IMPERFECT INFORMATION

Breach of Warranty
- Breach does not have to cause the loss
- Affirmative: promise at the time the agreement is entered into; Promissory: promise for the life of the policy
Vlastos → If there was substantial compliance at the time the warranty was entered into, that is enough

Misrepresentation and Concealment
Ward → Ins. co. cannot avoid coverage on basis of facts known to it when policy went into effect; but if the agent put the false info and the insured approved, this is misrep.
Waxse → Insurer must ask questions that elicit the info they seek
MacKenzie → Application is continuing representation during entire process; if there is a change, insured has duty to disclose

CONTRACT FORMATION AND MEANING

Construing Ambiguities against the Insurer
Rusthoven → If there is an ambiguity, honor the reasonable expectations of insured
Vargas → Insurer must show: (1) it would be unreasonable for average man to construe policy as insured did AND (2) its own construction is the only one fairly placed on policy
Atwood → objectively reasonable expectations of insured honored even though study of policy would negate those expectations [no fair notice b/c clause was buried]
Atwater Creamery → Technical definitions cannot defeat reasonable expectations of insured if not adequately explained

Role of Intermediaries
- Agents: represent insurance company; Brokers: represent insured
Elmer Tallant Agency → once the agent is given apparent authority by insurance company, third party insured’s have the right to rely

Waiver and Estoppel
- Waiver: voluntary relinquishment of known right; Estoppel: change in position as consequence of representation of insurer and reliance on that
Roseth → Majority Rule: Estoppel is not available for risks not covered by policy;
Minority Rule: Can be expansion of coverage, but only for conduct at outset of policy

Group Insurance
Paulson → ER is responsible as agent of insurer if ER performs administration of plan

Public Policy Restrictions
Hartford v. Powell → As matter of public policy, cannot insure against punitive damages
First Bank Billings → Punitive damages can be insured if for unintentional acts (no black letter law against this); otherwise, the policy would be worthless
Strickland → Insurance policy forcing a gruesome choice may be void against public policy (insured can use this PP argument also)
FIRE AND PROPERTY INSURANCE

**Insurable Interest**
- **Factual Expectancy Test:** insurance should protect against anything putting person at a disadvantage; **Legal (Eldon) Test:** there is a legally cognizable interest in the following situations (1) property interest, (2) contract right, (3) legal liability
  - Gossett → payments for indemnity are limited to loss; payment of insurance or improvements to property do not give rise to insurable interests (only interest in imp.)

**Subrogation**
- Equitable: Ins. co. is subrogated even if nothing in policy; Contractual: specific clause allows for ins. co. to subrogate any claims against insured
- No subrogation rights against the insured
  - Great Northern → Insured cannot release third party after the loss b/c this would impair the ins. co.’s subrogation rights; if the ins. co. wants to avoid pre-loss releases, there must be a provision in the policy

**Limited Interests**
Northwest v. Althauser [**Mortgages**] → When the insured breaches a policy, this is void to him but not the mortgagee; but, when ins. co. pays mortgage, it has subrogation rights
  - Alaska v. RCA [**Leaseholds**] → Commercial tenant is implied co-insured
  - Paramount [**Real Estate Sales**] → Seller collects on his own policy, but there is collective trust going to the buyer, unless the buyer already has insurance of their own
  - Home Insurance v. Adler → life tenant gets full value of insurance proceeds
  - Folger Coffee → Policy covers all property for which bailee is responsible (not leg. liab.)

**Exclusions and Exceptions**
State Farm v. Bongen [**Causation**] → Efficient Proximate Cause Test: For every thing that happens, there is one cause; if this cause it not covered under policy, no recovery
  - Commercial Union v. Taylor [**Increased Risk**] → For hazard exclusion, insured must have control and knowledge and the risk must be substantial and long-term
  - Smith v. Lumberman’s Mutual [**Increased Risk**] → Any temporary vacancy [furniture, not people], must allow reasonable time to get new tenants before policy forfeiture

**Measure of Recovery**
Zochert → Depreciation can be computed in measure of reimbursement; 3 tests:
  - (1)Market Value, (2) Replacement Test, (3)Broad Evidence Rule

**Coinsurance**
- If you do not have the property insured to at least 80% of value, amount recoverable is reduced to amount paid

**Business Interruption Insurance**
Omaha Paper → This insurance is property specific; other properties are irrelevant in computing recovery, only mitigation of loss

**LIFE INSURANCE**

**Application**
Gaunt → You pay for the long-term policy, but there is short-term policy in place from application date to date of acceptance by insurance company
Insurable Interest
Ryan v. Tickle → Insurable interest is measured at inception of policy and only ins. co. can raise the argument of want of insurable interest

Change of Beneficiary/Assignment
Engelmann → Substantial Compliance Test: effective change in beneficiary when (1) owner intended to change and designate new AND (2) has taken substantial affirmative action to effectuate change. Substantial compliance means that insured must have done something to change so that the intent of insured is clear.
Grigsby v. Russell → Policies are freely assignable w/ or w/o insurable interest

Limitations on Recovery
New England Mutual v. Null → Majority Rule: If policy is taken out and immediately assigned to third party w/ no insurable interest, the policy is void
State Mutual v. Hampton → Although conviction would be conclusive, an acquittal does not per se entitle a beneficiary to recovery (courts only use reasonable doubt standard)

Incontestability
- If two year period passes and CQV is alive, certain defenses cannot be raised
- Limitation: restriction on risk; Condition: would invalidate policy
Amex → misrepresentations are covered under incontestability clause; incontestability clause applies to conditions, not limitations
Simpson → If defense is discoverable at outset, this is condition, covered by clause

Limitations on Risk
Silverstein → Only something as open and onerous as a disease is excluded; accidental means are not excluded (some kind of violent, external cause)
Charney → For exception, there has to be intent to reach particular means (suicide)

Negligence against Insurer
Mauroner → If ins. co. fails to act w/in reasonable time and insured can show damages, insured can collect (ins. co. has breached duty to issue policy in timely manner)
Minority Rule: If ins. co. fails to act w/in reasonable time, this is acceptance of policy

DISABILITY INSURANCE
- 2 types: (1)total -can’t do any gainful employ; (2)occupational – can’t do own job
Mossa → To determine gainful employment, must be something disabled would engage in b/c of education, training, experience; has to be suitable compensation
Heller → Insured can be required to do certain things to cure ailment, nothing drastic
Silberg [Bad Faith Breach] → failure to afford relief for eventuality insured against is violation of implied duty of good faith and fair dealing

LIABILITY INSURANCE
AY McDonald → Property damage includes anything traceable, including clean-up
- Exposure Theory: Whoever is at risk at time of exposure to cause of injury
- Manifestation Theory: When recognizable symptoms come to light
- Injury-In-Fact Test: Individual determination of when he began to suffer injury
- Triple Trigger Test: Every company that covers at time of exposure, manifestation or injury is potentially liable
Amer. Home Products → proper test is injury in fact although hard to show
Northern States Power → Trigger Theory: each insurer is held liable only for those damages which occurred during its policy period; can determine allocation based on: (1) pro rate by time on risk, (2) apportionment as proven, (3) joint and severable

**Number of Occurrences**
MI Chemical → occurrence is not the harm, but the cause; can be happening, event, or continuous exposure (but the coverage of the policy is determined by effect)

**Exclusions**
Stonewall [Expected/Intended Harm] → Exclusions only apply if there is subjective intent or expectation, but calculated risk is only negligence, which is not enough
- For known risk defense, insured has to know number of claims and when these claims may arise in addition the presence of the risk
Unigard [Expected/Intended Harm] → For intentional exclusion, means and results have to be intentional; excluded acts of one insured does not preclude coverage for others
Weedo [Business Risk Exclusion] → This exclusion only covers actual service or product supplied by insured (costs of fixing defective workmanship)
Amer. States [Pollution Exclusion] → Only traditional environmental pollution

**Notice Conditions**
Mighty Midgets → Insured has to give notice “as soon as practicable;” so there must be reasonable basis for any delay
West Bay → Insurer must demonstrate that is prejudiced by delay; this must materially impair insurer’s ability to contest liability

**Professional Liability Insurance**
Thoracic Cardiovascular Associates → Claims-made policies turn on when notice given to insurer, it must be w/in policy period
Amer. Casualty → cannot indemnify officers for intentional wrongdoing

**Defense and Settlement**
Beckwith [Scope of Duty] → If claim is possibly w/in coverage, must defend
- Do not unconditionally defend b/c this constitutes waiver of company’s claims
Gray v. Zurich → duty to defend b/c of possibility of change in complaint
Parsons [Conflicts of Interest] → Although selected and employed by insurance company, attorney owes primary fidelity to insured
Crisci [Settlement] → there is an obligation to accept reasonable settlement offers

**REGULATION**
McCarran-Ferguson Act → Business of Insurance is regulated by states, but Congress has right of preemption; antitrust laws shall apply to “business of insurance” not regulated by states; if there is boycott, coercion, intimidation, Sherman Act still applies
Royal Drug → Business of insurance is determined (1) whether practice has effect of transferring/spreading policyholder’s risk, (2) whether practice is integral part of policy relationship, AND (3) whether practice is limited to entities w/in insurance industry.
St. Paul v. Barry → Boycott can be conspiracy w/ target outside insurance industry
Hartford v. CA → Concerted activity is not enough to be boycott, there must be something more using related collateral transactions as leverage to achieve terms desired