostilities or war like operation (whether war be declared or not), Civil War, Rebellion, Revolution, Insurrection, Mutiny, Civil Commotion, Military or usurped power, martial law, conspiracy, confiscation, commandeering a group of malicious person or persons acting on behalf of or in connection with any political organisation, requisition or destruction or damage by order of any government de jure or de facto or by any public, Municipal or Local Authority. (hereinafter, to be referred as **War Loss**)
- Loss or damage directly or indirectly caused by, or arising out of, or aggravated by nuclear reaction, nuclear radiation or radioactive contamination (hereinafter, to be referred as **Nuclear Loss**)
- Loss or damage as a direct consequence of the continual influence of operation (e.g. wear and tear, corrosion, rust, deterioration due to lack of use and normal atmospheric conditions. (hereinafter, to be referred as **Wear and Tear**)
- Loss or damage directly or indirectly caused by, or arising out of or aggravated by the willful act or willful negligence of the insured or his representatives. (hereinafter, to be referred as **willful negligence**)
- Loss or damage for which the supplier or manufacturer is responsible either by law or under contract (hereinafter, to be referred as **losses covered under contract**)
- Loss or damage discovered only at the time of taking an inventory or during routine servicing (hereinafter, to be referred as **inventory losses**)
- In many policies, there is a minimum specified amount called excess. **'Excess'** is the amount that will be deducted from each claim to arrive at payable amount. That means that any claim upto that amount would not be payable.
- In some policies, where the time taken for reinstatement/repair of loss is of importance, **'Time Excess'** is used. This concept is common in 'Loss of Profit' or consequential loss policies.
- ' **Franchise** has some similarity with excess. Any claim upto the franchise amount is not payable. But if the claim is larger than franchise amount, compensation is calculated without subtracting the franchise amount.

  Many Policies offer option to proposers to select 'higher excess' i.e an amount larger than specified minimum excess in that Policy. This is often known as **'voluntary excess'**. By selecting higher excess, the insured is offered a discount.

  Excess or franchise is a useful concept. This eliminates smaller claims, thus reducing administrative works apart from reducing the claim ratio.

1.0.3 COMMON CLAUSES

- General Insurance Contracts are subject to certain common clauses/conditions with a few exceptions. These common clauses include:

- If any dispute or difference shall arise as to the quantum to be paid under a policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. (Hereinafter referred to as **Arbitration Clause**)
- An insurance contract may be terminated at any time at the request of the Insured, in which case the Company will retain the premium calculated at the customary short period rate for the time the policy has been in force. Insurance may also at any time be terminated at the option of the Company, by notice to that effect being given to the insured, in which case the Company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation. (to be referred as **Cancellation Clause**)

1.0.4 COMMON TERMS

- **Negligence**

  Negligence can be defined as an act of a lack of due care or concern —*'an unintended wrong involving breach of legal duty of care'*[4].

  Breach of duty may occur due to either.

  - Act of commission (negligent act): Doing something a reasonably prudent man would not do under given circumstances or
  - Act of omission (Negligent omission): Failure to do something a reasonably prudent man would do under given circumstances.

  Breach of duty of care means failure to exercise reasonable degree of care. Court would decide whether the standard of care required under the circumstances was observed. The complainant has to prove that such duty of care was owed by the other.

  Negligence is insurable; but willful negligence is not. Mere carelessness where there is no duty to take care is not negligence.

- **Tort**

  'Tort' has been defined as "*a civil wrong arising from an act or failure to act, independently of any contract, for which an action for personal injury or property damages may be brought*"[5].

  Tort law deals with situations where a person's behavior has unfairly caused someone else to suffer loss or harm. A tort is not necessarily an illegal act but causes harm. The law allows anyone who is harmed to recover their loss. Tort law is different from criminal law, which deals with situations where a person's actions cause harm to society in general. A claim in tort may be brought by anyone who has suffered loss after suing a civil law suit. Criminal cases tend to be brought by the state, although **private prosecutions** are possible.

(4) Blyth v. Birmingham Waters Company (1956)
(5) Legal Dictionary – FARLEX

- **Crime**

  Crime is *"an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law; especially a grave offence against morality"*[6]

TORT	CRIME
Breach of private rights of individual as individual	Breach of public rights which affects the entire society as a society
Action initiated by aggrieved party	State prosecutes the culprit
Remedy is in compensation	Punishment in the form of imprisonment &/or fine
Adjudicated by civil court	Conviction by criminal court
Civil Liability is insurable	Criminal liability is not insurable as it is against public policy —civil consequences of a criminal act can be covered

(6) From Dictionary by Merriam-Webster

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