Course Goals, Objectives, and Expected Learning Outcomes

This course is designed to provide you with knowledge of the fundamental principles of insurance law and regulation. The content of the course emphasizes the topics and issues that an attorney will most frequently encounter when representing an individual, business organization, or insurer in the varied situations when consumers encounter the insurance industry. In the twenty-eight class sessions, we will

- study and discuss the substantive law of insurance, both statutory and case law;
- identify and explore the implications of the substantive law for effective lawyering when representing either insurers or insureds; and
- identify and explore public policies that underlie the substantive rules, to the end that in future representations you will be better equipped to advocate effectively, and sometimes innovatively, on behalf of your client.

Thus, upon your successful completion of this course,¹ you will:

- have achieved a basic understanding of the substantive law of insurance;
- understand the theoretical bases for and public policies underlying the substantive law;
- appreciate the implications of the substantive law when representing clients; and
- appreciate interrelationships between insurance law and other bodies of law you are studying during law school.

The course will cover in detail principles of insurance law that are common to all kinds of insurance products. With respect to principles that are specific to particular lines of insurance, the course will cover some of the principles relevant to property and life insurance, but much greater emphasis will be placed on liability insurance. This is because the number of law school

¹ Revised ABA Standard 301 requires that the law school collectively publish a set of learning outcomes. The Mizzou Law statement appears at http://law.missouri.edu/prospective/learning-outcomes.
graduates whose practice will involve liability insurance is larger than the number who will spend significant time on life and property insurance. For the “deeper dive” into life and property insurance, I offer a course in the spring semester called “Advanced Topics in Property, Life, Disability, and Health Insurance,” and I would refer interested students to that course. This course is not a prerequisite to the “Advanced Topics” course.

Books and Required Readings


Note that I am using the third edition of Baker & Logue in this course, even though the fourth edition was published this past summer. The reason is that in the fall of 2018, I plan to use a newly released version of my own casebook (last published in 2001), and I do not want to eliminate the ability of prior years’ students to sell a used book or you to purchase a used book in the year before I stop using Baker & Logue.

Additional required readings will be posted in the “course readings” page in TWEN.

Many students find it helpful to consult a secondary resource from time to time. In this regard, I recommend Robert H. Jerry, II & Douglas R. Richmond, Understanding Insurance Law (LexisNexis, 5th ed. 2012). I stress that this is not a required text. I will make multiple copies available on reserve in the Law Library. For your information, the sixth edition of Jerry and Richmond will be published in a few months, but not before this course is completed.

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.

Final Exam, Grading, and Attendance

The final examination will be a take-home exam. You will be allowed to choose an 8-hour period on any day within the 11-day examination period during which you can take the exam. 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).

American Bar Association rules require “regular and punctual class attendance” by students. In my 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, please do 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 schedule an appointment with me to discuss the situation. Upon the fifth unexcused absence, you will receive a penalty on your final grade for the course. Upon the seventh unexcused absence, you will not be allowed to take the final exam, except with the permission of the Associate Dean for Academic Affairs.

I will circulate an attendance sheet in each class. If you are late, you are not to sign the attendance sheet. I recognize that sometimes factors beyond our control cause us to be late; although entering the classroom late is distracting, I would prefer that you come to class if you are late rather than not come at all.

Your grade for this course will be based on your score on the final examination. I reserve the option to raise a grade for particularly strong classroom recitation, and I reserve the option to lower a grade for particularly weak classroom recitation. Having four or more unexcused absences creates a presumption of “particularly weak classroom participation.”

It will be necessary for me to cancel one or more classes this semester and schedule make-ups. Although attendance at make-up sessions is expected, your absence from a make-up session will not count as an unexcused absence.

**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](http://disabilityservices.missouri.edu)), S5 Memorial Union, 882-4696, and then notify either Associate Dean Gely or Denise Boessen in the main office of your eligibility for reasonable accommodations. The Office of Disability Services is responsible for reviewing documentation provided by students requesting academic accommodations and for accommodation planning in cooperation with students and instructors, as needed and consistent with course requirements. 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 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. Other exceptional situations may exist that require a phone to be ready for use.

In that same vein, it is permissible to use laptops, tablets, and similar devices (“mobile devices”) in class for note taking and to access Web materials related to the class. Because of the potential for a mobile device screen to be distracting to those seated near you, what I require is that you not use a mobile device during class for non-class purposes (such as checking e-mail, social media sites or other websites, or text messaging) or in any other 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.

**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 is not possible and you have missed me in my office after a couple of attempts, please email me so that we can make an appointment.

**Assignments**

All assignments listed below are to pages in the Baker & Logue, 3d ed. casebook. These are subject to change (and there will be changes); any additions, deletions, or modifications will be announced on the TWEN course site.

**Topic I: Introduction to Risk, Insurance, and Insurance Law 1-30**

A. What is Insurance?  
B. Risk & Risk Management  
C. Insurance & Risk Regulation  
D. Insurance Markets  
E. Other Functions of Insurance  
F. Insurance and Social Responsibility  
G. What is Insurance Law?

**Topic 2: Contract Law Foundations**

A. Insurance Contract Interpretation 31-57  
B. Waiver & Estoppel 59-77  
C. Insurance Intermediaries: Agents and Brokers 77-82  
D. Misrepresentation 82-96  
E. Disproportionate Forfeiture 96-104  
F. Damages 104-11  
   1. The Tort of Bad Faith 112-18  
   2. Punitive Damages 118-32
**Topic 2A. Insurance Regulation [time during semester TBD]**

A. Courts as Regulators TBD
B. Legislatures as Regulators
   1. Overview of Legislative and Administrative Regulation TBD
   2. Functional Divisions 573-77
C. Theoretical Justifications 577-80
D. Insurance Federalism Issues
   1. Defining Insurance (reprise) 580-89
   2. The Federal-State Boundary 589-96
E. Risk Classification 635-39

**Topic 3: First-Party Insurance**

A. Property Insurance
   1. The Policy 133-59
   2. Valuation 173-81
   4. Causation 160-70
   5. Flood Insurance 170-73
B. Life Insurance
   1. Overview 201-02
   2. Insurable Interest 211-14
   3. Interests Protected *Estate of Bean*
   4. Incontestability 202-11
   5. Beneficiary Designation and Change TBD
   6. Beneficiary Disqualification TBD
C. Disability Insurance
   1. Overview 214-15
   3. Insured’s “Obligation” to “Mitigate” 219-25
   4. Coordination of Benefits 225-31
D. Subrogation 287-96

**Topic 4: Liability (Third-Party) Insurance**

A. Introduction 305-06
B. A Representative Policy 308-24
C. The Insuring Agreement
   1. Trigger Issues 306-07, 325-34
   2. Occurrence vs. Claims-Made Coverage 340-45
   3. Bodily Injury 345-49
   4. Limits, Deductibles, and Number of Occurrences 349-55
D. The Problem of Intentional Harm
   1. Defining “expected or intended” 364-78
   2. Public Policy 378-88
   3. Criminal Acts Exclusion 392-402
E. Environmental Liability 355-64
F. Special Issues in Automobile Liability Insurance
   1. Omnibus Clause 402-08
   2. Family Member Exclusion 408-14
   3. Arising out of the Use of an Automobile 414-17
G. Intellectual Property Coverage Issues TBD
H. Professional Liability Insurance
   1. Definitions of “Professional Services” 422-43
   2. D&O Liability Insurance 443-54
   3. Late Notice Under Claims Made Coverage 454-71

**Topic 5: Claims Processing (Liability Insurance Relationship Issues)**

A. The Duty to Defend
   1. The Basic Duty 473-83, 488-92
   2. Reservation of Rights, Terminating the Duty, and Conflicts of Interests 492-99
B. The Duty (Privilege?) to Settle 504-12
C. The Tripartite Relationship & Conflicts of Interest
   1. Pattern Conflict Cases 525-28
   2. Defense Lawyers’ Responsibilities 534-42
D. The Duty to Cooperate 542-50
E. Understanding the Relationship between Liability Insurance and Tort Law 563-71

**Topic 6: Insurance Regulation (Reprise): Three Major Examples**

A. Insurance Guaranty Funds 614-24
B. Residual Market Mechanisms 624-35
C. Risk Classification (Reprise) 640-52