

INSURANCE LAW
PROF. MICHELLE BOARDMAN
FALL 2022
MONDAY & WEDNESDAY, 1:50-3:15

The text for this class is Kenneth S. Abraham and Daniel Schwarcz's **Insurance Law and Regulation** (7th Edition). Unlike some first-year texts, the writing between cases is not fluff; it is central to learning and exploring the subject matter. Most of the sections have problems and questions that you will answer for yourself before coming to class. I recommend writing down your analysis. Some answers will be a phrase or a line but others will be more detailed. Your grade will be based on class participation (25%) and an exam (75%).

8/22: History and functions of insurance, 1-11. Worksheet on adverse selection and moral hazard. Insurance contract formation, 37-45. Explore <https://www.verisk.com/insurance/>

8/24: Law of misrepresentation, 11-35.

8/29: Principles of insurance law: Formation and Interpretation, 45-66.

8/31: Waiver and estoppel in insurance, 79-83. Public policy restrictions, 98-110.

9/5: Labor Day

9/7: Introduction to insurance regulation, 111-122. Regulation of certain rates, 133-150. Policy form regulation, 150-157.

9/12: Property insurance sample policy and insurable interest requirement, 195-231.
Sample Homeowners Policy: 197-223 and questions on 224. Give yourself plenty of time to read it, perhaps in more than one sitting. Come to class ready to give your thoughts on it and raise questions about it. Flag at least three terms each that seek to address adverse selection and moral hazard.

9/14: Property trigger and occurrence/business interruption coverage, 231-247.
Intrinsic loss "exclusion," 248-256.

9/19: Property causation problems, 256-274. These cases can be a puzzle; give yourself time to read slowly, re-read where necessary, and consider.

9/21: Property: Measure of recovery and subrogation, 281-295. You may want to read the subrogation materials separately, with a fresh brain.

9/26: Life insurance, application and insurable interest, 313-328. Incontestability, 333-345.

9/28: Life insurance, continued discussion of prior day's reading. Long-term care, 351-357.

10/3: Health insurance. Structure of the market, 383-387. Rating and underwriting, 387-403.

10/5: Health insurance, 403-420. Coverage disputes, 420-430. This reading is slightly longer than usual, but the public policy discussion goes by quickly.

10/10: Fall Break. Monday classes meet on Tuesday

10/11: We meet: Liability insurance: Coverage.

Sample CGL Policy: 465-482. I recommend reading it in a separate sitting. Read the policy in several ways. First, skim through the policy to understand its structure. Second, read the policy to understand its content; writing an outline of the policy as you go will prove useful.

10/12: Liability insurance: Trigger and allocation.

10/17: Liability insurance: Occurrences & Expected or Intended Harm.

10/19: Liability insurance: Pollution Exclusion & Notice Conditions.

10/24: Liability insurance: Pollution Exclusion & Notice Conditions.

10/26: Claims-Made Policies. Reading the D&O policy is optional.

10/31: Duty to Defend.

11/7: Settlement.

11/9: Auto Insurance—Policy and Compulsory Insurance Requirements.

11/14: Auto Insurance—Omnibus Clause and “Use.”

11/16: Reinsurance: Duty of Utmost Good Faith. Breach of Bad Faith.

11/21: Possible make-up or additional topic.

12/9: Exam at noon

Individual meetings, in person or by Zoom, are available by request on Tuesday or Wednesday, or on other days as necessary. I will attempt to record class for students who are ill, but I cannot guarantee recording. Meeting individually to discuss missed class topics will also be available.

Learning Outcomes

This course involves learning about specific lines and categories of insurance, as well as understanding the overarching concepts that are common to all insurance. Among other skills, at the end of the course students will:

- Understand and be able to apply the concepts of risk, risk allocation, adverse selection, moral hazard, and underwriting accuracy to various insurance contexts.
- Understand and be able to apply the insurance-specific rules of contract law that govern the interpretation and construction of insurance policies, including issues of misrepresentation and bad faith breach.
- Know how to analyze the structure and content of various types of insurance policies.
- Develop a general understanding of the insurance market from the perspective of both the policyholder and the insurer and understand how the market shapes the availability and content of insurance.
- Have an advanced understanding of central disputes in liability insurance, homeowners insurance, health insurance, automobile insurance, and life insurance.