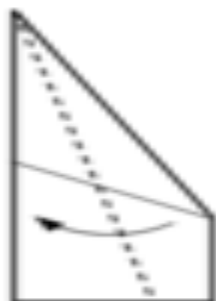
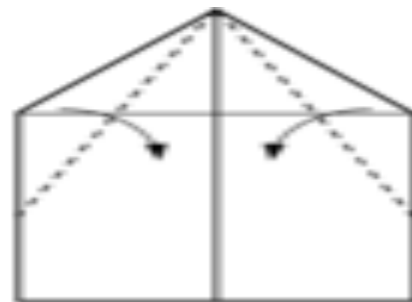
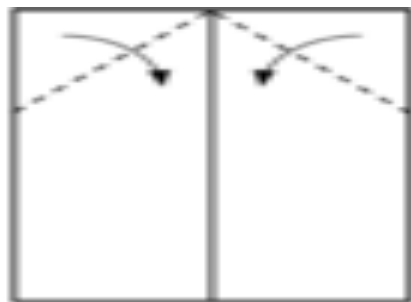
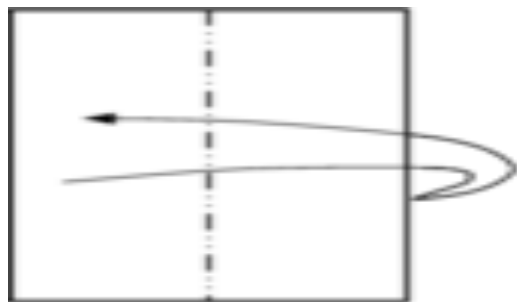


# **InsureTech 2020: Regulation – Will it ever catch up?**

**Donald Dinnie  
Daniel Breier**





- **ANY SUFFICIENTLY ADVANCED TECHNOLOGY IS EQUIVALENT TO MAGIC**

*Sir Arthur C Clarke*

- **TECHNOLOGY IS ANYTHING THAT WASN'T AROUND WHEN YOU WERE BORN**

*Alan Kay*

# FIRST HORSELESS CARRIAGE



Henry Bliss, America's first  
horseless carriage  
fatality, 1899

- **GETTING INFORMATION OFF THE INTERNET IS LIKE TAKING A DRINK FROM A FIRE HYDRANT.**

*Mitchell Kapor*

- **TECHNOLOGY IS A USEFUL SERVANT BUT A DANGEROUS MASTER.**

*Christian Lous Lange*

- **ONCE A NEW TECHNOLOGY ROLLS OVER YOU, IF YOU'RE NOT PART OF THE STEAMROLLER, YOU'RE PART OF THE ROAD.**

*Stewart Brand*

- **WE DON'T NEED NUKES. WE HAVE THE INTERNET.**

*Alice Minium*

# InsurTech in the Insurance Value Chain

| Product                                | Distribution      | Underwriting                            | Administration and Claims        |
|--|-------------------|---|----------------------------------|
| Smart/Connected Devices                | Digital platforms | Bespoke pricing                         | Artificial intelligence          |
| Pay as you go and micro insurance      | Sharing economy   | Granular risk / micro risk segmentation | Robotics and automatic           |
| Robo advice (inc in Wealth Management) | P2P               | Risk assessment                         | IoT                              |
| Self Directed Services                 | Data capture      | Real time pricing                       | Blockchain / Distributed Ledgers |
| Consumer Behaviour                     | Disintermediation | Probabilistic to deterministic          | Smart Contracts                  |
|  |                   |   | Big Data / Data Analytics        |



# Protection of Personal Information Act, 2013

Protects **personal information**

**Data subject:** living individuals and corporates

**Responsible Party:**  
Person or entity who determines the purpose of and means for processing personal information

**POPI applies to:**

- SA companies;
- Foreign companies processing in SA

# Where are we with POPI?

Partially in force since 2014

Information Regulator established as of December 2016

Chairperson = **Pansy Tlakula**

Regulations published in December 2018

The effective date to be determined by the President

Possibly 1 April 2020

**1 year** after that to comply



# What is personal information?



# 8 conditions for lawful processing

The responsible party is **accountable**

2 Processing must be **lawful**, **reasonable** and **justified**

3 Processing must have a **specific purpose**

7 Appropriate and reasonable **security safeguards** must be in place

4 **Further processing** must be compatible with the original purpose

The data subject must be **aware** of **6** the processing

5 Information must be **accurate** and **up to date**

8 Data subjects may request **access**, **correction**, **deletion**

# Some things to think about

- **Consent clauses**

- Are we asking for consent where we don't need it?
- Where we do need consent, is it valid under POPI?

- **Data security**

- Do we have technical and organisational security safeguards against loss, damage, unlawful access, unauthorised destruction.
- Have we taken appropriate and reasonable measures to identify risks, establish safeguards, check implementation and update regularly.

# Some things to think about

- **Automated decision making**

- Unless certain requirements are met, data subjects cannot have decisions made which result in legal consequences for them or which affect them to a substantial degree solely on the basis of the automated processing of personal information
- Insuretech – use of AI through underwriting / claims AI algorithms will likely be lawful as it will be considered to be a decision taken in terms of the conclusion or execution of a contract
- But one must take appropriate measures to protect the interests of data subjects – including allowing representations and providing access to information about underlying logic of the algorithm

- **ETHICS CHANGE TECHNOLOGY**

*Larry Niven*

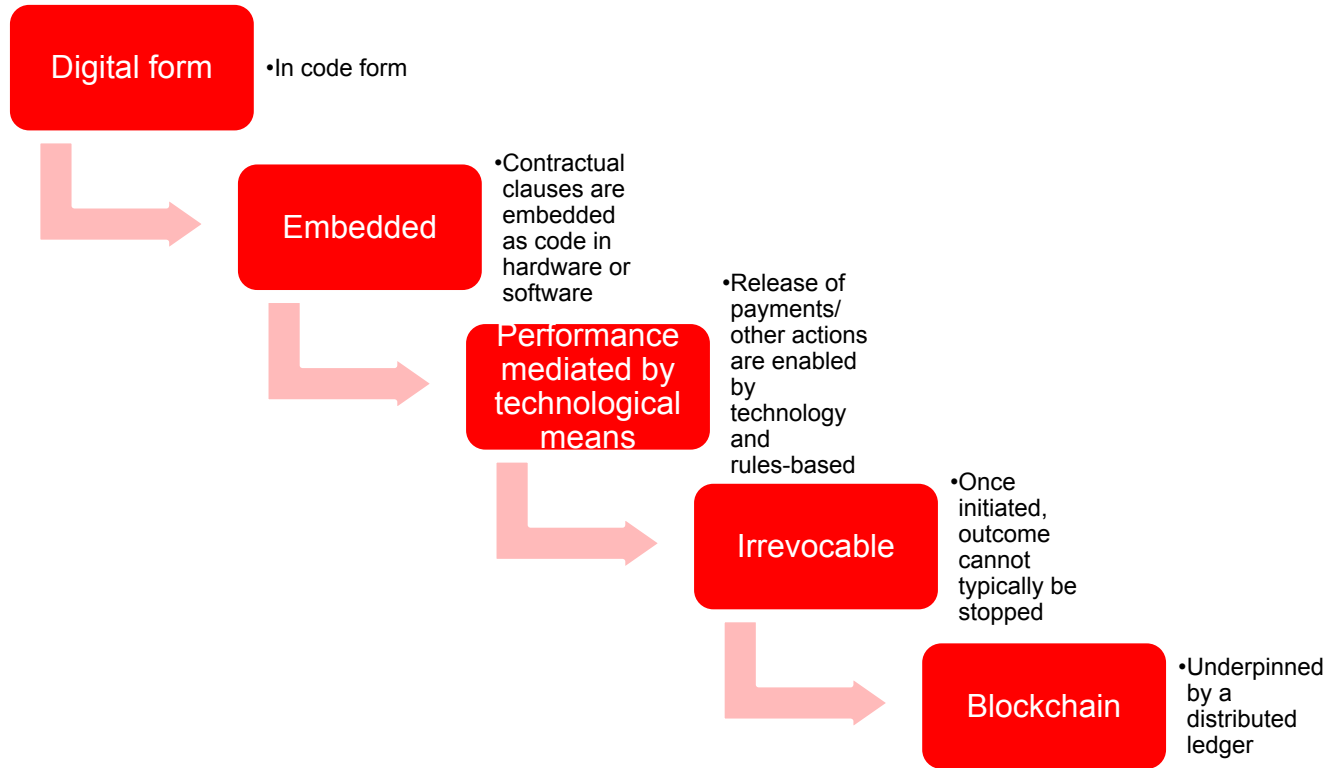
- **ITS SUPPOSED TO BE AUTOMATIC, BUT ACTUALLY YOU HAVE TO PUSH THIS BUTTON**

*John Brunner*

- **TECHNOLOGY PRESUMES THERE'S JUST ONE RIGHT WAY TO DO THINGS AND THERE NEVER IS**

*Robert M Pirsig*

# SMART CONTRACTS: ARE THEY BINDING?



# FACTORS TO CONSIDER

- Smart contract models
- Facts and applicable law
- Jurisdiction
- Enforceability
- Inclusion of dispute resolution mechanisms

# POSITION IN SOUTH AFRICA

## Requirements for valid contract:

- Consensus
- Contractual capacity
- Lawfulness
- Possibility
- Formalities
- Impact of Electronic Communications and Transactions Act



- **COMPUTERS ARE USELESS. THEY ONLY GIVE YOU ANSWERS.**

*Pablo Picasso (Artist)*

- **TECHNOLOGY FRIGHTENS ME TO DEATH. IT'S DESIGNED BY ENGINEERS TO IMPRESS OTHER ENGINEERS. AND THEY ALWAYS COME WITH INSTRUCTION BOOKLETS THAT ARE WRITTEN BY ENGINEERS FOR OTHERS ENGINEERS – WHICH IS WHY ALMOST NO TECHNOLOGY EVER WORKS.**

*John Cleese*

- **TECHNOLOGY IS A WORD THAT DESCRIBES SOMETHING THAT DOESN'T WORK YET.**

*Douglas Adams*

- **WE ARE STUCK WITH TECHNOLOGY WHEN WHAT WE REALLY WANT IS JUST STUFF THAT WORKS**

*Douglas Adams*

- **WE NOW EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER**

*Sherry Turkle*

# Applications of AI relevant to the Insurance Sector

## Own Processes

- Processing of data
- Identifying customers
- Pricing risk
- Analysing claims
- Chatbots
- Internet of Things
- Big Data analysis
- Collecting and feeding back large amounts of data efficiently
- New products to cover risks emerging from the implementation of AI technologies
- Fraud detection

## Risk Coverage Areas

- Chatbots
- Autonomous vehicles
- Manufacturing
- Cyber risks
- Healthcare
- Data analysis
- Transportation

## AI applications include...



### Speech processing

- Conversion between speech (audio) and text



### Natural language processing

- Deriving meaning, context, or sentiment in textual data or conversations with humans using grammars and graph structures



### Machine vision

- Detecting patterns in visual content for object tracking, audio, and face recognition



### Robotics

- the use of AI systems to automate and mechanically control machine movements

### AI planning

- A form of automated programming

# AI Liability

AI technologies present potential new sources for liability

- 'Bugs' in the AI software
  - Logic Error
  - Implementation Error
  - Corner case
- Deliberate choices by the AI software
- Defects with the specialist equipment used by the AI to collect information
- Fault during the handover process from a human to AI



# Unintentional coverage

- Situations where an existing policy may cover a liability that it was not intended to cover
- Examples could include the following:
  - where an AI system used as part of legal services makes an error which is not detected by a human ‘supervisor’ and there is an existing D&O policy
  - where an AI system operating heavy, industrial equipment causes harm to a worker and there is an existing policy covering workplace death and injury caused by machinery
  - where an AI system coordinating vehicles makes an error and causes a delay or loss of goods
  - where an AI system is involved with a healthcare diagnosis and a claim for medical negligence is established
- Complexity of AI systems means where there is such harm, the resultant financial loss is potentially severe and insurers are therefore open to greater risk under existing policies that they may not be aware of
- This has been seen in other coverages such as D&O and Cyber

## Product liability

- Strict liability
- Is AI a “product”?
- Is programming a “defect” when it results in unexpected outcomes?

## Strict liability

- Under statute
- Breach of statutory duty
- Criminal liability

# Liability in AI supply chain

## Liability for negligence in delict

- Is unexpected behaviour foreseeable?
- Negligent design, programming/training errors, failure to warn, misstatement etc

## Liability in contract

- Autonomous smart contracts
- Electronic agents
- Changes in liability and indemnification schemes

# Robot Hedge Fund



Samathur Li Kin-kan, suing  
robot hedge fund for \$23m,  
2019

# CONSUMER PROTECTION ACT

- ***“Goods” includes –***

***(c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium or a license to use any such intangible product***



# PRODUCT LIABILITY

## Liability for damage caused by goods

61. (1) Except to the extent contemplated in subsection (4), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (5), 40 caused wholly or partly as a consequence of—

- (a) supplying any unsafe goods;
- (b) a product failure, defect or hazard in any goods; or
- (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, 45

irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.

# LIABILITY CONTI

(2) A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purposes of this section.

(3) If, in a particular case, more than one person is liable in terms of this section, their liability is joint and several. 5

(4) Liability of a particular person in terms of this section does not arise if—

(a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;

(b) the alleged unsafe product characteristic, failure, defect or hazard—  
(i) did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or 10  
(ii) was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case subparagraph (i) does not apply;

(c) it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers; or 15

(d) the claim for damages is brought more than three years after the—  
(i) death or injury of a person contemplated in subsection (5)(a);  
(ii) earliest time at which a person had knowledge of the material facts about an illness contemplated in subsection (5)(b); or 20  
(iii) earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property contemplated in subsection (5)(c); or  
(iv) the latest date on which a person suffered any economic loss contemplated in subsection (5)(d). 25

(5) Harm for which a person may be held liable in terms of this section includes—

(a) the death of, or injury to, any natural person;

(b) an illness of any natural person;

(c) any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and 30

(d) any economic loss that results from harm contemplated in paragraph (a), (b) or (c).

- **THE HUMAN SPIRIT  
MUST PREVAIL OVER  
TECHNOLOGY**

*Albert Einstein*



*Law around the world*

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