

4: APPLYING CONTRACT LAW

- characteristics of ins contracts
 - conditional (insd must satisfy conditions before ins co's promise to pay is binding)
 - relates to fortuitous events (accidental & unforeseen)
 - exchange of unequal amts (small prem vs. large clm payout)
 - requires utmost good faith
 - complete honesty & disclosure from both parties
 - incontestable clause:
 - clause that states ins co can't contest pol after it has been in force for specified period
 - contestable period: period during which ins co can challenge validity of life ins pol
 - **adhesion**
 - one party writes the contract & other party has to accept it as-is
 - (i.e., "take it or leave it")
 - for ins contracts, court normally interprets in favor of insd who didn't have say in language
 - court might make exception if language under question was required by the state
 - **indemnity (payment is for amt of dmgs suffered)**
 - nontransferable (insd can't assign rights to someone else)
- unique aspects of ins contract formation
 - agreement
 - agent commitments can be binding
 - application submitted to ins co by producer is considered the initial offer
 - if ins co issues pols w/ exact terms, that is acceptance & contract formed
 - if ins co issues pol w/ different terms, that is counteroffer
 - customer asking ins co directly for quote is usually invitation for an offer
 - *indication*: when ins co provides **nonbinding** quote on potential prem price
 - mailing of insd's acceptance binds ins contract at time of mailing, even if not rcv'd by ins co
 - binder: temporary written or oral agreement to provide ins cov until formal written pol issued
 - **silence is usually not binding unless there is established history/pattern w/ those parties**
 - content of ins contracts
 - **(5) necessary terms**
 - type(s) of cov sought
 - object or premises to be insured
 - amt of ins (pol limits)
 - insd's name
 - duration of cov
 - other terms can be implied by:
 - previous dealings
 - policy language in ins co's other policies
 - insd's needs/practices compared to similar customers
 - legal requirements
 - *delivery* (placing pol in insd's control/hands)
 - provides evidence of contract formation and that ins co accepted insd offer to do business
 - generally, no law or statute **requires** delivery for pol to be effective
 - parties can decide to make delivery and/or payment a requirement before pol is bound
 - if no prior agreement already made, delivery **and** payment of 1st prem (as evidence of offer/acceptance) usually required before pol is bound

- when 3rd parties benefit from ins
 - (situations where someone **other than insd** might be affected by a loss, so they benefit from that fact that ins can help cover a loss)
 - 3rd party claimants
 - if insd is liable for a claimant's loss, claimant benefits from being able to claim from ins
 - **direct action statute: allows victim to sue ins co directly or to sue both ins co & tortfeasor**
 - real estate sales
 - buyers have future interest in home, so they benefit if seller's ins covers a loss that occurs
 - once buyer signs agreement, they bear risk of loss unless contract says otherwise
 - mortgagees (lenders)
 - lender want prop to be protected so that it retains its value as collateral for the loan
 - **lender can obtain separate ins on insd's property, solely for the mortgagee's benefit**
 - lessees (renters)
 - lessees/renters will be inconvenienced if prop is dmg'd, so they benefit if owner has ins
 - life estates/life tenants
 - *life tenant* (person who has right to use prop during their lifetime, but can't choose heirs)
 - *remainder party* (heirs who get prop after life tenant dies)
 - want to protect prop so they can use or earn money from prop during their lifetime
 - **party w/ life interest has no obligation to buy ins to protect remainder-party interests**
 - **life tenants can recover entire value of prop insured**
- *representation:*
 - statements made by applicant that ins co uses to decide if they are willing to write pol
 - do **not** relate to the pol itself and are **not** incorporated into it
 - can still cause contract to be voidable if proven to be *false representation*
 - 3 elements to proving *false representation*
 - statement is false/misleading
 - statement relates to material fact
 - ins co relied on false/misleading statement in issuing pol
 - (some states also require proof that misrepresentation was intentional)
 - statutes for when ins co has right to avoid pol
 - *increase-of-risk* (if misrep'd fact would have increased risk to ins co)
 - *contribute-to-loss* (ins co can avoid contract **only if** misrep'd fact contributed to loss in question)
- *warranty:*
 - statement that certain facts are true, and if not would render contract voidable
 - i.e., making someone guarantee a fact as a condition of the policy
 - (ex: application includes warranty that insd will maintain certain safety equipment)
 - 2 requirements:
 - parties must have clearly & unmistakably intended statement to be a warranty
 - statement must form part of contract itself
 - how warranties differ from representations
 - ins co will write warranty into pol or incorporate them by reference
 - warranties are automatically considered material by law (representations are **not** necessarily assumed to be material)
 - warranties require strict compliance

- 3 classifications
 - affirmative [stating a fact is true at the time pol is formed]
 - continuing (promissory) [promising to do certain things or that certain conditions will continue to exist during pol term]
 - implied
 - obligation that courts impose on a seller to ensure regarding their product, even if those warranties are not expressly stated
 - ex: that product is safe
- ways an **ins co** might lose/forfeit a defense or contractual right
 - waiver:
 - intentional relinquishment of a known **right**
 - **contractual in nature and rests upon agreement between parties**
 - **cannot** waive:
 - anything before the pol is actually in force (because no rights exist until the contract does)
 - facts
 - any privileges that are in place to protect public policy
 - exclusions because they aren't "rights" (they are ins co's statement beforehand of what they won't cover)
 - if producer misrepresents cov, ins co **not** liab but producer can be sued
 - if insd breaches a pol condition:
 - ins co must know of breach before ins co can waive it
 - once ins co knows of breach, must act immediately to avoid inadvertent waiver
 - ins co acts that might constitute them waiving a right:
 - receipt of prem w/ knowledge that insd is breaching pol conditions
 - demanding something according to pol provisions (if ins co disputes validity of pol, enforcing a right granted by the pol implies they agree pol is valid)
 - if ins co knows that insd is breaching contract, requesting for proof of loss (statement) w/o nonwaiver agreement in place
 - silence beyond reasonable term after learning of breach
 - insd must prove ins co made waiver
 - parol evidence rule **does** allow for evidence of **oral** waivers made **after** pol formation
 - estoppel:
 - prohibits ins co from asserting claim or right that is inconsistent w/ their past conduct when insd has detrimentally relied on
 - i.e., if insd innocently acted on ins co's initial representations, and a change now would result in dmg to the insd
 - ex: insd can claim estoppel if ins co initially says they will cover med bills so insd goes to see dr, then ins co changes mind about cov leaving insd w/ med bills
 - 3 elements that must be proved:
 - false representation of a material fact
 - reasonable reliance on this representation
 - **injury or detriment to insd**
 - insd **cannot** have committed fraud or acted in bad faith
 - election:
 - refers to voluntarily choosing btwn 2 alternative rights/privileges
 - making 1 choice may imply relinquishment of the other option(s)

- non-waiver agreement:
 - **signed agreement** indicating that neither party waives rights during investigation
 - used to prevent subsequent claims of waiver, estoppel, and election
 - ins co should send as soon as cov issue arises
- reservation of rights (ROR) ltr:
 - **letter** stating the cov issues being investigated for a claim
 - informs insd that ins co is handling clm w/ understanding that it may end up denying cov
 - provides unilateral notice to insd
 - must be communicated to insd in writing in timely manner