



INSURANCE LAW (Law 610; CRN 60534)
SPRING 2021 SYLLABUS
Revised – January 17, 2021

Instructor: Hon. Karsten H. Rasmussen
Class meetings: T/R from 5:30-6:45 p.m., via Zoom
E-mail: Karsten.H.Rasmussen@ojd.state.or.us
*Available for discussion and appointments after class and by appointment at other times.

Course Description

This course examines the relationship between various insurance strategies and the law that has developed to regulate both the insured and the insurer. We will use texts, cases, statutes, and policies as materials. The class will be divided into six sections, although these sections will necessarily overlap at times:

I. The Nature and Purpose of Insurance: This section will provide a historical overview of insurance and the motivations and purposes served by insurance. We will review the basic concept of contract law, which provides the underpinning of insurance law. We will also discuss other basic concepts, such as binders, risk, secondary insurance markets, and reinsurance.

II. Basic Insurance Principles: In this section, we will review insurable interests, exclusions, limitations of risk, warranties, causation, and duties of both policyholders and the insurer after loss. Basic terms such as indemnity, duty to defend, and subrogation will be examined. We will also consider liability insurance, moral hazard and adverse selection, progressive loss, and disasters.

III. Automobile Insurance: Here, we will examine automobile insurance, as it is the most widely sold insurance, it produces a high volume of disputes, and it was a significant shaping force in the now-common concept of the duty to defend. This section will feature a guest speaker.

IV. Commercial Insurance: This section will explore general commercial insurance issues, multiple occurrence/continuous exposure exclusions, business risk and pollution exclusions, and the Lamb-Weston Doctrine. We will also examine insurance in the context of construction.

V. Special Risks: In this section, we will examine professional liability, workers' compensation, environmental liability, and executive and officers' insurance.

VI. Defenses and Settlement: Finally, we will consider how litigation and settlement processes are navigated.

Course Texts

- Jeffrey W. Stempel, Erik S. Knutsen, & Peter N. Swisher, Principles of Insurance Law (5th ed., Carolina Academic Press, 2020)
 - **A note on the casebook:** some sections use extensive footnotes. **PLEASE READ THEM.** They are often entertaining and contain many substantive definitions and evaluations of legal terms and applications.
- Kenneth S. Abraham, The Liability Century: Insurance and Tort Law from the Progressive Era to 9/11 (2008).
- Class Reading Supplement, which is available at the University of Oregon Law Bookstore or from the professor.
- Cases online, ORS online, and various websites.

Course Assignments

Grading Policy:

Your grade in this class will be based on three criteria:

- **Participation:** Professionalism, class participation, and attendance will affect your grade. You must read and think about the assigned material prior to class to be prepared to make informed, considered comments or pose cogent, relevant questions during class discussion. At the beginning of the semester I will divide the class into firms. Before each class I will send out a list of questions regarding the upcoming readings. The questions will either be assigned to the class or to a specific firm. You are responsible to come to class prepared to answer and discuss all questions. Consistent failure to prepare for class adequately will result in your grade being lowered by one grade increment (e.g. A- to B+). Tardiness and absenteeism will similarly harm your grade. Conversely, excellent preparation can raise your grade by one grade increment.
- **Take-home final:** 100% of your grade, apart from any adjustments made on

account of your class participation, will be determined based on your firms' answers to the assigned questions. For the final, each firm will submit a document that answers all the questions that were specifically assigned to their firm throughout the semester. Each firm member's grade will be based on those answers. It is up to the firms to determine how to best answer and allocate the questions between firm members.

- **Cumulative list of course-related terms:** During each class one of the firms will be asked to keep a running list of insurance related terms discussed during the class. The assigned firm for a given class will be listed on the assignment packet, and the firm is charged with delegating the task of adding the new terms to one of its members. This running list should include a brief definition and should be shared with class members shortly after class (Google Doc, DropBox), perhaps by the following day. The "keeper of the list" will rotate every class.

Last year this list of terms provided a final product, collaboratively generated, for the entire class to take with them into practice as a starting point for any research, legal questions, etc. regarding insurance law that might come up for you in practice. It proved to be not only a great teaching tool, but a practical tool as well.

Attendance

Class meets Tuesday/Thursday from 5:30 p.m. to 6:45 p.m. via Zoom. The School of Law believes that dependability and punctuality are essential characteristics of a good lawyer and that the development of good professional habits is essential for legal education. Students are expected to attend all classes and arrive punctually. Roll will be taken at the beginning of each class.

Accommodation

If you need accommodation based on a disability, please contact the Assistant Dean for Student Affairs, as soon as possible to make the appropriate arrangements.

Prohibited Discrimination and Harassment Reporting

Any student who has experienced sexual assault, relationship violence, sex or gender-based bullying, stalking, and/or sexual harassment may seek resources and help at safe.uoregon.edu. To get help by phone, a student can also call either the UO's 24-hour hotline at 541-346-7244 [SAFE], or the non-confidential Title IX Coordinator at 541-346-8136. From the SAFE website, students may also connect to Callisto, a confidential third-party reporting site that is not a part of the university.

Reading Assignments

• THE NATURE AND PURPOSE OF INSURANCE

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>	<u>Additional</u>
<ul style="list-style-type: none"> Tuesday (1/12) 	Basic concepts of insurance; the development of liability insurance; structure of a casualty insurance company	<p>Principles: p. 3-17 (including footnotes); Liability Century: Ch. 1</p> <p>Watch: https://www.youtube.com/watch?v=OiBNQADtMnk</p> <p style="text-align: right;">(15+)</p>	Consider the pervasive nature of insurance in society.
<ul style="list-style-type: none"> Thursday (1/14) 	Contract law and the construction of insurance contracts	<p>Principles: p. 99-134; 235-241</p> <p>Insurance Law CLE: §1.1; Review this section again as the course proceeds</p> <p style="text-align: right;">(42+)</p>	Review basic function, construction, interpretation, remedies of general contract law.
<ul style="list-style-type: none"> Tuesday (1/19) 	Risk spreading, exclusions, warranties, and “other” insurance; excess insurance	<p>Principles: p. 17-49; 80-86; 290-298; 626-628; 899-901</p> <p>Also: <i>Farmers Ins. Co. of Oregon v. American Family Mutual Ins. Co.</i>, 243 Or App 391 (2011).</p> <p style="text-align: right;">(50+)</p>	
<ul style="list-style-type: none"> Thursday (1/21) 	Reinsurance; follow-the-fortunes principle; subrogation; tail coverage	<p>Principles: p. 930-934; 946 (D)-947; 953-959; 569-576</p> <p>Also: http://www.irmi.com/online/insurance-glossary/terms/t/tail-coverage.aspx</p> <p style="text-align: right;">(19+)</p>	

II. BASIC INSURANCE PRINCIPLES AND INSURANCE CONTRACT FORMATION

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>	<u>Additional</u>
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<ul style="list-style-type: none"> • Tuesday (1/26) 	The insurable interest requirement (Split the Arrangement in half)	<p>Principles: p. 325-365 State Farm Homeowners Policy (SFHP)</p> <p>(40+)</p>	Note what is covered under the SFHP
<ul style="list-style-type: none"> • Thursday (1/28) 	Exclusions	<p>Principles: p. 33-36; 45-49; 290-292; 641-680 Insurance Law: §1.2-1(a)(5)</p> <p>(49)</p>	Note relevant provision of SFHP (p. 16-18; 20(2.))
<ul style="list-style-type: none"> • Tuesday (2/2) 	Causation	<p>Principles: p. 367-389 Insurance CLE: § 3.3-3.7(c)</p> <p>(22)</p>	Note relevant provision of SFHP
<ul style="list-style-type: none"> • Thursday (2/4) 	Causation (cont.): accidental; fortuity; and pre-existing conditions	<p>Principles: p. 389-407</p> <p>(40)</p>	Note relevant provision of SFHP
<ul style="list-style-type: none"> • Tuesday (2/9) 	Duties of policyholders and insurers	<p>Principles: p. 411-418; 421-442 Also: <i>ZRZ Realty Co. v. Beneficial Fire & Cas. Ins. Co.</i>, 349 Or 117 (2010) to “C: Protection and Indemnity Coverage.”</p> <p>(28+)</p>	Focus on concepts of duty to indemnify, duty to defend, occurrence, exceptions, property damage, breach of contract and public policy limitations on coverage
<ul style="list-style-type: none"> • Thursday (2/11) 	Fee shifting; role of insurer-appointment defense counsel; rights of insurer; etc.	<p>Principles: p. 442-479; 479-481 Supplement: <i>Regence Group v. TIG Specialty Ins. Co.</i>, 903 F.Supp.2d 1152 (D. Or. 2012); ORS 742.206; 742.210; 742.242</p> <p>(39+)</p>	In the case, focus on public policy restrictions and the duty to indemnify in regard to RICO claims
<ul style="list-style-type: none"> • Tuesday (2/16) 	Liability insurance: general concepts, bodily injury, property damage	<p>Principles: p. 77; 579-598. Read and review</p> <p>(20)</p>	
<ul style="list-style-type: none"> • Thursday (2/18) 	Liability insurance (cont.): “occurrence,” “claim” or “suit” in context of duty to defend; uninsurable “known loss”; “claims made” v. “occurrence” liability coverage; tail coverage	<p>Principles: p. 598-614; 673-678 Also: Bodyfelt Mount article</p> <p>(21+)</p>	

<ul style="list-style-type: none"> Tuesday (2/23) 	Liability insurance and duties to defend; “drop down” liability; “umbrella” coverage; self-insurance	<i>Principles</i> : p. 915-930 Insurance CLE : § 2.7 (15)	
<ul style="list-style-type: none"> Thursday (2/25) 	Reinsurance revisited		

III. AUTOMOBILE INSURANCE

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>	<u>Additional</u>
<ul style="list-style-type: none"> Tuesday (3/2) 	General principles and recurring issues	<i>Principles</i> : p. 773-805 Insurance Law CLE : §18 (31) State Farm Car Policy(SFCP) <i>Liability Century</i> : Ch. 3 (32+)	
<ul style="list-style-type: none"> Thursday (3/4) 	General principles and recurring issues (cont.)	<i>Principles</i> : p. 805-818 (13)	Note relevant provision of SFCP
<ul style="list-style-type: none"> Tuesday (3/9) 	Uninsured and underinsured motorist	<i>Principles</i> : p. 818-830 Insurance Law CLE : §19.1 – 19.25; 19.38-19.41 Also : ORS 742 Also : <i>Lawson v. Hoke</i> , 339 Or 253 (2005) [concerning uninsured motorists] (12+)	Note relevant provision of SFCP (p. 17-27)
<ul style="list-style-type: none"> Thursday (3/11) 	No-fault automobile insurance	<i>Principles</i> : p. 830-842 Insurance Law CLE (1996) : Part VI (PIP Coverage) (12+)	Note relevant provision of SFCP

IV. COMMERCIAL INSURANCE

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>	<u>Additional</u>
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<ul style="list-style-type: none"> Tuesday (3/16) 	Triggers of commercial coverage; coordination of coverage and allocation of insurance proceeds	Principles: p. 618; 626-641; Appendix E p. 1285 (Commercial General Liability Policy) (16+)	Review p. 579-581
<ul style="list-style-type: none"> Thursday (3/18) 	Coverage triggers (cont.); excess and other insurers in the commercial insurance context Coverage and exclusions in context of commercial insurance	Principles: p. 678-680 Also: <i>The Unanswered Question of Environmental Insurance Allocation in Oregon Law</i> , 39 Willamette L. Rev. 1131 (2003) Construction Law CLE: p. 564 [Additional cases] (2+)	
<ul style="list-style-type: none"> Tuesday (3/30) 	Insurance in the context of construction	[Cases on duty to defend]	

V. **SPECIAL RISKS**

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>	<u>Additional</u>
<ul style="list-style-type: none"> Thursday (4/1) 	Workers' compensation	Principles: p. 683-686 Liability Century: Ch. 2 Workers' Comp. CLE: § 1; 4 Also: ORS 656 (3+)	
<ul style="list-style-type: none"> Tuesday (4/6) 	Professional malpractice	Principles: p. 680-682 Liability Century: Ch. 4 Insurance CLE: § 2.5-8 Also: Oregon PLF Policy (2+)	
<ul style="list-style-type: none"> Thursday (4/8) 	Products liability; environmental liability; insuring the tail	Principles: p. 683(D) Liability Century: Ch. 5 Damages CLE: § 11 Insurance Law CLE: § 13 (1+)	

<ul style="list-style-type: none"> Tuesday (4/13) 	Additional types of liability coverage	<p>Principles: p. 680-694 Also: <i>St. Paul Fire & Marine Insurance Co. v. F.H.; K.W.</i>, 55 F.3d 1420 (9th Cir. 1995) Also: <i>Oregon State Bar Prof. Liability Fund v. Benfit</i>, 225 Or App 409 (2009)</p>	(14+)
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VI. DEFENSES AND SETTLEMENT

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>	<u>Add</u>
<ul style="list-style-type: none"> Thursday (4/15) 	Catch up (#20)	---	
<ul style="list-style-type: none"> Tuesday (4/20) 	Insured's defenses	<p>Principles: p. 86(6)-87; 298-324</p>	(28)
<ul style="list-style-type: none"> Thursday (4/22) 	Considerations of good faith; moral hazard; first v. third party claims; duty to settle and defend in context of good, institutional, and bad faith	<p>Principles: p. 53-57; 87-88; 707-709; 847-851; 862-871; 887-889</p>	(23)

Supplemental Reading List:

- *The Value of Risk*, Oxford University Press (2014).
 - p. 1-20; 138-144; 210-230; 336-352
- *Insurance Law: The Basics*, OSB Legal Publications (2011).
 - §§ 1.1; 1.2-1.2(a); 1.2-1(a)(5); 2.5-8; 2.7; 3.3-3.7(c); 13; 18; 19.1-19.25; 19.38-19.41;
- *Farmers Ins. Co. of Oregon v. American Family Mutual Ins. Co.*, 243 Or App 391 (2011).
- <http://www.irmi.com/online/insurance-glossary/terms/t/tail-coverage.aspx>

- *ZRZ Realty Co. v. Beneficial Fire & Cas. Ins. Co.*, 349 Or 117 (2010).
- *Regence Group v. TIG Specialty Ins. Co.*, 903 F.Supp.2d 1152 (D. Or. 2012).
- Justin M. Thorpe, *One Occurrence or More? Determining Multiple Occurrence/Accident Limits in Liability Policies*, Bodyfelt Mount (2015).
- *Lawson v. Hoke*, 339 Or 253 (2005).
- *The Unanswered Question of Environmental Insurance Allocation in Oregon Law*, 39 Willamette L. Rev. 1131 (2003).
- *Construction Law*, OSB Legal Publications (2011) p. 365.
- *Workers' Compensation*, OSB Legal Publications (2008).
 - §§ 1; 4
- *Damages*, OSB Legal Publications (1998). § 1.
- *St. Paul Fire & Marine Insurance Co. v. F.H.; K.W.*, 55 F.3d 1420 (9th Cir. 1995).
- *Oregon State Bar Prof. Liability Fund v. Benfit*, 225 Or App 409 (2009).
- *1 and 2 Insurance Law in Oregon (OSB Legal Pubs 2020)*.