



Contract Law: Insurance Applications

Educational Objectives

After learning the content of this assignment, you should be able to:

1. Describe these characteristics of insurance contracts:
 - A conditional contract
 - A contract involving fortuitous events and the exchange of unequal amounts
 - A contract of utmost good faith
 - A contract of adhesion
 - A contract of indemnity
 - A nontransferable contract
2. Describe the unique characteristics of insurance contract formation with regard to these aspects:
 - Agreement
 - Content
 - Delivery
3. Describe under what circumstances a third party can benefit from an insurance contract.
4. Explain how representations and warranties affect the creation and voidability of an insurance contract.
5. Explain how the following concepts legally prevent an insurer from reviving a defense it has forfeited earlier:
 - Waiver
 - Estoppel
 - Election



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Educational Objectives, continued

6. Explain how nonwaiver agreements and reservation of rights letters affect insurers' and insureds' rights.

Outline

- ▶ **Special Characteristics of Insurance Contracts**
 - A. Conditional Contract
 - B. Contract Involving Fortuitous Events and the Exchange of Unequal Amounts
 - C. Contract of Utmost Good Faith
 - D. Contract of Adhesion
 - E. Contract of Indemnity
 - F. Nontransferable Contract
- ▶ **Insurance Contract Formation**
 - A. Agreement
 - 1. Offer and Acceptance
 - 2. Effective Date
 - 3. Silence or Delay
 - B. Insurance Policy Content
 - 1. Written Versus Oral and Informal Written Contracts
 - 2. Necessary Terms in Insurance Contracts
 - 3. Implied Terms in Insurance Contracts
 - 4. Insurance Company Designation
 - C. Delivery of Insurance Policies
- ▶ **Insurance as Third-Party Beneficiary Contract**
 - A. Third-Party Interests in Liability Insurance
 - B. Real Estate Sellers and Buyers
 - C. Mortgagor's and Mortgagee's Interests
 - D. Limited Interests in Realty
 - 1. Lease Interests
 - 2. Life Estates
- ▶ **Representations and Warranties in Insurance**
 - A. Representations
 - 1. Elements Required to Establish False Representation
 - 2. Statutory Approaches to Misrepresentation
 - 3. Construction of Representations
 - B. Warranties
 - 1. Warranties Distinguished From Representation
 - 2. Classification
 - 3. Lessening Warranty Effects
- ▶ **Waiver, Estoppel, and Election**
 - A. Waiver
 - 1. Use of Waivers
 - 2. Consideration
 - 3. Knowledge Requirement
 - 4. Policy Provisions
 - 5. Acts Constituting Waiver
 - 6. Parol Evidence Rule
 - B. Estoppel
 - 1. Insurance Law and Estoppel
 - 2. Distinguishing Estoppel From Waiver
 - 3. Factors Establishing Estoppel
 - C. Election
 - 1. Application
 - 2. Insured's Election
- ▶ **Nonwaiver Agreements and Reservation of Rights Letters**
 - A. Use of Nonwaiver Agreements and Reservation of Rights Letters
 - B. Nonwaiver Agreements
 - C. Reservation of Rights Letters
 - D. Requirements for Nonwaiver Agreements and Reservation of Rights Letters



Use the SMART Online Practice Exams to test your understanding of the course material. You can review questions over a single assignment or multiple assignments, or you can take an exam over the entire course.



For each assignment, you should define or describe each of the Key Words and Phrases and answer each of the Review and Application Questions.

Educational Objective 1

Describe these characteristics of insurance contracts:

- A conditional contract
- A contract involving fortuitous events and the exchange of unequal amounts
- A contract of utmost good faith
- A contract of adhesion
- A contract of indemnity
- A nontransferable contract

Key Words and Phrases

Conditional contract

Utmost good faith

Misrepresentation

Incontestable clause

Contestable period

Contract of adhesion

Contract of indemnity



Principle of indemnity

Valued policy

Review Questions

- 1-1. Explain why insurance contracts are considered to involve an exchange of unequal amounts.

- 1-2. Identify the two things courts have held that insurers must prove to establish concealment of a material fact.

- 1-3. Contrast how the term “misrepresentation” is normally used with how the term is used with reference to insurance contracts.



1-4. Explain why insurance policies are nontransferable contracts.

Educational Objective 2

Describe the unique characteristics of insurance contract formation with regard to these aspects:

- Agreement
- Content
- Delivery

Key Word or Phrase

Binder

Review Questions

2-1. Describe the offer and acceptance components of an insurance contract.

2-2. Describe the circumstances under which an issued insurance policy might be an offer and not an acceptance of the contract.



- 2-3. Explain why courts have ruled that an insurer can be held liable under its contract if it delays action on an application beyond a reasonable time.

- 2-4. List the facts a court will consider when determining whether an insurer's response to an insurance application was unreasonably delayed.

- 2-5. Explain why written insurance policies are preferable to oral insurance contracts.

- 2-6. Explain why delivery of a contract is rarely in dispute in property-casualty insurance.



Educational Objective 3

Describe under what circumstances a third party can benefit from an insurance contract.

Key Word or Phrase

Direct-action statute

Review Questions

- 3-1. Explain why claimants under liability policies are not considered third-party beneficiaries in states that have not adopted direct-action statutes.

- 3-2. Explain why a buyer of real estate under an incomplete agreement of sale requires insurance on the property being sold.

- 3-3. Describe the situations that can occur when a mortgage does not specify who will obtain insurance on the property.



- 3-4. Describe the insurance protection available to cover a lessee's liability for causing fire damage to a lessor's property.

Educational Objective 4

Explain how representations and warranties affect the creation and voidability of an insurance contract.

Review Questions

- 4-1. Describe the effect of a policyholder's false representation or misrepresentation of facts on an insurance application?
- 4-2. List the elements required for a plaintiff insurer to establish false representation.



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- 4-3. Explain why contribute-to-loss statutes create a more difficult standard for an insurer to show materiality sufficient to avoid a contract than do increase-of-risk statutes.

- 4-4. Describe the two requirements that must be present in order for a promise to be a warranty.

- 4-5. Contrast an affirmative warranty with a continuing (promissory) warranty.

- 4-6. Describe the effect on coverage when courts interpret policies as severable.



Educational Objective 5

Explain how the following concepts legally prevent an insurer from reviving a defense it has forfeited earlier:

- Waiver
- Estoppel
- Election

Key Words and Phrases

Waiver

Estoppel

Election

Review Questions

5-1. Describe the conditions required for a waiver of provisions under an insurance contract.

5-2. Explain why waivers are subject to the parol evidence rule.



5-3. Describe the sequence of events leading to estoppel in insurance law.

5-4. Distinguish waiver from estoppel.

Educational Objective 6

Explain how nonwaiver agreements and reservation of rights letters affect insurers' and insureds' rights.

Key Words and Phrases

Nonwaiver agreement

Reservation of rights letter



Review Questions

- 6-1. Explain how insurers use nonwaiver agreements and reservation of rights letters.

- 6-2. Describe the difficulties that may arise in securing an insured's consent and signature on a nonwaiver agreement.

- 6-3. Contrast a reservation of rights letter with a nonwaiver agreement.

