

SYLLABUS - INSURANCE LAW

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Term: Spring 2009
Class: Insurance Law; Tuesdays, 5:30-8:30 pm.

I. Statement of Goals and Objectives

In some way, insurance impacts virtually every aspect of modern society.

Perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance business. Insurance touches the home, the family, and the occupation or business of almost every person in the United States.

United States v. South-Eastern Underwriters Assoc., 322 U.S. 533, 540 (1943).

This impact can be seen in ways that are obvious and subtle. Insurance is the specific subject of vast sections of statutory law and reported decisions. Its influence on other areas of the law is profound.

Insurance law is both a subset of contract law and a creature unto itself. Principles of contract law are a necessary foundation for the study of insurance but they will take the student only so far. The student that leaves law school with an understanding of the basic principles of insurance and insurance law, with the ability to interpret and understand insurance contracts and with some sense of how the invisible hand of insurance influences commerce and the law will have a significant advantage over those that do not possess that knowledge.

This course is designed to provide the student with a basic understanding of the following:

- A definition of "insurance;"
- The history and development of the modern insurance markets;
- Basic insurance principles such as "risk" and "fortuity;"
- Insurance contract negotiation and formation;
- Unique principles of insurance contract interpretation;
- "Extra-contractual" issues (e.g. waiver, estoppel, bad faith, reformation and reasonable expectations);
- Insurance agents and brokers;

- Governmental regulation of insurance;
- Property insurance;
- Liability insurance;
- Personal insurance (Life, Health and Disability);
- The "tripartite" insurance defense relationship; and
- Declaratory Judgement actions and other remedies of enforcement.

Because of its vast nature, no introductory course could reasonably cover every aspect of insurance law, nor the unique components of all types of policies. Similarly, certain areas of insurance law are well covered in other classes at the Law School, such as No-Fault automobile insurance and workers compensation. Thus, by necessity and for practical reasons, some omissions will be made.

Ultimately, it is hoped that the course will sensitize the student to identify the insurance issues lurking in many legal problems. The course should also provide the student with the tools necessary to analyze and effectively address those issues. As part of that mission, the class should impart an understanding of the true "logic" behind the seemingly random provisions in an insurance policy and the equally baffling ways in which insurance companies conduct their affairs. For some students this may produce a true appreciation for the way in which insurance policies are drafted and for the economic and social goals of insurance companies.

By the end of the class the student should be able to take an everyday fact pattern, spot the insurance law issues and provide an analysis of coverage under one or more of the policies typically issued by insurers in today's market. The student should also be able to provide an explanation as to the rationale behind their coverage interpretation and to explain the greater societal benefits that may be served by that result. Finally, the student should be able to identify the remedies available to the client (be they insurer, insured or third-party) in order to enforce their coverage rights under the policy.

II. Course Materials

A. Required Readings

1. E. Fischer, P. N. Nash, and J. W. Stempel, *Principles of Insurance Law*, 3d Ed. (LexisNexis); and
2. Supplemental Materials (Booklet to be distributed on 1st day of class).

B. Recommended Readings

1. R. H. Jerry, *Understanding Insurance Law*, 3d Ed. (LexisNexis)

III. Attendance Policy

The Law School's academic rules require students to attend class "regularly and in a

punctual manner." Given the length of weekend class sessions, regular attendance is especially critical. Given the expected smaller class size, active participation in class sessions will be essential to overall learning and content for all students. Thus, attendance, participation and valuable contribution to each class will be expected. Although attendance and participation will not be graded, the student's grade will be indirectly affected by missing the class room experience.

I reserve the right to seek the removal of any student with excessive absences. I define excessive absence to mean absence from six or more class hours in the semester. This can be achieved by missing two or more entire class sessions, the failure to attend one hour of six or more classes, or any combination thereof totaling six hours or more. Attendance will be taken for this purpose only.

IV. Testing and Grading

The *entire* grade for the class will be based on the final exam. *Non-graded* assignments may be given at various times throughout the semester and will be solely for the benefit of the student to assess individual understanding of core concepts.

V. Assignments and Questions for Class

A. Week 1

Topics:

- What is insurance?
- The history and development of the modern insurance markets.
- Types of insurance.
- The concept of "risk."

Reading Assignment:

1. *Principles of Insurance Law*, p. 1 to p. 56

B. Week 2

Topics:

- Adverse selection & "moral hazard."
- Insurable interest.

Reading Assignment:

1. *Principles of Insurance Law*, p. 57 to p. 86 and p. 342 to p. 390

C. Week 3

Topics:

- Agents and Brokers.
- Insurance contract negotiation and formation.

Reading Assignment:

1. *Principles of Insurance Law*, p. 289 to p. 309 and p. 314 to p. 334
2. Supplemental Materials:
 - a. Minn. Stat. §§ 65A.14;
 - b. *Morrison v. Swenson*, 142 N.W.2d 640 (Minn. 1966);
 - c. *Mien v. Spring Lake Park Agency Inc.*, 166 N.W.2d 355 (Minn. 1969); and
 - d. *Art Goebel, Inc. v. Northern Suburban Agencies, Inc.*, 555 N.W.2d 549 (Minn.App. 1996).

D. Week 4

Topics:

- Insurance contract interpretation.

Reading Assignment:

1. *Principles of Insurance Law*, p. 87 to p. 126

E. Week 5

Topics:

- Insurance contract interpretation (cont).

Reading Assignment:

1. *Principles of Insurance Law*, p. 127 to p. 165 and p. 166 to p. 178

F. Week 6

Topics:

- Warranties, representations and concealment by the insured.
- Duties of the insured.

Reading Assignment:

1. *Principles of Insurance Law*, p. 391 to p. 444 and p. 513 to p. 535.

2. Supplemental Materials:
 - a. *Auto-Owners Ins. Co. v. NewMech Companies, Inc.*, 678 N.W.2d 477 (Minn. App. 2004).

G. Week 7

Topics:

- Waiver, estoppel and reformation.
- Duties of the insurer.
- Third-party rights under the insurance contract.

Reading Assignment:

1. *Principles of Insurance Law*, p. 445 to p. 477 and p. 536 to p. 574.
2. Supplemental Materials:
 - a. *Employers Mutual Casualty Co. v. Wendlund & Utz*, 2002 WL 989482 (D. Minn. 2002); *affd* 351 F 3d 890 (8th Cir. 2003); and
 - b. Minn. Stat. §§ 60A.08, Subd. 9 and 65B.49, Subd. 3. (3) (a)

H. Week 8

Topics:

- Government regulation.

Reading Assignment:

1. *Principles of Insurance Law*, p. 185 to p. 246 and p. 256 to p. 288 and p. 334 top. 341.

I. Week 9

Topics:

- Liability insurance.

Reading Assignment:

1. *Principles of Insurance Law*, p. 673 to p.728
2. Supplemental materials:

- a. The Annotated CGL Policy
- b. *American Family Ins. Co. v. Walser*, 628 N.W.2d 605 (Minn. 2001);
- c. *American Family Mut. Ins. Co. v. Peterson*, 405 N.W.2d 418 (Minn. 1987); and
- d. *State Farm Fire & Cas. Co. v. Wicka*, 474 N.W.2d 324 (Minn. 1991)

J. Week 10

Topics:

- Liability insurance (cont.)

Reading Assignment:

1. *Principles of Insurance Law*, p.729 to p. 796 K.

K. Week 11

Topics:

- Property insurance.

Reading Assignment:

1. *Principles of Insurance Law*, p. 575 to p. 592 and p. 597 to p. 627
2. Supplemental Materials:
 - a. *General Mills v. Gold Medal*, 622 N. W.2d 147 (Minn. App. 2001);
 - b. *Sentinel Management Co. v. Aetna Cas. and Sw. Co.*, 615 N.W.2d 819 (Minn. 2000);
 - c. *Henning Nelson Const. Co. v. Fireman's Fund American Life Ins. Co.*, 383 N.W.2d 645 (Minn. 1986); and
 - d. Homeowners Policy Outline

L. Week 12

Topics:

- Property insurance.

Reading Assignment:

1. *Principles of Insurance Law*, p.628 to p. 672
2. Supplemental Materials:
 - a. Homeowners Policy Outline

M. Week 13

Topics:

- Personal insurance (Life, Health and Disability).

Reading Assignment:

1. *Principles of Insurance Law*, p.797 to p. 836

N. Week 14

Topics:

- Bad Faith.
- The ethics of the "tripartite" insurance defense relationship.
- Declaratory Judgement actions and other remedies of enforcement.

Reading Assignment:

1. *Principles of Insurance Law*, p.931 to 976 and p. 1012 to p. 1025
2. Supplemental materials:
 - a. Minn. Stat. §§ 555.01 to 555.16
 - b. Rule 57, Minn. R. Civ. Proc.
 - c. Ethical Duties of Defense Counsel