

1/13/04

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no class Tues 2/10

What is insurance law?

- contract between 2 parties where risk is transferred.
- in order to have risk you must have something to lose.

risk preferring

risk neutral

risk adverse

8.5% Gross Nat. Product is insurance.

Moral hazard

RISK

- diversification (e.g. stocks)
- health insurance (company owns it)

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GAF Corp. v. County School Bd. (1980)

Was this a warranty or insurance?
b/c the comp. didn't properly register as an insurance co., & could sue

- make it tough for insurance companies to practice if they aren't registered.

* Public Policy - ^{why?} to regulate insurance companies
 - so insurance is fair/standardized.
 (not just taking your money)
 Gov. wants to keep their hand over the insurance industry to level the playing field.

interlocutory appeal - stop the case in the middle of the case.
 if judge signs off on it, the case can go up

this is ~~a~~ insurance b/c the warranty is beyond workmanship → beyond your control; faulty wood

Bad Faith

Rawlings v. Apodaca (1986)

- neighbors - one set fire to brush & burned Rawlings barn
- Farmers Insurance Co. paid \$10,000 (they insured π & Δ) - wouldn't give π the report

1st party insurer: Rawlings
(been around forever) \rightarrow I insure myself against myself (ie. I run my car into telephone pole)

3rd party insurer:
(recent innovation) \rightarrow damage you do to another's

Is an insurance company a fiduciary? NO
- but they have certain good faith obligations. Fairness & honesty

* in π ID, there is no 1st party bad faith but there is 3rd party bad faith (insura co. won't pay)

I'm at fault, John can sue me for negligence. John will also sue his own insurance co. for diff btwn his policy & mine

if my policy is \$100,000, & his damages are more, I have a 3rd party bad faith claim against my ins

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46-50
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66-67
Notes 1-3, 9 p. 67-71
72-77

read
for next week

p. 21

Deschler v. Fireman's Fund Ins. Co. (1985)

- parasailing - guy had insurance policy that excluded "devices for aerial navigation"
- Court ruled that this was a device used for aerial navigation

It says - it is unclear whether it is or not. If it is, it should've said "no parasailing" in the policy. It did not.

FORTUITY

"All risk" -
does not cover
wear & tear

p. 43 Compagnie Des Bauxites v. North America (1998)

Facts: - CBG filed suit against insurers to recover for business interruption losses arising from mining facilities
- have \$10 mil. policy

Issue: Can CBG recover for the business interruption?
(for rebuilding/reinforcing machinery)

Δ says
- or learned the engineers built structure too weak
- Insurance co. filed motions for summary judgment:
1) the defects caused an inevitable shut down, not by chance.
2) π didn't file timely notice of loss as required by terms of policy
3) π didn't file suit within 12 mos.

District court: in favor of Insurance Co.
b/c insurance covers risks not certainties.
A loss must be fortuitous to be covered.

On appeal, court defines fortuitous as:
"an event which so far as the parties to the contract are aware" is dependent on chance

- π had no knowledge of defects? the insurer & the insured did
- Court says a loss from an unknown design defect is one caused by a fortuitous event.
Insurance Co. shouldn't have been awarded summary judgment.

p. 62

Sneathen v. Oklahoma State Union of Farmers (1985)

Issue: Whether a good faith purchaser for value of a stolen motor vehicle has an insurable interest?

Holding: Yes.

- π was insured - collision loss for Cadillac
- car was stolen; no one knew this at the time of/before accident.
- car returned to rightful owner
- insurance co. refused to pay
- trial court in favor of insurance co.
- reversed

"factual expectation" - there is an insurable interest in the property if the insured would gain some economic advantage by its continued existence or would suffer some economic detriment in case of its loss or destruction.

- π had insurable interest
- paid \$6,500 for his car / traded in old car

p. 66

Brewton v. Alabama Farm Bureau Ins. Co. (1985)

- Browning owned home
- Browning & Brewton went to insurance co. to get fire policy - in name of Mrs & Mr. Brewton
- Browning dies
- fire destroys house
- Brewtons didn't live in house after Browning dies
- Brewton wants to collect - says they have an insurable interest in the home.
- π says Browning was going to give house to them
- summary judgment for Farm Bureau Ins. Co.

Holding: - π s have no insurable interest in Brownings property

- no title / no possessory interest in it
- π didn't suffer any economic loss
- love and affection \nrightarrow insurable interest

Insurance Co. is collecting premiums from Brownings knowing Brownings don't have a real interest (legal interest) in the property.

Mutual Savings Life Insurance v. Noah (1973)

p. 72

- π took out 3 policies on his brother's life
- π was beneficiary
- brother drowned
- Insur. Co. refused to pay

A. death benefit = \$1,500 + double if accidental death
 π is beneficiary

B. death benefit = \$1,000 + double if accidental
 π is beneficiary

C. burial policy - \$500

- funeral was paid by Insur. Co \$ 434.66,
so \$ 65.34 is owed to π .

Δ Insur. Co. says:

1. π has no insurable interest
2. policies lapsed for non-payment of premiums.

Held: By π taking out a policy on the life of another person, he must have an insurable interest in the continuance of the life of such insured.

* The brother - brother relationship will support an insurable interest standing alone.

p 93

Elberon Bathing Co. v. Ambassador Insurance

- bathing club damaged by fire
- A couldn't agree on money
- court appointed appraiser

fire loss based on replacement without depreciation value is not "actual cost"

Replacement value = replaces the old couch burned in fire w/ 7 new couch

actual value = gives you \$ for a "used couch" (depreciation value)

Determining actual cash value:

BROAD EVIDENCE RULE

takes many factors to calculate actual cash value

- original cost - cost of reproduction - witness opinion

take ANY information that is available

p. 98 Doelger & Kirsten Inc. v. National Union Fire

- π wants to recover for wood patterns from a fire burning down the barn

Replacement cost - physical depreciation
- obsolescence

Δ says they are obsolete.

Broad evidence Rule

410.353-3917
Ron in Cancer

Exam - Tues. 1 hr. 10% of our grade
mult. choice / short essay
essay

→ up until Cunningham case

p. 118

Cunningham v. Metropolitan Life Ins. Co. (1988)

- π 's daughter dies in car accident
- π 's insurance co had 2 riders
- Insur. co. paid \$80K in bills
- π sued car driver

Issue: Was Met. Life subrogated to π 's rights?

- #1 investment = no subrogation
- #2 indemnity = subrogation \rightarrow purpose: to place the loss on the wrongdoers (as opposed to insurance companies whenever possible)

p. 120 Subrogation \rightarrow # 1

property damage will always be a subrogation — even w/ express language of the contract.

p. 171

State Legislative and Administrative Regulation

- insurance is a regulated industry
- mostly regulated by states, not fed. gov't

p. 191

Vlastos v. Sumitomo Marine & Fire Ins. Co. (1982)

- appeal from court that denied π recovery from fire in building
- warranted the 3rd floor was for janitor residence
- jury found π breached the warranty

Δ refused to pay since π breached warranty by allowing massage parlor on 3rd floor.

It was a warranty at the time. Δ Court says provision is satisfied IF the janitor ~~occupied~~ ^{occupied} the floor when the policy was dated - even if the situation changed

Held: The warranty was ambiguous:
 - didn't say the 3rd floor was occupied solely by the janitor

<p><u>representation</u> not part of insurance contract (ie: you misrepresent your middle name)</p>	<p>v. no <u>warranty</u> positive affirmation that is made that is material to the risk when you enter into the contract</p>
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p. 140: Carriers Ins. Co v. American

Jill gets car insurance from:

John and Mark

so you have 2 insurance policies from the same risk

JAN 1 Jill gets from Mark 100/300 policy
* means: for a 1 person claim the max. is \$100,000 \rightarrow if there are 400 people in car \rightarrow max is \$300,000

JAN 31 from John 20/40 policy

Jill hits Starla.

case is settled for \$60,000

John would argue he pays \$0 because a policy was already in place on Jan. 1 & adequately covered it.
"FIRST IN TIME"

Pro rata = it's not proportionate to the risk (ie: the premium you pay compared to the coverage)

you want people to get high levels of coverage because if you cripple someone you want them to have the highest amount possible to compensate them.

Berger v.

Minnesota Mutual Life Insurance (1986)

- Insured wife wants to collect life insurance policy.
Husband misrepresented that he had diabetes, and thus the insurance company had reason to refuse to pay benefits.
- insurance co. didn't have a chance to weigh the risk of insuring the husband because of the misrepresentation of his medical condition.
- the concealment of his condition was KNOWING & INTENTIONAL

Materiality Test: if it has any impact on the risk born by the insuree at the time policy was written

whether there was a factor that the insured lied about that is related to the risk

- has to be something a reasonable insurance co would find to be material.

Cigarette Smoking

p. 203 Mutual Benefit Life Insurance v. JMR (1988)

- The president of JMR concealed his history of smoking cigarettes
- therefore he was issued a discount premium policy as a result of his misrepresentation.
- policy rescission was justified.

Smokers die faster than non-smokers

Waxse v. Reserve Life Insurance Co.

- π failed to disclose HIV testing & there were no questions asked about it
- insurer refused to pay major medical insurance under policy.
- they were not allowed to rescind policy

• π felt in good health & didn't see the HIV test as an impairment of health.

- the insurance co. didn't ask specifically about HIV or AIDS, therefore π didn't commit fraud.
- π made representation in good faith

Insurance company relies on your answers.

If you lie on your application, you shouldn't get covered.

Insurance co. has the ability to ask the correct questions

Mostow v. State Farm Insurance

- reduced award from \$190,000 to \$100,000 because the policy was ambiguous
 - \$100,000 for UIM coverage for bodily damage for 1 person & \$300,000 for bodily injury to 2 or more persons in the same accident.
- limits against insurer so \$190,000 could be awarded to one insured & \$100,000 to be awarded to the other insured

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Omaha Sky Divers Parachute Club v.
Ranger Insurance Co.

- aircraft damaged; π wants to recover
- policy excluded coverage while aircraft was operated in flight by pilots not having valid pilots or medical certificates.
- π 's medical certificate expired 5 mos. before the accident occurred.
- coverage denied
- A is entitled to exclude coverage.

test argument

- no causal connection btwn. the accident & not having medical certificate. (technicality)

TEST:

whether the insurer would have given the same coverage for the same amount of \$ if they had the material fact.
(if the ins. co. knew that the med. insurance had lapsed)

MD rule is the same.

Why is insurance regulated?

- size of the investment
- sophistication of the companies
- ~~power~~ bargaining power
Sherman anti-trust act 1890ish
Rockefeller
Oil is a necessity for light/kerosene

Nationally regulated and
Locally regulated

- so we don't treat insurance just like a contract

p.243 Republic Insurance Co. v. Silverton Elevators

(1977)

- fire policy to recover loss of household goods (\$3,000) b/c it was personal items, not items of the business.
- agent knew the arrangement at time policy was signed.

so, Insurance Company has to pay

Why?

waiver/estoppel

agent ~~stated~~ ^{said} that it would cover the furniture; assurance

Dissent: says you can't rewrite a contract.

END of EXAM MATERIAL
②

Start
exam
materials (3)

p. 254 Clark-Peterson Co. v. Independent
Insurance Assoc. (1992)

- insured claimed that policy covered
discrimination claim

Holding: - policy did not cover insured's
intentional act of employment
discrimination but the
insured was entitled to
recovery pursuant to reasonable
expectations doctrine.

POLICY does not cover intentional discrimination
claim

abzaze: oppressive

most jurisdictions don't allow you
to collect on intentional acts.

p 200 Crobon v. Wisconsin Nat. Life Ins. Co. (1986)

- Miswife; seeking policy of dead husband
- A paid policy to former business partner (they took out policies on each other)
- later, it was named beneficiary
- while he was comatose, business partner tried to change it

presumption of death is when the death certificate shows he dies.

"to a reasonable degree of medical certainty" → the doctor needs to say this.

p. 287 Nielsen v. Provident Life & Accident (1977)

- man commits suicide (gunshot)
- wife wants to collect
- insurance policy has suicide exclusion
and it so they won't pay.

What event caused the suicide?

"Sane or insane" language of the policy
doesn't matter

Incontestability

p. 292

Crawford v. Equitable Life Assurance (1973)

- H's wife has group life insurance policy
- wife represented she worked full time

Why have incontestability clauses?

- to provide a layer of security in insurance - presuming you pay on your premiums.

H argues - Ins. Co. had 2 years to determine that she was a full-time paid employee & they didn't.

A argues the cost to do the investigation is too great, would raise premiums.

Trying to change beneficiary

p. 303

Lemke v. Schwarz (1979)

- man dying; wrote a letter to daughter saying he didn't want his wife to get anything
- court said this changed beneficiary
put \$ into trust

Insurance co. should use INTERPRETER
(the money is going to someone ~
we just don't know who
yet) so they can get out of the
litigation & discharge contractual
obligation



2 prong test: 1) intent to change
the beneficiary
AND 2) taking affirmative action
to demonstrate that intent

policy reasons: we want people to pick
their beneficiary with
aforethought & consideration

Disqualification of Beneficiaries

P.316 Prudential Ins. Co v. Athmer (1999)

- man is killed by wife's lover
- man has kid who he didn't have contact with - wants beneficiary \$

whether allowing a relative of the murderer to take the \$ would benefit the murderer?

- have to look at the facts closely.
- don't want people murdering for \$

p. 355

TNA Life Insurance v. Bunker (1979)

- husband dies during surgery
- no one knows cause
- have to define what "accidental" is
- defined in the insurance policy

Accident external force occurring suddenly

have to prove the surgery caused the accident

→ Medical malpractice is usually not an accident in most jurisdictions

→ High risk behavior is NOT accidental

→ Intoxication - in MD, you are still covered under insurance policy.

in MD, if the drunk guy admits liability, the court can't bear testimony about how he was drunk when determining damages

Disability Insurance

Shapiro v. Berkshire (2002)

Shapiro, a dentist (did admit paperwork)
wants disability for his skeletal illness

Ins. Co. argued at the fact he was
being disability pay to his claim
- he was collecting on his disability
\$ but he was making money
third another dentist did admission work

the ins. co. ruled that the dentist
can't perform his "dentist duties"
any more immediately preceding to
onset of his disability

Pre-existing Condition

Bullwinkel v. New England Mutual Life (1994)

p. 412

- R had lump removed - Sept.
- later found cancerous
- filed claim for cancer treatment
- ins. co. denied coverage
- ins. co. said physician discovered lump July 20; policy started July 31
- district court granted summary judgment for

Pre-existing Condition Limitation

- cancer was pre-existing condition - even though she didn't know

because of Clinton administration

today, if you switch jobs, the new insurance co. must insure you in spite of a pre-existing condition.

public policy: everyone should get med. coverage & we should encourage employers to gain coverage their employees.

COBRA
HIPAA

- Health Insurance Portability & Accountability Act: eliminates gaps w/out insurance

2428

Engel v. Redwood County (1979)

4/13

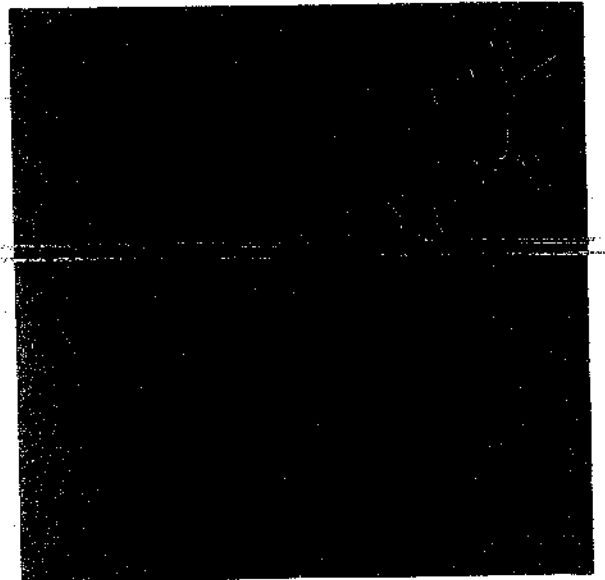
- furnace in farm malfunctioned
- death of 75 SOWS
- did ins. co. cover fire? YES

friendly fire → planned fire

hostile fire → fire you didn't expect to have

Even though this furnace did what it was supposed to do, it was for a greater duration of time than it was supposed to, so Ins. Co. covered the loss.

a friendly fire can turn into a hostile fire at any time.



Youse v. Employers' Fire Ins. Co. (1951)

- woman w/ expensive ring in her purse
- maid threw away / fire damage of \$900
- wants to recover fire damage to ring

Policy was only for hostile fire, not friendly fire. So, insurance company didn't have to pay.

Stanley v. American Fire Co. (1978)

- fire in home, daycare in home was excluded under the policy
- a child got hurt in the fire

Is this a business pursuit?

ASK → whether the language as applied to the fact is ambiguous.

— most homeowners policies have exclusions
for automobiles

Amco Ins. Co v. Haht (1992)

- 11 y/o threw baseball at kid & killed him
- ins. co. won't pay

Policy didn't distinguish the intent
to harm

p. 550 Nationwide Ins. Co. v. U of Illinois (1997)

- insured & other students set football field on fire
- policy excluded damages which "is expected or intended by insured" (parents homeowners policy)

Court says: - student obviously intended or expected harm -
- student says he only thought the fluid would burn leaving letters in the stadium.

Holding: Ins. Co. didn't have to pay; the harm was controlled by the insured

intentional conduct

p. 580 Gatx Leasing Corp v. National Union Fire Ins. (1994)

π owned oil facility (storage facility)
TCR & Arco stored oil w/ π
π corrupted and lost much of their oil
they sued π
Δ insurer refused to defend & indemnify π
π sued Δ for coverage
policy says Δ covers property damage due
to occurrence

- harm by intent does not equal an
accident causing an occurrence.
(even if act done by negligence)

Holding: no "occurrence" = no coverage

- the damage was from the π's
volitional acts. (intentional)

Trigger
of coverage

p. 597 Montrose Chemical Corp. v. Admiral Ins. Co. (1995)

2.

1st party: Δ pays insured for its direct losses

3rd party: Δ pays for insureds liability to a 3rd party

ISSUE: Continuous & routine exposure to injury — who bears the risk?
(ie: asbestos)

- when did you learn of disease?
- when you file the lawsuit?

difficulty of exposure to different time periods

p. 667 First Bank Billings v. Transamerica Ins. Co. (1984)

T was sued in wrongful possession actions
Δ insurer defended T, but Δ argues
public policy is against coverage for
punitive damages.

- Court says punitive damages is not a
violation of public policy

Should we allow insured's to indemnify
themselves on their own intentional
acts?

allowing protection for punitive damage

- don't want people to go & get insurance
for intentional acts (moral hazard)

p. 697 McNeill v. MD Insurance Guaranty (1981)

- Watkins had car w/ ins. policy.
- McNeill used Watkins car to jumpstart
- someone lit match
- McNeill's battery exploded - he got injured

Issue: Did the injury arise from Watkins' car?

- π says there's a substantial nexus
- Δ says no causal connection
- the lit match was not an intervening cause.

Holding: there was a causal relationship between the use of Watkins' vehicle to start McNeill's car. The vehicle was being used as contemplated by the insurance policy.

there was use, ownership, maintenance of the vehicle.

p. 702 Farm Bureau Mutual Ins. Co v. Evans (1981)

sat in car, lit firecracker
threw it at someone; she was injured

- no causal relationship between the
use of the car & the injuries sustained

"reasonable use" of the car

Compulsory Coverage

Odum v. Nationwide Ins. Co. (1919)

- auto accident; ~~husband's~~ ^{otherwise his} wife die
- wife was insured, husband was not insured under the policy

She made misrepresentation ^{50/100} coverage
(deadwife)

- ins. co. has no coverage at all.

in Md, protects insurance

Odolicki v. Hartford Accident Co. (1970)

When someone else drives your car.

- son drove it; he let friend drive it
- friend gets in an accident.
- Ins. Co. said they wouldn't cover it

MD Rule: you can pass it along once
in permissive use of
the vehicle; presumably
you can pass it along to
other people.

as long as a reasonable person
would expect to.

Close v. Liberty (1998)

- guy skips school
- took mom's van w/out permission
- got in an accident
- Ins. Co. wouldn't pay b/c the son didn't have permission

entitlement exclusion applies to all family members.

"wrongful use" is hard to prove.

