

Feb. 11, 2019

**Law 285.42—Consumer Protection in Insurance  
Spring 2019**

**Instructor Information**

Instructor: Patricia A. McCoy

Email: patricia.mccoy@bc.edu [note that this is a Boston College email address, not a Berkeley Law address].

Office: 590 Simon

Office Hours: By appointment

**Course Information**

Meetings: Friday February 1 and Friday February 8: 10:00 am to 12:30 pm *and* 3:10 pm to 5:10 pm

Saturday February 2 and Saturday February 9: 10:00 am to noon

Location: Boalt 240

Prerequisites or Co-requisites: None

Credit Hours: One

**Course Materials**

All of the course readings are available without cost and can be found on our bCourse site. To find them, go to our bCourse site and click on “Pages” in the left navigation column. All of the course readings are located under the “Pages” link.

**bCourses**

The bCourse site for this course is located at <https://bcourses.berkeley.edu/courses/1477667>. Students can locate and read all of the course assignments on this bCourse site. In addition, students should check the bCourse site for any course announcements.

**Course Description**

It's a well-kept secret that insurance law is really consumer protection law in disguise. When you buy insurance, what you get is a promise: i.e., that the insurer will honor your claim if and when you suffer an insured loss. But what assurance do you have that the insurer will be good for the money when the time comes?

It is insurance law's job to provide that assurance. This course will examine important ways that Insurance law seeks to advance consumer protection. The class will begin with the special contracts principles that courts apply to insurance policies and then examine how consumer protection plays out in other selected areas of insurance regulation.

**Attendance Policy**

PLEASE NOTE: Attendance at all class sessions is mandatory. Students must sign the attendance sheet for each morning and afternoon session of the course. Failure to attend one or more of the sessions for any reason will result in the student being dropped from the class.

**Grading**

This course is a 1-unit class and will be graded credit/no credit. To complete the course, students must write a paper answering two essay questions that totals 8-10 pages (double-spacing, 12-point font). The essay questions are located on the bCourse website for this course, under the link

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“Pages” (located in the left navigation column). The paper is due on Monday, March 4, 2019, at midnight (*i.e.*, at the end of that Monday). To turn in the paper, please email it to me at [patricia.mccoy@bc.edu](mailto:patricia.mccoy@bc.edu).

### **Learning Outcomes**

The ABA requires that the law school as a whole, as well as individual instructors, adopt learning outcomes for our students. Learning outcomes are not only required, but they are also an important step in creating an effective course. Students in the course will be expected to achieve the following Berkeley Law Learning Outcomes:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; and
- (e) Using the law to solve real-world problems and to create a more just society.

### **Class Assignments**

Friday February 1: *Morning Class:*

*Rationales for Government Intervention in Insurance:*

- Sharon Tennyson, Challenges and Approaches to Consumer Protection in the Insurance Industry
- John Y. Campbell et al., *Making Financial Markets Work for Consumers*, Harvard Bus. Rev. (July-August 2011)
- Spectrum of Regulatory Techniques

*Contra Proferentem:*

- Gaunt v. John Hancock Mutual Life Insurance Co. (2d Cir. 1947)
- Gaunt Timeline

*Afternoon Class:*

*Reasonable Expectations:*

- C&J Fertilizer, Inc. v. Allied Mutual Insurance (Iowa 1975)

*Waiver and Estoppel:*

- Darner Motor Sales, Inc. v. Universal Underwriters Insurance Co. (Ariz. 1984)
- Bible v. John Hancock Mutual Life Insurance Co. (N.Y. 1931)

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Saturday February 2: *Insurance Brokers and Agents:*

- Economy Fire & Casualty Co. v. Bassett (Ill. App. 1988)

*Disproportionate Forfeiture:*

- Aetna Casualty & Surety Co. v. Murphy (Conn. 1988)

*Damages:*

- Kewin v. Massachusetts Mutual Life Insurance Co. (Mich. 1980)

Friday February 8: *Morning Class:*

*Risk Classification:*

- California Department of Insurance, Gender Non-Discrimination in Automobile Insurance Rating (Oct. 19, 2018)
- California Department of Insurance, Commissioner issues regulations prohibiting gender discrimination in automobile insurance rates (Jan. 3, 2019)
- Community Rating Provision of the Affordable Care Act
- Federal Trade Commission, Credit-based Insurance Scores: Impacts on Consumers of Automobile Insurance (2007): read Executive Summary only (pp. 1-4).
- *FTC dropped ball on study of credit scores, insurance premiums*, DENVER POST, Aug. 3, 2007

*Afternoon Class:*

- Excerpt from Tom Baker Health Insurance Article
- National Fed'n of Independent Business v. Sebelius, U.S. 2012 (read pages 7-9, 15-17 and 31-44 in Chief Justice Robertson's majority opinion)
- Denial of Coverage Fact Pattern
- California Department of Insurance, Challenging Denials of Health Claims and Requesting an Independent Review

Saturday February 9: Exercise: Independent Medical Review of Blue Shield's Denial of Coverage:

- For this exercise, carefully review the Denial of Coverage Fact Pattern and the description of the Independent Medical Review by the California Department of Insurance (assigned yesterday afternoon)
- In class, each team will receive additional facts in advance of the simulation exercise.