

Principles of Insurance Law

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FIFTH EDITION

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For Ann, Ryan, Shanen, and Reed

For Wenjue, Kai, and Landon

To Karen and Stephanie—For all your love and support

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Preface

Our Fifth Edition of *Principles of Insurance Law* has been substantially revised, re-organized and updated in order to create the best teaching and learning tool about insurance law that we can. Our aim is to make the book both instructor and learner friendly. To that end, we re-envisioned the book to make it as “ready to teach” as possible, with the busy practitioner-instructor in mind. It is our hope that this book can be easily picked up and used with a minimum of preparation by the sessional instructor as easily as the lifelong academic scholar of insurance. Coupled with our Teacher’s Manual, we expect the practitioner-instructor will find a user-friendly text that will allow them to easily plan their course syllabus and choose those topics that best play to their strengths.

In this casebook, we aim to offer the insurance law student and practitioner a broad perspective of both traditional insurance law concepts and cutting-edge legal issues affecting contemporary insurance law theory and practice. We strive to make the content both reflective and practical, maintaining a realistic balance between insurance law theory and practice.

We have also re-designed the book to best fit with how instructors would organize a typical insurance course (especially that busy sessional instructor in full-time insurance law practice or that first-time insurance law instructor whose main area of teaching may not be insurance). To that end, we have adopted a modular approach to the chapter divisions within the book, so instructors can select the modules that best suit them depending on the type of class taught. Because the modules (or chapters, as we call them) can be addressed standalone in the classroom, this should allow instructors to build a syllabus that plays to their strengths in insurance law while also being mindful of the time allowed in a course to cover (or not) particular topics.

The book itself has been substantially compressed, with targeted material in each chapter. Some of the material that has been removed from the prior version has been ported to the Teacher’s Manual, if historical adopters wish to continue to use those materials.

One important innovation for the insurance law teacher and learner is the incorporation of practical Problems within each chapter. These Problems often draw on actual case examples and allow for opportunities to apply one's cumulative knowledge of insurance law topics to "real life" situations and legal disputes, and to make the type of difficult decisions with which a practicing attorney or judge would be faced. These Problems are designed to draw out the controversies and challenges that make insurance law such a fascinating field, while also giving the new student to insurance a taste of how a typical insurance law problem may arrive at a practitioner's door.

The new edition further includes new and expanded treatment of important insurance law developments that have taken place since the prior edition:

- inclusion, where appropriate, of how the new *Restatement of the Law of Liability Insurance* relates to a variety of insurance fundamentals (including specific analysis of key elements of the RLLI in the Liability Insurance chapter);
- discussion of the continued fallout from the wranglings and controversies with the Affordable Care Act ("Obamacare");
- a discussion of the corpus linguistics movement, which posits that the use of massive textual databases or even consumer surveys can aid in interpreting insurance policies (somehow);
- the drama from *Henkel* and *Fluor*: the California Supreme Court's flip-flop cases about anti-assignment clauses in insurance policies;
- new cases on cyber-insurance, insurable interest in property, and consequences of breach of duty to defend;
- new commentary and discussion on recoupment of defense costs, bad faith, and underlying insurance issues; and,
- a new section on reinsurance.

Between the Fourth and Fifth Edition, we were saddened to lose our co-author and friend, Professor Peter Nash Swisher. Peter very sadly passed away in 2016, leaving a large hole in the scholarly insurance law firmament. His important contributions to this book through a number of editions are gratefully acknowledged. He was a fond adopter of the formalist-functionalist modality, which we use as a key explanatory tool in the text.

Thanks also to our long-suffering families and to our respective colleagues at UNLV and Queen's, all of whom are probably more than a bit puzzled at our constant fascination with insurance—an interest we hope students will grow to appreciate as they read the materials in this casebook. Special thanks to UNLV Wiener-Rogers Law Library Director Jeanne Price and Assistant Director David McClure.

Insurance is often regarded as a topic that induces a feeling of “stirring cement with my eyelids” (to use Oliver Wendell Holmes’s memorable description of first-year law school), even as compared to other parts of the law school curriculum. We beg to differ. Insurance involves many of the most intellectually interesting issues in modern law as well as topics central to modern human existence: life; death; greed; money; property; business; cars; homes; family; lawsuits; deals made and broken; steadfastness; and sharp dealing. It’s all there in insurance law. We hope we have captured some significant part of this rich picture in *Principles of Insurance Law*.

Welcome to the fascinating and challenging world of insurance law!

Jeffrey W. Stempel

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