

Hofstra University
Maurice A. Deane School of Law
Insurance Litigation and Corporate Practice Externship
Spring 2016
Professor Michael D. Jaffe
No. of Credits: 5

This syllabus outlines the components of the Insurance Litigation and Corporate Practice Externship Program. It includes a listing of the substantive topics to be covered, the reading assignments, and the practical skills simulation exercises that you will participate in. These simulations may require oral presentations, written work, or merely the contemplation of certain questions. The syllabus is subject to revision during the course of the semester.

Location of Class:

The classroom component will be held at the Law Offices of Jaffe & Koumourdass LLP, located in the Trump Building at 40 Wall Street in Manhattan. Upon arrival, please go to the building security area to check in and obtain access to the said offices. If you experience difficulty obtaining access, please call me at 646 235 0622. Litigation-related assignments will be made to students on a weekly basis, often requiring that you report to counsel who is appearing in the Supreme and Civil Courts in the five boroughs on New York City and in contiguous counties, at arbitration forums in the same venues or may otherwise require offsite work.

Class Schedule:

The seminar portion of class will regularly meet on Wednesdays from 2:30 P.M. to 4:00 P.M, to be followed by practical skills and supervision meetings from 4:00 P.M. to 6:00 P.M. Some sessions may, upon prior notice, extend beyond the said time period. In addition, students will participate in corporate office activities and court appearances for an additional eight hours each week.

Course Overview:

The course is designed to (1) provide a detailed analysis of the fundamental principles of insurance law and to understand their relationship to virtually every area of our legal and commercial systems; (2) foster a deep understanding of the important role of corporate and defense counsel in guiding the operation of an insurance company and fulfilling its obligations to insureds, and (3) provide students with practical legal skills training to properly handle a vast array of insurance and corporate-related legal issues. We will study legal concepts relevant to insurance underwriting, policy interpretation, regulation, the interaction between the claims and legal processes, the interplay of principles of reinsurance, and the development of formidable civil litigation strategy based upon insurance and insurance law considerations. We will also study the significant role of

insurance counsel and the legal and ethical considerations that guide their representation of insurance carriers, their policyholders, and third parties. Emphasis will be placed upon the externship experience, which will give participants the opportunity to learn about the role of an associate at a law firm.

During our meetings, we will debate and address a broad scope of insurance-related and corporate legal issues through a variety of specialized exercises. This course will enhance your abilities to analyze legal problems relating to contracts, torts, real property, trusts & estates, agency law, business organizations, administrative law, legal ethics and other areas, all from an insurance law and litigation perspective.

Instructor:

Michael D. Jaffe, Special Professor of Law

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Office Hours: TBA

Evaluation and Grades:

The overall grading methodology for this course will be guided by the policies implemented by the Law School.

For this course, each student will be evaluated in seven areas. You are evaluated on a scale of one to ten for each category: 9 – 10 = outstanding; 7 – 8 = very good; 5 – 6 = good; 3 – 4 = fair; 2 – 3 = poor. My evaluation is based upon the quality of your work, your effort, your improvement, and your level of achievement.

Weekly Class Seminar: 30%

Consistency, quality and timeliness of preparation for class.

Class attendance and participation.

Quality of case presentation.

Practical Skills Oral Simulation Exercises: 25%

Development of client interviewing, counseling and observation skills.

Development of advocacy skills.

Ability to work with professionals involved in the simulation exercises.

Practical Skills Interactions with Attorneys and Corporate Staff: 15%

Ability to positively interact with counsel and corporate staff on case assignments.

Compliance with the NYS Disciplinary Rules of the Code of Professional Responsibility, and identification of ethical issues related to your actual cases, and to the insurance system generally.

Identification of broader social, economic, political, and public policy context of legal problems presented by actual cases.

Practical Skills Written Simulation Exercises (30%)

With respect to legal memorandum:

Thoroughness and accuracy of the substantive content of the writing

Adherence to proper memorandum form.

Ability to utilize legal research tools and to properly cite cases.

The extent to which a position is supported by crisp and concise legal arguments.

Timeliness of submissions.

With respect to the drafting of pleadings and corporate documents:

Thoroughness and accuracy of the substantive content of the writing.

Adherence to proper form required by the courts and/or regulatory bodies.

The extent to which the particular legal document reflects an appropriate writing style.

Presentation of sufficient support for the legal positions set forth in the written document.

Ability to utilize legal and financial research tools.

Timeliness of submissions.

Attendance:

Since attendance is weighted within the determination of your grade, I expect each of you to attend every scheduled class session and to be punctual. All classes offered by the law school are guided by the rules of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, the American Bar Association Standards and the law

school itself. During each class, I will either take attendance personally or provide a sign in sheet. The sign in sheets or my own “roll call” will be considered dispositive evidence regarding your presence or absence from a given class. Each student is responsible for signing in or responding to my roll call. Falsifying a sign in sheet violates the law school’s Code of Academic Conduct.

In the event you are compelled to miss class, please make every effort to e mail me in advance and briefly explain the situation.

Assignments For Class Preparation:

Reading assignments are listed below. This list is tentative, and may change on notice to the class. Class discussion will commence with the assumption that everyone is thoroughly familiar with the assigned materials.

I expect each of you to be a conscientious, insightful and effective member of the class. This is a class in which each of you can explore a vast number of concepts that will have tremendous application to other courses and to your eventual practice of law. It is crucial that you are prepared for our class discussions by virtue of a careful reading of the assignments. Your class participation grade will be based on your preparedness when called upon, your willingness to volunteer, and the quality of your comments in class. In my discretion, being unprepared may be counted as an absence, and it will negatively affect your grade.

During class sessions, each of you will participate in practical skills simulations that relate to legal issues that arise in a corporate or insurance company setting. In all of these exercises, you will act as associate counsel. You will be provided with fact patterns, and you will be guided so that you can acquire the requisite skills to provide a client with able representation. You will be expected to conduct legal research to provide senior counsel with a written legal opinion, using standard memorandum (IRRAC) form, to assess the likelihood of success on a matter. You will hone your oral presentation engage in effective oral advocacy to further the interests of your clients.

Electronic Devices:

You must turn your cellphone or any like devices off during class. E mailing and texting during class is strictly prohibited. You may use a computer in class, but only to take notes unless otherwise directed. Therefore, you must refrain from using your computer to view materials unrelated to this class.

Readings:

The basic text for the class is Abraham, Kenneth S., *Insurance Law and Regulation: Cases and Materials* (5th ed., Foundation Press, 2010).

I will frequently provide supplemental readings that will include recently issued caselaw, as well as amended laws and regulations. Additional reading materials will be distributed in advance either in class or via an e-mail in a timely fashion.

Written Assignments:

All students are required to complete five written assignments. These assignments shall relate to the substantive topics and simulation exercises to be covered under the class syllabus hereinbelow. The writings will, in total, exceed 30 pages in length. Three particular assignments, which are denoted in the syllabus below and which emanate from Simulation Exercises 4, 9 and 10, shall total over 20 pages. They will be graded, and students shall need to receive a grade of C + or higher in order to fulfill the advanced writing requirement (Writing Requirement II) for graduation. All of the aforesaid written assignments mentioned in the syllabus must be undertaken and completed by all students in the class, regardless of whether they are specifically seeking to fulfill the said writing requirement. Due dates will be firmly established for each written assignment.

All assignments must be submitted in a timely manner. Your final grade will be reduced in the event that you fail to adhere to those deadlines. In my sole discretion, I may grant exceptions to this policy in consideration of verifiable extreme circumstances. Generally, extensions sought in advance of the due dates will only be granted sparingly and for documented illness, family emergency, or other extraordinary reasons.

In each case, written assignments should be double spaced, with cases cited appropriately and footnotes duly made in conformity with standard Bluebook citation practice.

The determination of your course grade and the certification that the paper fulfills the advanced writing requirement are separate decisions. Thus, hypothetically, you could receive a passing grade for the course but not receive certification of having fulfilled the advanced writing requirement.

Academic Honesty:

The Law School's Code of Conduct defines plagiarism and sets forth the circumstances under which a student commits a violation of the Code. Please become familiar with the appropriate sections thereof. You must therefore use quotation marks and citations in connection with all words, thoughts and expressions not of your own composition, and properly acknowledge the correct source.

Syllabus

The following outlines a tentative schedule of the textbook reading assignments for this course. You will receive a volume of additional cases and other materials to read and review during the course of the semester. If there are changes in the syllabus, you will be given due notice of them. This syllabus also provides a schedule of simulation exercises, which are based on both hypothetical and actual legal and corporate matters. Students will be actively engaged in these matters and will participate in them through oral and written presentations.

Session 1: January 13 INTRODUCTION

Introduction, Warranties, and Representations, Misrepresentation and Concealment

READING: Abraham, 1-30

Session 2: January 20 THE INSURANCE CONTRACT--GENERAL PRINCIPLES

Standardized Forms, Policy Construing Ambiguities, Principles of Contracts

READING: Abraham, 31-50, additional reading material to be provided.

Simulation Exercise No. 1 – “Will the Law Firm take the Case?” – This simulation will engage each student in the crucial process of properly interviewing a new client who presents a personal injury action. It will include a detailed discussion of the appropriate follow-up steps that must be taken to protect the new client’s interests, and it will cover the proper manner of investigation, placing the insurance carrier on notice of the claim, and the preparation of a Summons & Complaint. This exercise will then examine the steps that shall thereafter be taken by the insurance carrier and its assigned counsel to defend against said claim; it will include an examination of the legal and ethical issues indigenous to the tripartite relationship between the insurance carrier, assigned counsel, and the insured.

Session 3: January 27 PUBLIC POLICY CONSIDERATIONS ON INSURANCE CONTRACT TERMS

Judicial interpretations of the insurance contract

READING: Abraham 78-85; handouts

THE BUSINESS OPERATION OF AN INSURANCE CORPORATION AND
ITS LEGAL RELATIONSHIP WITH ITS INSUREDS, AGENTS
AND BROKERS, AND EMPLOYEES

The role of intermediaries, the underwriting, claims and litigation processes; The role of General Counsel in advising various divisions within a corporation; fiduciary obligations of corporate officers and directors.

Simulation Exercise No. 2: “Protecting the Corporation from Litigation – Substance and Procedure.” - This simulation will allow students to act as associates in a general counsel’s office, and to conduct an internal investigation on behalf of corporate officers on an employment harassment/discrimination claim that is presented to an insurance company. The exercise will involve issues relating to attorney client privilege, requirements under director and officers liability policies, compliance with internal corporate regulations, interaction with a Human Resources Division, and a discussion of Federal and state civil rights laws.

Simulation Exercise No. 3: “The Arrogance of Power In a Corporation - The Self Dealing Problem” – This exercise will allow students to as an associate at a law firm that is retained by the office of general counsel of a corporation, and will simulate counsel’s commencement of an investigation on behalf of members of the Board of Directors following an alleged breach of a corporate officer’s duty of good faith and loyalty involving the corporate opportunity doctrine.

READING: Abraham, 64-75, handouts

Simulation Exercise No. 4: “Counsel’s Role in Protecting the Corporate Shareholders” - This exercise will explore counsel’s role in a quarterly meeting of an insurance company’s Board of Directors as it prepares for its Annual Meeting of Shareholders. Students will act as corporate counsel and engage in the preparation of portions of the insurer’s Notice of Annual Meeting, Annual Report to Shareholders and Proxy materials. In this simulation, students must also prepare an amendment to a an insurer’s bylaws.

Session 4: February 3 STATE INSURANCE REGULATION

State Regulation of Insurance Policies; The role of regulatory opinions; Regulatory Examinations of the Insurance Industry; Anti-Discrimination issues. Current Regulatory Challenges resulting from the breakdown of the Financial Marketplace.

FEDERAL INSURANCE REGULATION - Government Health Insurance Programs: Medicare, PPACA (“Obamacare”); Impact of Genetic Non-Discrimination Act

READING: Abraham, 114 -127, 133-137

STATE INSURANCE REGULATION OF DULY LICENSED
AGENTS AND BROKERS

Legal and Ethical issues surrounding compensation; arguing a case before the regulator in an administrative hearing setting.

READING: additional reading material to be provided.

Simulation Exercise No.5: Through this exercise, students will learn the requisite skills to effectively representing an insurance agent in an administrative proceeding brought by insurance regulator against an agent based upon a violation of the Insurance Law.

Simulation Exercise No. 6: This exercise will present a legal dilemma faced by an attorney representing an insurance carrier who is directed to prepare a legal analysis of certain provisions of the PPACA (“Obamacare”) to determine the responsibilities of corporations thereunder, at a time when there is an absence of regulations or official interpretations of the new law.

Session 5: February 10 FIRE AND PROPERTY INSURANCE

Reading a Policy; Insurable Interest

READING: Abraham, 192-219, 251-259

Session 6: February 17 BUSINESS INTERRUPTION, REASONABLE EXPECTATIONS, SUBROGATION

Ethical Issues facing Counsel on a Business Interruption Claim; Preparation of an Expert Witness

READING: Abraham, 50- 54, 226-232, 276-281

Simulation Exercise No. 7 – “ Damage Control -Counsel’s Role in Drafting/Crafting a Corporate Press Release” – Through this exercise, students will act as counsel to a national corporation that faces product liability suits and the loss of business when it is discovered and publicized that one of its leading products contains a defect that is harmful to consumers.

Session 7: February 24 EXCLUSIONS AND EXCEPTIONS:

DUAL CAUSATION, INCREASE OF HAZARDS, INCREASED RISK, MOLD EXPOSURES; REVISITING PALSGRAF AND THE PROXIMATE CAUSE DILEMMA

READING: Abraham, 241-246, 247-251, additional reading materials to be distributed

Session 8: March 2 COMMERCIAL GENERAL LIABILITY INSURANCE

Reading the Policy; The Insuring Agreement, The Trigger and Allocation of Coverage

READING: Abraham 463-481 (The CGL policy),

READING: Abraham, 482-491

Session 9: March 9 TRIGGERS OF CGL COVERAGE; NUMBER OF OCCURENCES

READING: Abraham, 502-511

Exclusions and Conditions

Handouts

The Pollution Exclusion

Professional Liability Policies

Handouts

Simulation Exercise No. 8 – “Pre-trial Discovery: Handling a Deposition on a General Liability Claim.” – Students will act a counsel and engage in a simulated Examination Before Trial that involves a negligence cause of action.

Simulation Exercise No. 9 - “Researching the Viability of a Medical Malpractice Claim” – Students will be presented with a client intake, and will have to prepare a medical/legal presentation to the partners of a law firm who are considering whether to be retained by an allegedly injured plaintiff.

Session 10: March 16 AUTOMOBILE INSURANCE

The Automobile Insurance Policy; Compulsory Insurance

READING: Abraham, 682-696, 697-704

Session 11: March 23 THE OMNIBUS CLAUSES OF THE AUTO POLICY

Legal issues surrounding the No-fault Medical Insurance System

Simulation Exercise No. 10 - “The Role of Legal Counsel in Handling Insurance Fraud Investigations – Piercing the Corporate Veil Surrounding Professional Medical Corporations Engaged in Insurance Fraud.” Students will act as counsel, and engage in the necessary steps to investigate and then formulate a case of medical insurance fraud. Students will then draft a summons and complaint based upon their findings.

READING: Abraham, 704-716, additional reading materials to be distributed.

**Session 12: April 6 NOTICE AND COOPERATION;
COMPREHENSIVE AND COLLISION COVERAGE**

READING: Abraham, 716-723, additional reading materials to be distributed.

Simulation Exercise No 11: “Defending the Interests of an Insurance Company in a Bad Faith Action” – Through this exercise, which will initially involve the preparation of a summons and complaint based upon an allegation of bad faith by an insurer, students will engage gain a greater understanding of the potential exposure of insurance companies resulting from bad faith, excess judgments and punitive damages awards. Students, acting as corporate counsel, will also prepare an Answer to the bad faith complaint, and thereafter be involved in simulated discussions between company executives and claims staff in an effort to prepare for the litigation and settlement negotiations.

Session 13: April 13 UNINSURED/UNDERINSURED MOTORIST ACTIONS

Simulation No. 12 – Handling a Summation on a Auto Liability claim at a civil trial.

READING: Abraham, 747-761

**Session 14: April 20 LEGAL ISSUES SURROUNDING REINSURANCE
CONTRACTS: SEMESTER REFLECTIONS**

READING: 130-132, additional reading materials to be distributed.