

Insurance Law

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M. 8:00 a.m. to 10:00 a.m. - Room 212

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Insurance frequently effects strategies employed in modern litigation and often influences the outcome of litigation. The purpose of this course is to provide a broad-based introduction to insurance law, with a focus on how to read, analyze, and work with insurance policies. The course concentrates on the law governing construction of insurance policies, including analysis of coverage provisions and exclusions, conditions of coverage, the effect of representations, and insurer liability for both personal and business policies. A variety of insurance policies are discussed in the course, particular emphasis is given to insurance policies covering legal liability. These policies strongly influence litigation strategies in civil suits and are commonly used by businesses as part of their risk-management practices.

In this two-credit class, we will not cover some topics in insurance law (e.g., unemployment insurance, workers' compensation, and health law). While we will discuss the claims handling process, considerable attention will be given to the lawyer's role and conduct when representing a policyholder's defense to a claim pursuant to a liability insurance policy and the rights and obligations of policyholders and insurers. At the conclusion of the course, students should be capable of representing either policyholders or insurers in connection with insurance coverage and claims handling matters.

CLASS EXPECTATIONS and REQUIREMENTS: I expect regular and on-time attendance that will be monitored by a daily attendance sheet to be initialed, as well as informed participation.

GRADING: Your grade in the course will be based on the completion of an in-class two-hour (modified open-book or closed-book essay) final examination involving a primary fact pattern followed by questions.

REQUIRED BOOK: Abraham, Kenneth S., Insurance Law and Regulation: Cases and Materials (4th ed., Foundation Press, 2005) ("Abraham").

ADDITIONAL READING: Title 26.1, Insurance, The North Dakota Century Code (NDCC) (www.legis.nd.gov/cencode/t261.htm1). Reading will be supplemented with case law and handouts.

TENTATIVE SCHEDULE:

INTRODUCTION, THE INSURANCE CONTRACT- GENERAL PRINCIPLES & INSURANCE REGULATION

January 22 – Overview of the course, Introduction; State Regulation of Insurance Policies and Discrimination in Policies, First Party Insurance (e.g., fire, property, life, health, disability, auto – bodily injury to persons deemed to be insured, gap, and identity theft) versus Third Party Insurance (e.g., commercial general liability, directors and officers liability, professional liability/malpractice, and auto – bodily injury to a third person)

READING: Abraham, 1-12.

January 29 – The Insurance Application; Material Misrepresentation and Concealment; The Insurance Contract; Construing Ambiguities; Reasonable Expectations; The Role of the Agent; Duties of Policyholder and Insurer Upon Loss

READING: Abraham, 16-19, 31-40, 50-53, Familiarize yourself with the web sites of the North Dakota Insurance Department (www.nd.gov/indins/company), and The North Dakota Supreme Court (www.court.state.nd.us)

DUTIES OF POLICYHOLDER AND INSURER UPON LOSS

February 5 - Notice and Cooperation; Duty to Investigate and Defend; Relations Between Primary and Excess Insurers

READING: Abraham, 551-557, 676-682, 588-611, NDCC 26.1-04.

FIRST PARTY INSURANCE ISSUES - PROPERTY, LIFE AND HEALTH

February 12 - Reading a Policy; Insurable Interest; Business Interruption; Subrogation; Exclusions; Exceptions; Measure of Recovery

READING: Abraham, 172-196 (sample policy), 197-203, 205-211-250.

February 19 - *President's Day Holiday - No Class*

February 26 - The Life and Health Insurance Policies; Insurable Interest; Construing the Policy; Incontestability; Limitations of Risk

READING: Abraham, 276-296 (skim sample policy), 297-306, 309-323, 337-347.

THIRD PARTY INSURANCE - COMMERCIAL GENERAL LIABILITY INSURANCE

March 6 - Reading the Policy; The Insuring Agreement; The Trigger and Allocation of Coverage; Number of Occurrences

READING: Abraham, 441-459 (sample policy), 460-469, 480-508.

March 12 - *Spring Break – No Class*

March 19 - Exclusions and Conditions

READING: Abraham, 509-520, 522-527, 529-538.

March 26 – The Pollution and Mold Exclusions

READING: Abraham, 540-551.

FIRST PARTY AND THIRD PARTY INSURANCE - AUTOMOBILE

April 2 – The Automobile Insurance Policy; Compulsory Insurance; Omnibus Clauses

READING: Abraham, 643-656 (sample policy), 657-675.

April 9 - *Easter Holiday – No Class*

April 16 – Comprehensive and Collision; Uninsured/Underinsured Motorist Coverage

READING: Abraham, 676-682, 697-706, 714-723.

ACTIONS AGAINST THE INSURER

April 23 – Bad Faith Actions

READING: NDCC 26.1-04(9).

April 30 – Recap/Last day of class