
TABLE OF CONTENTS

PREFACE.....	V
TABLE OF CASES.....	XIX
Chapter One. Introduction	1
A. The History and Functions of Insurance.....	1
B. The Law of Misrepresentation	11
1. The Origins of the Law of Misrepresentation: Breach of Warranty.....	12
Vlastos v. Sumitomo Marine & Fire Insurance Company.....	12
Notes and Questions	16
2. The Transformation of Warranty Law: The Modern Law of Misrepresentation	18
De Smet Farm Mutual Insurance Company of South Dakota v. Busskohl.....	19
Notes and Questions	26
Neill v. Nationwide Mutual Fire Insurance Company	30
Notes and Questions	32
Chapter Two. General Principles of Insurance Law.....	37
A. Insurance Contract Formation.....	37
1. The Drafting of Insurance Policies	37
2. Binders and Policyholder Assent to Standardized Forms.....	42
Notes and Questions	44
B. Insurance Contract Interpretation	45
1. The Plain Meaning Rule and <i>Contra Proferentem</i>	45
Stone Container Corporation v. Hartford Steam Boiler Inspection and Insurance Company.....	46
Notes and Questions	50
Vargas v. Insurance Company of North America	53
Notes and Questions	56
2. Honoring the Reasonable Expectations of the Insured	59
Zacarias v. Allstate Insurance Company.....	60
Notes and Questions	65
C. The Role of Intermediaries	67
1. The Authority of Intermediaries	68
2. Intermediaries' Duties to Policyholders	69
Langwith v. American National General Insurance Company.....	70
Notes and Questions	77
3. Waiver and Estoppel.....	79
Roseth v. St. Paul Property & Liability Insurance Company	79
Notes and Questions	82
4. Group Insurance and ERISA.....	83
D. Liability for Bad-Faith Breach.....	85
Silberg v. California Life Insurance Company.....	86
Notes and Questions	95
E. Public Policy Restrictions on Contract Terms.....	98
Neal-Pettit v. Lahman	99

Notes and Questions	102
Strickland v. Gulf Life Insurance Company	104
Notes and Questions	109
Chapter Three. Principles of Insurance Regulation.....111	
A. The Allocation of Regulatory Powers.....	111
Notes and Questions	114
B. State Insurance Regulation.....	115
1. The First Virtue of Insurance: Regulation to Assure Solvency	118
a. Rationales for Solvency Regulation	118
Notes and Questions	121
b. The Tools of Solvency Regulation.....	122
Notes and Questions	130
2. Regulation of “Excessive” Rates	133
Anthem Health Plans of Maine v. Superintendent of Insurance	135
Notes and Questions	139
3. Regulation of “Unfairly Discriminatory” Rates.....	142
Allstate Insurance Company v. Schmidt	144
Notes and Questions	148
4. Policy Form Regulation	150
Notes and Questions	152
5. Market Conduct Regulation	155
Notes and Questions	156
6. Residual Market Mechanisms.....	157
Insurance Information Institute, Residual Markets (2009)	157
Notes and Questions	158
C. Federal Regulation	160
1. Federal Regulation and Reverse Preemption.....	160
Patrick O. Ojo v. Farmers Group, Inc.....	160
Notes and Questions	163
2. Federal Antitrust Law and Insurance	166
a. What Constitutes “The Business of Insurance”?.....	167
b. What Constitutes “Regulation” by the States?.....	169
c. What Constitutes “Boycott, Coercion, or Intimidation”?	170
Hartford Fire Insurance Company v. California.....	171
Notes and Questions	178
3. The Federal Role in Catastrophe Insurance	179
Notes and Questions	181
4. Federal Regulation of Insurance After the Dodd-Frank Act.....	183
a. The AIG Bailout	183
Notes and Questions	185
b. Dodd-Frank’s Insurance Reforms	186
Federal Insurance Office, How to Modernize and Improve the System of Insurance Regulation in the United States (2013)	187
Notes and Questions	190

D.	International Regulation of Insurance	191
	Federal Insurance Office, How to Modernize and Improve the System of Insurance Regulation in the United States (2013).....	191
	Notes and Questions	193
Chapter Four. Property Insurance.....		195
A.	Sample Homeowners Policy	195
	Notes and Questions	224
B.	The Requirement of an Insurable Interest in Property Insurance.....	224
	Richard C. Gossett and Margaret D. Gossett v. Farmers Insurance Company of Washington.....	225
	Notes and Questions	229
C.	Trigger and Occurrence Issues	231
	Port Authority of New York and New Jersey v. Affiliated FM Insurance Company	231
	Notes and Questions	236
D.	Business Interruption Coverage	239
	Zurich American Insurance Co. v. ABM Industries, Inc.	239
	Notes and Questions	245
E.	Exclusions.....	248
	1. The Problem of Intrinsic Loss	248
	Chute v. North River Insurance Company.....	248
	Notes and Questions	250
	Rosen v. State Farm General Insurance Company	251
	Notes and Questions	255
	2. The Problem of Causation	256
	State Farm Fire and Casualty Company v. Bongen.....	256
	Notes and Questions	260
	Russell v. NGM Insurance Company.....	261
	Notes and Questions	266
	Broussard v. State Farm Fire and Casualty Company	267
	Notes and Questions	272
	3. The Problem of Increased Risk.....	274
	Langill v. Vermont Mutual Insurance Company	275
	Notes and Questions	280
F.	The Measure of Recovery.....	281
	Zochert v. National Farmers Union Property & Casualty Company	281
	Notes and Questions	284
G.	Subrogation	287
	Great Northern Oil Company v. St. Paul Fire and Marine Insurance Company	289
	Notes and Questions	293
H.	Limited Interests	295
	1. Mortgages	296
	Northwest Farm Bureau Insurance Company v. Althauser	296
	Notes and Questions	298

2.	Leaseholds	299
	Alaska Insurance Company v. RCA Alaska Communications, Inc.....	299
	Notes and Questions	303
3.	Real Estate Sales	304
	Paramount Fire Insurance Company v. Aetna Casualty and Surety Company	305
	Notes and Questions	311
Chapter Five. Life and Disability Insurance		313
A.	Traditional Life Insurance	313
1.	The Application	314
	Gaunt v. John Hancock Mutual Life Insurance Company	314
	Notes and Questions	319
2.	The Requirement of an Insurable Interest.....	321
	Ryan v. Tickle.....	322
	Notes and Questions	326
3.	Assignment of Life Insurance Policies.....	328
	Grigsby v. Russell	329
	Notes and Questions	331
4.	Incontestability	333
	Amex Life Assurance Company v. Superior Court	334
	Notes and Questions	337
	Sun Life Assurance Company of Canada v. Wells Fargo Bank	340
	Notes and Questions	343
5.	Designating Beneficiaries.....	345
	Engelman v. Connecticut General Life Insurance Company	345
	Notes and Questions	350
B.	Long-Term Care Insurance and Annuities	351
1.	Long-Term Care Insurance and Guaranteed Renewability	351
	Newman v. Metropolitan Life Insurance Company.....	352
	Notes and Questions	356
2.	Annuities and Securities Regulation	357
	American Equity Investment Life Insurance Company, et al. v. Securities and Exchange Commission	358
	Notes and Questions	365
C.	Disability Insurance	367
	Mossa v. Provident Life and Casualty Insurance Company	368
	Notes and Questions	373
	Heller v. Equitable Life Assurance Society of the United States	376
	Notes and Questions	380
Chapter Six. Health Insurance		383
A.	The Structure of Health Insurance Markets	383
B.	Rating, Underwriting, and Coverage Rules	387
1.	Large and Self-Insured Group Coverage.....	387
	McGann v. H & H Music Company.....	387
	Notes and Questions	392

Metropolitan Life Insurance Company v. Massachusetts	395
Notes and Questions	399
2. Rating, Underwriting, and Coverage Rules for Individual Market and Small Group Insurers.....	403
a. Individual and Small Group Markets Before the ACA.....	403
(1) Health-Based Underwriting and Rating.....	404
(2) Preexisting Condition Exclusions.....	405
(3) Rescissions	406
b. The ACA's Reforms of Individual and Small Group Markets	407
(1) The ACA's Regulation of Insurers' Pricing, Offering, and Renewal of Coverage.....	407
(2) The ACA's Regulation of the Content of Coverage.....	408
(3) The ACA's Reforms to Health Insurance Shopping	408
Notes and Questions	410
3. Single-Payer Reform Proposals.....	413
The Pros and Cons of Single-Payer Health Plans, Linda J. Blumberg & John Holahan, Urban Institute Health Policy Center (2019)	413
Notes and Questions	419
C. Coverage Disputes	420
1. Managed Care, "Medically Necessary" Treatment, and External Review	420
Linn v. BCBSM, Inc.	421
Notes and Questions	426
2. Special Rules for Coverage Disputes Under ERISA	430
Aetna Health Inc. v. Davilla.....	431
Notes and Questions	438
Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey.....	440
Notes and Questions	444
D. Coordinating Payments Among Multiple Payers	447
1. Coordination of Primary and Excess Coverage.....	447
Harris Corporation v. Humana Health Insurance Company of Florida, Inc.....	447
Notes and Questions	453
2. Subrogation and Priority in Recovery	455
Associated Hospital Service of Philadelphia v. Pustilnik.....	456
Notes and Questions	459
Chapter Seven. Liability Insurance: Indemnity.....	463
A. General Liability Insurance	463
1. Sample CGL Policy	465
2. The Insuring Agreement.....	483
a. The Meaning of "Damages," "Property Damage," and "Bodily Injury"	483
A.Y. McDonald Industries, Inc. v. Insurance Company of North America	483
Notes and Questions	490
Eyeblaster, Inc. v. Federal Insurance Company	492

Notes and Questions	495
Heacker v. Safeco Insurance Company of America.....	496
Notes and Questions	498
b. The Trigger and Allocation of Coverage	499
American Home Products Corporation v. Liberty Mutual Insurance Company	500
Notes and Questions	506
In re Silicone Implant Insurance Coverage Litigation	509
Notes and Questions	517
c. The Number of Occurrences	522
Roman Catholic Diocese of Brooklyn v. National Union Fire Insurance Company of Pittsburgh, PA	522
Notes and Questions	528
3. Exclusions and Conditions	529
a. Expected or Intended Harm	530
Stonewall Insurance Company v. Asbestos Claims Management Corporation	530
Notes and Questions	535
Unigard Mutual Insurance Company v. Argonaut Insurance Company	538
Notes and Questions	540
b. The Business Risk Exclusions.....	544
Weedo v. Stone-E-Brick, Inc.....	544
Notes and Questions	552
c. The Pollution Exclusion.....	553
Georgia Farm Bureau Mut. Ins. Co. v. Smith	554
Notes and Questions	559
d. Notice Conditions	562
West Bay Exploration v. AIG Specialty Agencies	562
Notes and Questions	567
B. Claims-Made Policies.....	570
1. Directors and Officers Insurance	571
a. Sample D&O Policy.....	574
b. Key Exclusions in D&O Policies.....	591
Alstrin v. St. Paul Mercury Insurance Company.....	591
Notes and Questions	597
Federal Insurance Company v. Raytheon Company	600
Notes and Questions	605
2. Professional Liability Insurance	606
Anderson v. Aul.....	606
Notes and Questions	612
Chapter Eight. Liability Insurance: Defense, Settlement, and Excess Coverage	615
A. Insurers' Role in Defending Lawsuits	615
Beckwith Machinery Company v. Travelers Indemnity Company.....	616
Notes and Questions.....	623
Gray v. Zurich Insurance Company.....	626
Notes and Questions.....	631

Shoshone First Bank v. Pacific Employers Insurance Company	634
Notes and Questions	639
Parsons v. Continental National American Group	642
Notes and Questions	648
B. Settlement	651
Crisci v. Security Insurance Company of New Haven, Connecticut	652
Notes and Questions	657
Babcock & Wilcox Co. v. American Nuclear Insurers	659
Notes and Questions	664
C. Settlement and Defense Issues Involving Excess Insurers.....	667
1. Exhaustion and Settlement.....	667
Comerica, Inc. v. Zurich American Insurance Company	668
Notes and Questions	673
Salvati v. American Insurance Company	675
Notes and Questions	681
2. Primary Insurers' Duty to Excess Insurers to Settle.....	683
Commercial Union Assurance Companies v. Safeway Stores, Inc.....	683
Notes and Questions	688
Chapter Nine. Automobile Insurance	691
A. Sample Personal Automobile Insurance Policy	692
B. Auto Liability Insurance	708
1. The Scope of Compulsory Insurance Requirements	708
St. Paul Fire & Marine Insurance Company v. Smith	708
Notes and Questions	713
2. The Omnibus Clause.....	716
Griffitts v. Old Republic Insurance Company	717
Notes and Questions	721
3. "Use" of the Vehicle.....	723
Farm Bureau Mutual Insurance Company v. Evans.....	723
Notes and Questions	725
4. Notice and Cooperation Conditions	727
State Farm Mutual Automobile Insurance Company v. Davies.....	727
Notes and Questions	732
5. Coordination of Coverage and Other Insurance Clauses	733
Carriers Insurance Company v. American Policyholders' Insurance Company	734
Notes and Questions	739
C. Collision and Comprehensive Coverage	740
USAA County Mutual Insurance Company v. Cook.....	742
Notes and Questions	746
D. Uninsured and Underinsured Motorists Coverage.....	746
1. The Scope of Uninsured and Underinsured Motorists Coverage	747
Allstate Insurance Co. v. Boynton	747
Notes and Questions	753

2.	The Definition of an “Insured” and an “Uninsured Motor Vehicle”	754
	Boulter v. Hartford Fire Insurance Company	755
	Notes and Questions	759
3.	Stacking Policy Limits	760
	Taft v. Cerwonka	761
	Notes and Questions	764
E.	Auto No-Fault	765
1.	Medical Payments Coverage	766
2.	Mandatory No-Fault and Personal Injury Protection	766
3.	“Add-On” and “Choice” No-Fault	770
Chapter Ten. Reinsurance		771
A.	The Functions and Regulation of Reinsurance	771
	Notes and Questions	775
B.	The Duty of Utmost Good Faith	776
	Allendale Mutual Insurance Company v. Excess Insurance Co. Limited	777
	Notes and Questions	782
C.	“Follow-the-Fortunes” Clauses	784
	Travelers Casualty & Surety Company v. Gerling Global Reinsurance Corporation of America	785
	Notes and Questions	794
D.	Insolvency Clauses	796
	Ainsworth v. General Reinsurance Corporation	796
	Notes and Questions	800
E.	Set-Offs in Insolvency	802
	In the Matter of The Liquidation of The Home Insurance Company	802
	Notes and Questions	807
	INDEX	809