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- The use of agriculture insurance in addressing food insecurity attributable to climate change: The case of Kenya
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Climate change refers to the alteration in the statistical distribution of weather patterns over an extended period of time. It is on record that climate change has created insurmountable risks across the globe; it has challenged the entire world, prompting the need for policy formulation and regulations to ameliorate its impact. In Kenya, particularly the agricultural sector has been affected the most as a result of climate variability because a great percentage of agricultural practices in the country are rain-fed as opposed to irrigated. Literature has it that due to poor performance of the long rains in March–May 2016, pastoral and marginal farming communities in the arid and semi-arid lands of Kenya experienced severe drought. Arid and semi-arid lands make up more than 80 per cent of the country's land mass and are home to approximately 36 per cent of Kenya's population. According to the United Nations Children's Fund, from January to April 2017, a total of 85 237 children were admitted for lifesaving nutrition treatment. The Kenya Government declared the drought affecting 23 arid and semi-arid lands and pockets of other areas a national disaster. As a result of the drought, food security greatly deteriorated. This study argues that the insurance sector is a risk transfer mechanism and has the potential to mitigate the harsh impact of climate change, thereby ameliorating natural disaster loss, within the agricultural sector. Unfortunately, this potential remains untapped. In Kenya, there is no specific legal framework that governs agricultural insurance. This article evaluates the history of agricultural insurance practices in Kenya, reviewed the benefits that accrued thereof and a comparative study of jurisdictions with well-established agricultural insurance markets. This article seeks to bring to the fore the necessity of enacting law that regulates agricultural insurance. Ultimately, food security shall be enhanced if proffered recommendations are implemented.

- The art of local government: A preliminary analysis of catastrophe bond's potential to reduce the insurance gap
— *I R Edwards, J Bell-James and M Lindfield* 237

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This article shows that a growing insurance and funding gap, coupled with projected climate change impacts, points to an urgent need for local government to consider alternative options to finance the costs of repairing and replacing infrastructure following an extreme weather event. As a case study, the viability of one such alternative, a catastrophe bond, is explored in the context of Queensland —

a state where local government is already experiencing insurance affordability challenges due to the State's high exposure to extreme weather events. Against this backdrop, the characteristics of catastrophe bonds and the regulatory and economic environment that would determine their application by local government are considered. While due to the dynamic nature of market forces that influence their price, it is not practical to categorically opine on a catastrophe bond's comparative cost, no regulation that explicitly prohibits their application by local government in Queensland is identified. In this regard, it is asserted that alternative risk transfer mechanisms such as catastrophe bonds have the potential to form an integral, and to date neglected segment of local government's risk management arsenal.

Distributed ledger technology, blockchain and insurance:
Opportunities, risks and challenges — *Julie-Anne Tarr*

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This article canvasses examples of developments and initiatives driven by distributed ledger technology or blockchain technology within the insurance industry. These activities undertaken by insurers and reinsurers are designed to improve efficiency, lower the costs of transaction processing and to improve data quality and transparency. Fraud detection, risk prevention and 'smart' contracting are at the forefront of several collaborative efforts undertaken within the industry or in conjunction with major external technology entities. However, as this article discusses, these opportunities are not without their corresponding challenges and risks, technological, legal and otherwise. Key challenges and risks to be considered in the context of existing legal frameworks relate to security and privacy, governance, scalability and standardisation. While this new technology may enhance data security it is not 'bullet proof' and may commonly give rise to three major types of potential liability risk: ledger transparency risks, cyber risks and operational risks. Paradoxically, for example, one of the perceived strengths of distributed ledgers being the enhanced level of transparency whereby every node operator has access to data stored on a distributed ledger, does also facilitate re-personalisation of data stored on a distributed ledger or enable nodes to make an informed guess as to identities entering into certain transactions. This in turn leads to two main legal risks, being data privacy and insider trading and market abuse. Regulators globally have to date largely taken a 'light touch' approach to the question as to whether existing legal frameworks are sufficient to meet the technological challenges posed by distributed ledger technology or blockchain technology. This article considers industry initiatives within the existing legal framework and reviews some of the challenges in extending and applying private law and regulation to blockchain applications.

Classification of concurrent causes — *AMI Insurance Ltd v Legg*
— *Sarah Wroe*

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This article considers the decision of the New Zealand Court of Appeal in *AMI Insurance Ltd v Legg* where the Court applied the principle in *Wayne Tank and Pump Co Ltd v Employers' Liability Assurance Corporation Ltd* in deciding that loss suffered by an insured was excluded from cover by an exclusion clause in the policy of insurance. It examines the principles of contractual interpretation and causation when there are multiple concurrent causes and discusses why classification of

concurrent causes as either ‘interdependent’ or ‘independent’ is crucial. It suggests that the concurrent causes in *AMI Insurance Ltd v Legg* were wrongly classified as interdependent causes: they were not both necessary to bring about the loss. Consequently, the *Wayne Tank* principle was not applicable, and the exclusion clause should not have defeated cover under the policy. The article concludes that clearer policy wording and a better understanding of *Wayne Tank and Pump Co Ltd v Employers’ Liability Assurance Corporation Ltd* is needed to avoid unnecessary litigation in this area.

The benefit of hindsight? An analysis of the United Kingdom Supreme Court’s approach to the fraudulent devices rule in *Versloot Dredging*
— Daniel Brinkman

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The recent United Kingdom Supreme Court decision of *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* has rejected the existence of the fraudulent devices rule in insurance law. Under this rule, a valid claim will be forfeited where the insured has used fraudulent means to promote it. However, the majority of the Supreme Court held that a claim will only be forfeited where the fraud is material to the claim, in the sense that it must be relevant to the insurer’s liability under the policy as determined following trial. On this approach, the use of a fraudulent device will always be immaterial, and therefore the claim will not be forfeited. It will be argued that this approach is an unsatisfactory response to the problem of fraudulent insurance claims. The fraudulent devices rule serves a valuable function in deterring fraudulent claims, and therefore the rejection of the rule by the majority is inconsistent with a longstanding policy of deterring such claims. The majority’s approach is problematic to apply in practice, as insurers will often be unable to determine whether fraudulent evidence is relevant to their liability. It is therefore likely to create commercial uncertainty at the claims stage.

Insurance policy exclusions for ‘flood’ and the importance of the language deployed
— Patrick Mead

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In *Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd*, Kirby P observed that in this country the mention of ‘flood’, undefined, ‘will usually produce images of vast tracts of country under water and farmers awaiting rescue from the roofs of their houses’. The President said: ‘[d]oubtless this is why the insurer provided specific definitions of “flood” in each of the present policies’. Kirby P went on to say: ‘[t]he tendency of the modern approach to the construction of language is to avoid the assignment of meaning of words taken in isolation.’ Individual words or phrases contained within a definition of ‘flood’ which informs the operation of an exclusion, may however have a material impact upon the nature and scope of cover afforded by a policy of insurance, as is apparent from the cases analysed in the following article.

Case Note

Hannover Life Re of Australasia Ltd v Jones: Reviewability of an insurer's opinions under a TPD policy and the proper construction of an ETE clause
— Daniel Lorbeer

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The New South Wales Court of Appeal has examined the circumstances in which a court can review an opinion reached by an insurer, where the opinion determines the insurer's liability under the relevant policy. It held, consistently with earlier authority, that if an opinion formed by an insurer under a policy was not open to an insurer acting reasonably and fairly, the court can substitute its own decision. Further, it held, in the context of a TPD policy, that a clause referring to 'Regular Remunerative Work for which the Insured Person is reasonably fitted by education, training or experience' requires the identification of occupations for which the insured's vocational history fitted the insured; not merely occupations that the insured could perform without further education, training or experience.