

COURS DE DROIT DES ASSURANCES

INTRODUCTION GÉNÉRALE

L'assurance est une matière complexe, spécialisée et technique. Elle a pour origine le droit des contrats, et plus particulièrement le droit civil. Pour autant, il faut savoir manier d'autres spécialités, d'autres codes, particulièrement, le code des transports, code de la consommation, code de commerce, code civil etc.

Section I - Historique

I) Apparition de l'assurance

L'assurance en tant que telle n'existait pas dans l'antiquité mais on avait quand même des prémices, notamment chez les personnes qui pratiquaient le commerce maritime qui recherchait une certaine sécurité dans leurs échanges. Par exemple : L'échange mutuel pour les pertes de marchandises transportées en caravane. Autre exemple : En 800 av.JC dans des traités de droit romain on retrouve la description de la procédure d'avarie commune (perte de bien). C'était la notion de savoir sur qui repose le prix du transport. Développement d'une sorte de prêt à la grosse aventure avec les phéniciens puis repris par le droit romain. On faisait une sorte de pari. A savoir que les propriétaires de navires et les marchands, pariaient sur la bonne aventure du navire et sur le fait que le navire puisse revenir à son point de départ. Les phéniciens avaient mis en place une sorte de gage des marchandises et des biens pour indemniser les armateurs et les marchands en cas de naufrage de navires.

Ensuite, une idée de mutualité s'est développée au Moyen Âge, développement de la pratique du prêt à la grosse et apparition du prêt à la convention de vente qui sont peut-être des prémices du contrat de vente. On commence à réfléchir aux conventions de vente qui sont peut-être des prémices des contrats d'assurances. Au 14^{ème} décret de doge de gènes qui développe le contrat d'assurance.

A priori la plus ancienne police d'assurance maritime remonte à 1329. Les assurances se développent notamment dans le domaine du voyage en mer mais on n'utilise pas le terme assurance.

II) Période de développement de l'assurance

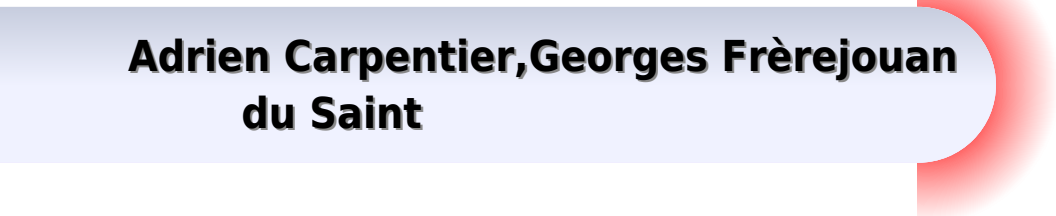
Émergence de l'assurance terrestre. Ce qui a beaucoup marqué la reconnaissance de l'assurance terrestre, c'est un incendie à Londres en 1666 qui a détruit près de 80% de Londres. A la suite de cet incendie on a réfléchi à comment mettre en place une protection dans les cas de survenance d'incendie et la première société d'assurance contre les incendies a été mise en place en 1684.

En France on peut dire que l'assurance va se développer relativement tard à cause des mœurs de l'époque. Le catholicisme est important, on a donc du mal à faire accepter cette notion d'assurance, on a du mal avec l'idée de se faire rembourser de l'argent, prévention d'emprunt et prohibition importante autour de la vie humaine, qui est contre la volonté de Dieu.

En 1668 à l'initiative de Colbert, qui est contrôleur général des finances ; on a la création de la chambre d'assurance des finances. Les assurances et les commissionnaires rédigeaient des polices d'assurances maritimes et proposaient des risques. C'était un marché de l'assurance.

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**Adrien Carpentier, Georges Frèrejouan
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1. Understanding the eBook Cours De Droit Des Assurances Chapitre Introductif
 - The Rise of Digital Reading Cours De Droit Des Assurances Chapitre Introductif
 - Advantages of eBooks Over Traditional Books
2. Identifying Cours De Droit Des Assurances Chapitre Introductif
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Cours De Droit Des Assurances Chapitre Introductif
 - User-Friendly Interface
4. Exploring eBook Recommendations from Cours De Droit Des Assurances Chapitre Introductif
 - Personalized Recommendations
 - Cours De Droit Des Assurances Chapitre Introductif User Reviews and Ratings
 - Cours De Droit Des Assurances Chapitre Introductif and Bestseller Lists

5. Accessing Cours De Droit Des Assurances Chapitre Introductif Free and Paid eBooks
 - Cours De Droit Des Assurances Chapitre Introductif Public Domain eBooks
 - Cours De Droit Des Assurances Chapitre Introductif eBook Subscription Services
 - Cours De Droit Des Assurances Chapitre Introductif Budget-Friendly Options
6. Navigating Cours De Droit Des Assurances Chapitre Introductif eBook Formats
 - ePub, PDF, MOBI, and More
 - Cours De Droit Des Assurances Chapitre Introductif Compatibility with Devices
 - Cours De Droit Des Assurances Chapitre Introductif Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Cours De Droit Des Assurances Chapitre Introductif
 - Highlighting and Note-Taking Cours De Droit Des Assurances Chapitre Introductif
 - Interactive Elements Cours De Droit Des Assurances Chapitre Introductif
8. Staying Engaged with Cours De Droit Des Assurances Chapitre Introductif
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Cours De Droit Des Assurances Chapitre Introductif
9. Balancing eBooks and Physical Books Cours De Droit Des Assurances Chapitre Introductif
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Cours De Droit Des Assurances Chapitre Introductif
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Cours De Droit Des Assurances Chapitre Introductif
 - Setting Reading Goals Cours De Droit Des Assurances Chapitre Introductif
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Cours De Droit Des Assurances Chapitre Introductif
 - Fact-Checking eBook Content of Cours De Droit Des Assurances Chapitre Introductif
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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