Course Goals and Objectives

This course will explore the legal issues presented in the purchase and ownership of “first-party” insurance policies, which includes the categories of personal and commercial property insurance, life insurance, accidental death insurance, disability insurance, and health insurance. The course will examine the law from a national perspective but will give special attention to Missouri law when appropriate. The emphasis will be on the legal issues that typically arise when the consumer comes into contact with the insurance industry with respect to these products. The coverage of health insurance will focus on the provision and regulation of private insurance, as distinct from government programs, including insurance, that provide access to the health care system.

The insurance products explored in this course represent a massive segment of the national and global insurance marketplace. The non-property products frequently present themselves as fringe benefits in employment. Lawyers across the full continuum of practice settings have clients who need advice with respect to these products. This course is designed to provide students interested in insurance law and practice with the foundational knowledge and skills necessary to provide representation with regard to these kinds of insurance products.

Books

Assignments in this course will be primarily readings in statutes, cases, and some other secondary authorities. These will be posted in electronic form on the course website. One book is required for this course: Robert H. Jerry, II & Douglas R. Richmond, Understanding Insurance Law (5th ed., LexisNexis Publishing, 2012).¹

¹ Disclosure: A sum exceeding any royalties I receive on sales of this book to MU students will be donated to the University of Missouri Foundation for the benefit of law students at the University of Missouri-Columbia School of Law.
Course Web Site: TWEN

I will use a course web page on TWEN (The West Education Network). The syllabus and other course materials will be posted on this website. I will also use the portal on the TWEN site to post assignments and other information about the course. I may occasionally send email messages to the email account that you designate when you register with TWEN. Please check your email account regularly to make sure it remains functional during the course.

Course Grade; Class Attendance

Your grade will be calculated as follows: Exam, 75%; Class Participation, 25%.

The final exam will be in the nature of a word-limited paper on an assigned topic; you’ll write the exam (i.e., paper) during the final exam period. Thus, it is a take-home final. The exam will be available on the first day of the exam period and will be due on the last day. It is anticipated that you will identify a two- to three-day window during the exam period to work on the paper. The instructions for the exam will state that you are allowed to consult any inanimate materials you wish, meaning you will not be allowed to confer with other persons (including, but not limited to, classmates).

Class participation will be evaluated on a 1-20 scoring system. Everyone starts with a 10, but particularly strong classroom participation or particularly weak participation will move the score up or down. One aspect of the class is that once approximately every two weeks (once the class is underway) you will be asked to present a case to the class and co-lead with me a discussion of the case.

American Bar Association rules require “regular and punctual class attendance” by students. In my past experience, exam performance strongly correlates with class attendance. Thus, I expect you to attend all classes. That being said, I understand that some absences are unavoidable; the common examples are personal illness (if you are contagious, you should not come to class), family health emergencies, professional development activities (such as a job interview), and the obligations of religious holidays. If you anticipate (or have) an unavoidable absence, please give me advance notice (if possible) and a brief explanation. Once you miss four classes for any reason, you should find a time to discuss the situation with me. Upon the fifth unexcused absence, you will receive a penalty on your final grade for the course. Upon the ninth unexcused absence, you will not be allowed to take the final exam, except with the permission of the Associate Dean for Academic Affairs. Having five or more unexcused absences creates a presumption of “particularly weak classroom participation.”

It may become necessary for me to cancel a class and schedule a make-up. Although attendance at make-up sessions is expected, your absence from a make-up session will not count as an unexcused absence. Because our class has a small enrollment, if (and only if) we have the consent of everyone in the class, we may be able to implement some special arrangements for rescheduling missed classes.
Policies

Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (http://osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of both the Law School and the legal profession for which you are preparing to join. All members of the Law School community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), SS Memorial Union, 882-4696, and then notify either Associate Dean Henson or Denise Boessen in the main office of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

Requirement of Consent for Redistribution of Recordings of Classes

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of
the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student’s grade.

Laptops and Cell Phones

I ask that cell phones be turned off during class, but there are exceptions. For example, if you are a parent or are responsible for a dependent, I understand that you may need to be available at all times (e.g., to deal with an emergency, etc.). If that is your situation, please put your phone on the “vibrate only” mode. There may be other exceptional situations that require a phone to be ready for use.

In that same vein, it is permissible to use laptops in class for note taking and to access Web materials related to the class. Because of the potential for a laptop screen to be distracting to those seated near you, what I expect is that you will not use a laptop during class for non-class purposes (such as checking e-mail, social media sites or other websites, or text messaging) or in any manner disruptive to those around you. This is simply one aspect of a shared value of our law school community -- that we all conduct ourselves professionally, which includes respecting our classmates and our class setting. If your use of a laptop becomes too distracting, you may be instructed to stop using it.

How to Reach Me

My office location, phone, email address, and office hours are at the top of this syllabus. One of the best times to reach me is right after class. You can always send me an e-mail, and I will try to respond as soon as I can; if you e-mail me about the course, please mention "Insurance Law" in the subject line in some way so that I will be less likely to miss your e-mail among the many I receive daily. If you need to see me but staying after class or coming in during office hours is not possible, please feel free to stop by at any other time; also, I will make an appointment with you if that would be helpful to your reaching me.

Schedule of Topics (subject to change)

[See TWEN for assignments on each topic]

I. Introduction

   A. Introduction to Risk, Insurance, and Insurance Law (Review)
   B. Contract Law Foundations (Review)
      1. Insurance Contract Interpretation
      2. Waiver & Estoppel
3. Insurance Intermediaries
4. Insurer Defenses
5. Damages

C. Classification of Insurance
   1. Nature of Risk
   2. Nature of Insurer
   3. Nature of Marketing

II. Property Insurance
   A. The Policy
   B. Elements of Coverage
      1. Fortuity
      2. Trigger and Occurrence Issues
      3. All-risk versus Specified-risk Coverage
   C. Insurable Interest in Property
   D. Indemnity I: Valuation
   E. Indemnity II: Valued Policies
   F. Indemnity III: Subrogation
      1. Basic Rules and Functions
      2. Subrogation and Settlement
   G. Indemnity IV: “Other Insurance” Clauses
   H. Causation
   I. Innocent Coinsureds
   J. Excluded Losses
      1. Friendly Fire Rule
      2. Increased Risk
   K. Conditions as Explicit Limitations on Coverage
   L. Partial Interests
      1. Mortgagor-Mortgagee and Conditional Sales
2. Partial Interests: Vendor-Vendee, Paramount
3. Other Partial Interests

M. Special Kinds of Property Coverages
   1. Business Interruption Insurance
   2. Flood Insurance
   3. Crop Insurance

III. Life Insurance
   A. The Policy
   B. The Application
   C. Insurable Interest in Life
      1. Basic Principles
      2. ILITs and STOLI
   D. Beneficiaries’ Interests
      1. Designation
      2. Change
      3. Beneficiary Disqualification
      4. Competing claims
      5. Common disaster problem
   E. Fortuity
      1. Insurance as Investment versus Security
      2. Intentional Self-Destruction
   F. Assignees’ Rights
      1. General Principles
      2. Vatical Settlements
      3. Reprise: ILITs and STOLI
   G. Incontestability
   H. Negligence Actions against the Insurer
   I. Group Insurance
1. Tripartite Contract and Questions of Agency
2. Multiple Contract Documents
3. Actively at Work Requirement
4. Termination and Modification
5. Corporate Ownership
6. Statutory Regulation

J. Lost Policies

IV. Accidental Death Insurance
   A. Defining “Accident”
   B. Temporal Limits
   C. Special Causation Problems

V. Health Insurance
   A. Drawing the Medical Necessity Line
   B. The Mental/Physical Distinction
   C. The Need for Reform Prior to the ACA
      1. Moral Hazard & Cost Sharing
      2. Preexisting Condition Exclusions
      3. Rescissions
      4. Annual and Lifetime Coverage Limits
      5. Loss of Employer-Sponsored Coverage
   D. Private Market Regulation under the ACA
      1. Regulation of Pricing, Offering, and Renewal
      2. Regulation of Content
      3. Exchanges
      4. Mandates, Subsidies and Taxes
      5. Employer-sponsored coverage after the ACA
   E. Coordination of Coverage
VI. Disability Insurance
A. Meaning of Disability
B. Common Coverage Issues
C. Coordination of Benefits

VII. ERISA: Insurance Provided as an Employee Benefit
A. ERISA’s preemption of state law
   1. Express preemption
   2. Complete preemption under 502(a)
B. Interpretation of ERISA Plans
C. Challenging Coverage Denials under ERISA

VIII. Other Common First-Party Issues
A. Duration of Coverage
B. Premium Payments and Grace Periods
C. Reinstatement and Renewal