

Learning Unit 5: Personal Liability

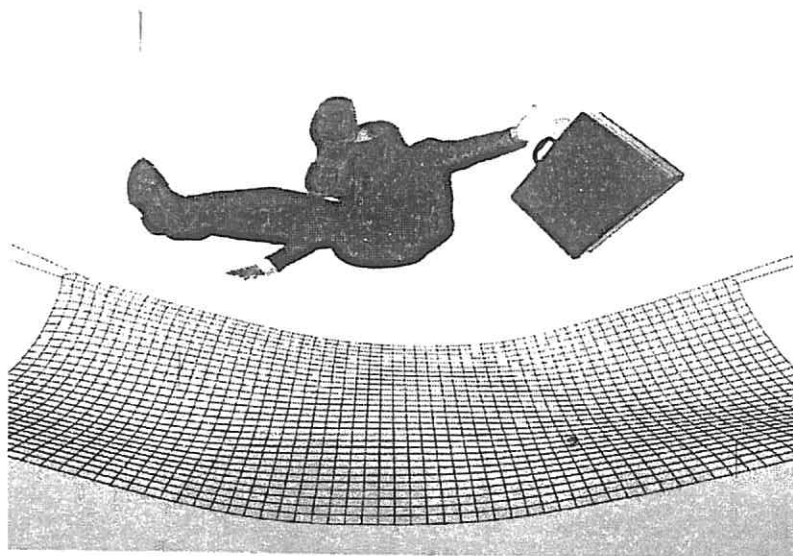


learning outcomes

Learning Outcomes

Upon completion of this learning unit, it is expected that you will be able to:

- Understand and provide definitions for terminology
- List who we insure under this section
- Describe what we insure under this section
- Identify what we do not insure (exclusions) under the Personal Liability section



Introduction

Many people do not realise how exposed they are to claims from third parties. Every person has a duty of care to every other person. Without realising it, you can be held liable for doing something or for failing to act.

Accidents happen and there are plenty of attorneys who specialise in recovering for victims involved in such accidents. Litigation has become an unfortunate fact of life. Anyone with assets must take steps to protect what has taken so long to acquire. Therefore, this element of personal insurance is an important one for every person who has insurance.

In addition, there are other events which cause frustration and unhappiness or are unexpected and which put a person in a position where they need financial assistance. The fraudulent use of a bank card is an example of this, or the golfer who does the unexpected and hits a hole-in-one.

This learning unit will give you the basic information related to issues of personal liability. Terminology has been defined and described in order to assist you with understanding key concepts.

5.1 Definitions

Word or phrase used	Definition and description
you, (your, yourself)	The phrase you refers to the policyholder and anyone insured under this section.
we (us, our)	This is Mutual & Federal Insurance Company Ltd. Registration No: 1970/006619/06.
accidental	An occurrence, which produces loss, damage, death or injury, and which takes place unintentionally and unexpectedly.
accidental loss	Unintentional or unexpected incident that results in a loss.
bodily injury	This means the destruction or impairment of living human tissue by an outside force, physical harm, disease or impairment. It excludes the natural aging process. It could also mean a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, impairment of the function of a bodily member, organ or mental faculty or any other injury to the body, no matter how temporary.

compensation	<p>Compensation means the insurer will pay the insured the amount stated in the schedule in the event of accidental bodily injury directly and independently of all other causes resulting in death or disability.</p> <p>As it is not possible to establish the value of someone’s ability or life in order to calculate a value at risk, the settlement is one of compensation and not indemnity.</p>
exclusion	<p>An exclusion is a condition in the policy that more accurately defines the risk accepted by the insurer and excludes liability for loss not intended to be covered.</p> <p>Exclusions in the policy relieve an insurer of liability for those issues not intended to be covered.</p>
illness	<p>Illness can be a synonym for disease or it can be a person’s perception of having poor health. However, illness and disease are not necessarily the same.</p> <p>Disease is an actual physical, pathophysiological process, which can cause an abnormal condition of the body or mind. Most people who have a disease will feel they have an illness, whilst others feel perfectly healthy. Some may claim illness although they do not actually have a disease.</p>
legally liable	<p>The concept of being legally liable includes all bases upon which liability may be founded for example, negligence, liability without fault and liability under statute.</p>
third party	<p>Another person.</p>

5.2 Who we insure

We only insure the following people if named in the schedule:

- The policyholder;
- Members of the policyholder’s family who live with them

5.3 What we insure

Cover afforded spells out quite clearly what cover the insured has under this section. The insured is covered for specific events, which will be described in detail.

Accidental death, bodily injury, illness, loss or damage to property

If the policyholder becomes legally liable to pay compensation for any of the following listed below:

- Accidental death;
- Accidental bodily injury or illness
- Accidental loss or damage to property.

Compensation

The compensation for accidental death, bodily injury, illness, loss of or damage to property as above includes the following:

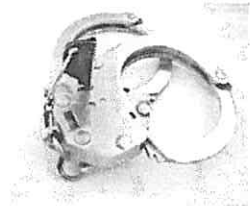
- The amounts you are liable for
- Legal costs of the other person that you are liable for
- Costs that you incur with our permission to settle or defend the claim against you

Limit of compensation

The compensation is limited to the amount shown in the schedule at the time of the loss, damage, bodily injury, illness or death. The amount applies to a single event or a series of incidents that are the result of one event.

Wrongful Arrest

Before we can gain clarity on this cover, it is necessary to examine the definition of the phrase wrongful arrest.



Wrongful means unlawfully violating the rights of others or having no legally established claim.



Arrest means the restraining and seizure of a person, whether or not by physical force, by someone acting under authority (for example, a police officer) in connection with a crime, in such a manner that it is reasonable under the circumstances for the person to believe that he or she is not free to leave.

Therefore, wrongful arrest can be defined as the restraining and seizure of a person by someone who has no legally established claim to arrest the person.

A false arrest is a situation in which someone is detained unlawfully. Depending on the circumstances, this charge may lead to a false imprisonment charge, in which someone is illegally confined, or a kidnapping, in which someone is detained and transported illegally. It can be difficult to prove a false arrest charge, but if the charge can be proved, sometimes it is possible to recover punitive damages from the arresting party.

Private citizens do have the right to detain people who have committed certain crimes in some countries and this is known as a citizen's arrest. In order for a citizen's arrest to be legal, the citizen must actually see the crime in progress and positively identify the criminal. Furthermore, law enforcement must be called immediately to enact a formal arrest otherwise a citizen may be liable to a false arrest charge.

The situation often arises when a retail business employee or owner holds a suspected shoplifter without having seen a crime committed in their presence or pretend that they are police officers. Such a person may be entitled to make a "citizen's arrest", but they need to be sure that they have a person who has committed a crime, and they must call law enforcement officers to take over at the first opportunity.

Cover is provided for compensation/damage for which the insured is legally liable following wrongful arrest of a person.

The insured is compensated if they are held liable for wrongful arrest while they are a member of a neighbourhood watch or block watch group, or a similar non-profit organisation. This includes liability for an assault or search connected to that wrongful arrest.

- * However, there is no compensation for the insured if the person that is holding them liable is under a contract of service or apprenticeship with the insured, or is a member of their family or household.



It is important to note that the limit of compensation will be reflected on the policy schedule.

The compensation for accidental death, bodily injury, illness, loss of or damage to property as above includes the following:

- The amounts you are liable for
- Legal costs of the other person that you are liable for
- Costs that you incur with our permission to settle or defend the claim against you.

The compensation is limited to the limit shown in the schedule at the time of the wrongful arrest. The amount applies to any single event or for a series of incidents that are the result of one event.

The limit of compensation in any 12-month period is the limit shown in the schedule.

Contracts with security, armed response and garden services companies

The purpose of this cover is to protect the owner or tenant who has signed an agreement with a security, armed response and garden service company.

Invariably, this agreement or contract includes a section in terms of which the customer, the owner or occupier of the house indemnifies the company's against claims made for death, injury or damage caused by the employees of the company, whilst working at the insured's premises.

Bank and SIM cards

This cover indemnifies the policyholder against fraudulent use of credit card, debit card or SIM cards - provided that the fraudulent use of the card is not by any member of the policyholder's family (for example the policyholder's children or domestic employees) or live with the policyholder.

This cover is also subject to the policyholder reporting the loss of the card to the issuing organisation as soon as reasonably possible. The phrase as soon as reasonably possible means the policyholder must report the loss as soon as he/she is aware of the loss of the card or at the earliest convenience to the policyholder.

It would not be viewed as reasonable if the policyholder is aware of the loss of the card but only reports the loss a month later to the issuing organisation.

4.4.1. Credit cards and debit cards

Credit and debit card fraud is the unauthorised and illegal use of a credit/debit card to purchase property. Fraud is a deliberate misrepresentation, which causes another person to suffer damages and usually monetary losses.



Credit card fraud happens when someone steals your credit card, credit card information or personal identification number (PIN), and uses it without your permission to make purchases in stores, online or by telephone, or to take out a cash advance from an automated bank machine.

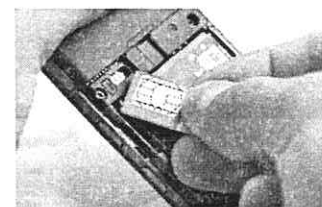
Debit card fraud happens when a thief “skims” or swipes the information off the magnetic strip on the back of your card to create a duplicate copy of your card. They also have to capture your PIN to access your account and withdraw money or make purchase. Debit card fraud can also happen if your card is lost or stolen and you have not taken steps to protect your pin.

In the case of a credit card the policyholder is required to report the lost or stolen credit card immediately to the relevant credit card division. Even if the policyholder reported the loss to the credit card division there are times that amounts can still be processed off the relevant credit card. If the purchase made on the stolen credit card were below the floor limit, in this case say R500, then the relevant bank would still process the transaction. Consider this example:

Jason's credit card was about to expire and he was waiting to receive the reissued card in the mail. It seemed to be taking a long time to arrive. He meant to phone his card issuer to ask about the delay but he kept forgetting. Then his credit card bill arrived, and it was full of purchases that Jason hadn't made: R11 500 for electronic goods purchased; R2 500 in new clothes and R575 for a restaurant dinner! Jason had been the victim of credit card fraud.

4.4.2. Cell phone and other SIM cards

The term SIM is an acronym for Subscriber Identification Module or Subscriber Identity Module.



The SIM card is the “smart card” which holds all of a subscriber’s personal information and phone settings. In essence, it is the subscriber’s authorisation to use the network. It also holds the phone number, personal security key and other data necessary for the handset to function. The card can be switched from handset to handset, letting the new phone receive all calls to the subscriber’s number. It is a common criminal event for a SIM card to be stolen and used, at the victim’s expense, in another handset.

The policyholder would also be required to comply with the issue of the relevant card.

When a person applies for a credit card and it is approved by a bank there are certain terms, conditions and exclusions that the person obtaining the card needs to adhere to. The document will differ from bank to bank but would normally include the following sections:

1. Credit card conditions of use;
2. Account charges and fees;
3. Rewards programme, if applicable;
4. Value-add services;
5. Conditions and exclusions.

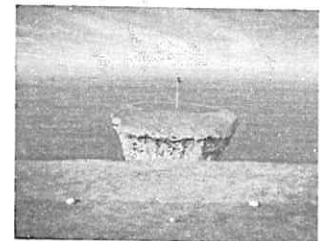
The limit of compensation in this case would be reflected on the policy schedule.



This extension does not extend to gambling cards and MVG cards as these are not insured by an authorised financial institution

Hole-in-one

Most golf clubs have rules and regulations which the club members have to abide by. There are also rules attached to a golfer hitting a hole-in-one. The player must be part of a four-ball game, which means there must be a maximum of four players. The tradition behind a hole-in-one is that the person who achieves the hole-in-one would have to buy a round of drinks for all his friends in the bar after the game of golf. This could prove costly if the wonderful event takes place on a day when the clubhouse is filled with golfers, all willing to celebrate with the fortunate person.



Cover is provided if the policyholder or a member of his family, normally resident with him, scores the hole-in-one in a game of golf as an amateur, and who is not getting paid for playing golf.

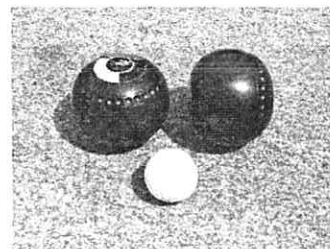
This compensation is provided on the following conditions:

- The insurer will only pay the insured the amount stated on the policy schedule.
- This payment will only be made once written confirmation has been received from the secretary of the golf club in question that the hole-in-one actually happened.

- The golf club where the game was played must be a recognised golf club. A recognised golf club is a golf club that is registered with the South African Golfers Association.

Full house

The cover afforded in this case is very similar to that granted under the golfing hole-in-one section with the only exception that it refers to a game of bowls. A team playing bowls normally consists of four members and each member plays with two bowls. Each team member has an opportunity to roll his/her bowl and the goal is to roll the bowl as close as possible to the white ball, which is known as the jack. If at the end of the round it is found that all eight bowls from the team in question are closest to the jack, without any bowls from the other teams, it is declared a full house.



Compensation for this phenomenon is provided on the following conditions:

- The game of bowls must have been played as an amateur;
- This payment will only be made once written confirmation has been received from the secretary of the bowling club in question that the full house actually happened;
- The wording is clear in stating that the full house must:
 - Happen as part of an official competition
 - Be on a registered bowling green
 - Be played according to the recognised rules of the game, with all 8 or 9 bowls to count.



If more than one person defined as you in this section was involved in the same full house, then the insurer would only compensate once for that full house.

5.4 What we do not insure (exclusions)

In terms of the policy wording under this section the insured will not be compensated for any of the following:

Claims by certain people



Remember that Personal Liability insurance provides cover if the insured is legally responsible for the accidental death or injury to a person who is not a member of the household.

Personal Liability cover also provides compensation if the insured is legally responsible for the accidental damage or destruction of property belonging to a person who is not a member of your household.

This section excludes liability to the insured or any member of the family resident with the insured. It also excludes any person employed by the insured as well as any business partners and members of their families who normally live with them if a company, close corporation or trust.

It is important to note that domestic staff members are specifically excluded under this section, which means that if a domestic staff member is injured while acting in the course of their duties, they would not be covered under this section of the policy.

Liability related to property looked after or controlled by certain people

Property belonging to the insured clarifies the policy intention that cover is intended for third party property damage only.

The mention of certain people in cases where there would be compensation for liability claimed if it was by any of the following people:

- The policyholder or any member of his/her family who normally lives with him/her;
 - Directors, members, trustees, beneficiaries and members of their families who normally live with the policyholder (if it is a company, close corporation or trust);
 - Employees acting in the course of their employment with the policyholder at the time of the event.

What does it mean to say that property is in someone's custody and control?



Custody means the supervision and control over property that usually includes liability for damage that may occur.



Control means to exercise restraining or directly influence over the property.

Liability related to your work, business and property

This section excludes liability as a result of liability arising due to the insured's:

- Employment, business or profession;
- Ownership of land or buildings;
- Aircraft, vehicles or watercraft that the insured or his/her domestic employees own, look after or control.



Exclusion under this section of the policy does not extend to the use of model aircraft, surfboard or paddle ski.

They are more specifically insured under the All Risks section of the policy, which does not include any liability cover.

Liability arising from a contract

The insurer will not compensate for liability arising from a contract that the policyholder has entered into unless the policyholder would have been liable if there were no contract.



This exclusion does not apply to any written contract entered into with any organisation providing security, armed response or garden services as mentioned previously.

Liability related to support of property

We do not compensate for liability related to the vibration, removal, weakening or interference with the support of any land, building or other property.

Judgements or settlements under US or Canadian law

Under this exclusion it is stated that the insurer will not compensate for:

- Any award or settlement made in countries that follow the laws of the USA or Canada;
- Any order made to enforce an award or settlement made in the USA or Canada

Liability based on events caused deliberately

The insurer will not compensate for any liability if it is found that the insured (or any person colluding with the insured) caused the loss, damage, death or bodily injury deliberately.



Colluding means an agreement between two or more parties (sometimes illegal and therefore secretive) in which acts of deceiving, misleading or defrauding others of their legal rights take place. Collusion could also mean an agreement to obtain an objective forbidden by law typically by defrauding or gaining an unfair advantage.

In legal terms all acts affected by collusion are considered void.



Deliberate means doing something on purpose and with careful thought.

Liability relating to movable or immovable property

The insurer will not compensate for any liability caused by the letting or hiring out of movable or immovable property for a fee.

Example:

The insured has a holiday home in Ysterfontein in the Western Cape which he rents out to holidaymakers. The house is a single storey and there are sliding doors, which lead out onto the beach. The insured does not make use of any method to indicate there is a sliding door as he feels anything attached to the sliding door will leave smudge marks. One of the children of the family renting the holiday home is so excited to go and swim in the sea that he does not realise that the sliding door is closed and runs into it. As a result he breaks his shoulder blade, cracks two rib bones and loses three of his front teeth. The child's parents institute legal action against the insured for the injuries to their child. This would not be covered in terms of the policy wording as the insured was letting out the property for a fee.



ACTIVITIES

Activity 1

The policyholder's son took the family dog for a walk in the local park. The dog saw a cat and broke free from the leash to chase the cat. A child playing in the park unknowingly stepped in the way of the dog and the dog attacked the child.

Would there be cover in terms of the policy wording under the Personal Liability section?

Activity 2

While surfing at the beach, the policyholder's son caught a large wave and failed to see a fellow surfer. He accidentally knocked the other surfer on the head with his surfboard.

Would this be covered under the Personal Liability section of the policy?

Activity 3

The policyholder's mother resides with the policyholder at the insured's private residence. During a shopping trip with her mother, the policyholder accidentally bumps her mother with the shopping trolley, which results in her mother falling and breaking her arm.

Would this incident be covered under the Personal Liability section of the policy?

Activity 4

James advises his father that the man sitting on the pavement outside their house is the same man who stole his Walkman. The father approaches the man and advises him that he is carrying out a citizen's arrest as he stole his son's Walkman. The father phones the local law enforcement officers to collect the man. The man is taken away and placed into custody at the local police station. It later comes to light that James is not 100% sure that the arrested man is the same man that stole his Walkman. As a result the man decides to sue James and his father for damages, which include mental distress and embarrassment.

If James' father had Personal Liability cover, would this be covered in terms of the policy wording?

Activity 5

The policyholder is a hairdresser. At the customer's request, the policyholder highlighted the customer's hair. A couple of days later the unhappy customer returned and told the policyholder that her hair was falling out following the treatment. The customer told the policyholder that she intends on suing the policyholder accordingly.

Would the policyholder be covered in terms of the policy wording under the Personal Liability section?

Activity 6

The insured signed an agreement with a garden service to contract their services on a weekly basis, every Monday. One Monday, while the garden service employee was mowing the insured's lawn, a stone flung up through the neighbour's window and injured the neighbour's child, who was watching television at the time.

Would this incident be covered in terms of the policy wording under the Personal Liability section?

Activity 7

The policyholder took his dog for dog training and signed an agreement stating that the trainer would not be legally liable for any actions of the dog following the training program. Due to the training methods used, the dog became aggressive and bit a person whilst at the training facility. The injured party instituted action against the policyholder. Would this damage be covered under the Personal Liability section of the policy?



Summary

This learning unit covered the difficult concept of personal liability. It identified and described the cover that can be afforded to an insured and his/her family as well as when the parties are **not** covered. It described the interesting sports experiences that are covered by personal liability insurance and the conditions that must be fulfilled in order for a policyholder to claim when one of these take place. The unfortunate incidents when bank cards and other electronic cards are lost have been discussed and an explanation given of how these mishaps are covered. In order to understand better, definitions and explanations of certain words have been highlighted so that these are clear when discussing this section of personal insurance with a client.

