TOPIC 24: INSURANCE LAW

Overview

Insurance is a method of mitigating the risk associated with a particular situation or transaction. This chapter introduces the concept of insurance and its importance to individuals and businesses. It explains the mechanics for establishing insurance coverage for specific occurrences. It outlines the rights and obligations of the insurer and insured. It then introduces the most common types of insurance coverage and relevant terms of such coverage.

VIDEO LESSON - INTRODUCTION

VOCABULARY & CONCEPTS

- Insurance
- Insurance Contract
- Insurable Interest
- Insurance Categories
- Automobile Insurance
- Health Insurance
- Disability Insurance
- Life Insurance
- Insurance on Real Property
- Business Insurance
- Insurer Obligations
- Insured Obligations
- Structure of Insurance Contract
- Insurance Contract - Common Disputes
- Termination of Coverage

TOPIC 24: INSURANCE LAW - QUESTIONS & ANSWERS

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1. What is "insurance"?

Insurance is a risk management and mitigation relationship between an insurer and the insured party. The primary participants and characteristics of the relationship are as follows:

- *Insured* - The insured allocates the contingent risk of loss in a particular situation to an insurer.
- *Insurer* - The insurer is a business entity that agrees to bear the burden of potential losses and to indemnify the insured from a degree of personal loss. "Indemnify" generally means to hold a person harmless by paying any costs or expenses incurred.
- *Premiums* - The insurer receives some form of compensation for assuming the insured party's risk, known as a "premium". The insurer assesses the extent or severity of the contingent risk through a process or system known as "actuarial science". The premium that the insurer charges to the insured is documented through a contract known as an "insurance policy".
- *Coverage & Policy Limits* - An insurance policy contract is the legal document evidencing each party's right and obligations in the insurance relationship. It will cover or establish terms of indemnification of an insured for losses suffered as a result of a specific occurrence. It will identify specific limits on the amount of indemnification payable upon the occurrence of a specific risk.

Insurance policies are a specific type of contract with unique attributes.

- ***Discussion***: Can you identify a difference between an insurance policy and a typical contract for services? Hint: Think about the elements of a valid contract as compared with the attributes of an insurance policy.
- Practice Question: Jed owns a home and car that are both subject to an insurance policy. What must Jed do to maintain this insurance relationship? If Jed's home or car suffers damage that is covered under the insurance policy, what is the role of the insurer?
- ***Resource Video***: http://thebusinessprofessor.com/what-is-insurance/

2. What is an "insurance contract"?

An insurance contract, or "insurance policy", establishes the legal relationship between the insurer and the insured. A potential insured makes an offer to the insurer to purchase the insurer's services. In the application, the insurer will reveal all information relevant to the insurance relationship. The insurance relationship begins when the insurer accepts the insured's offer to purchase coverage, which is the "effective date" of the insurance policy. The insurance contract lays out the extent to which the parties allocate or transfer the contingent risk of loss to the insurer. It will detail the rights and obligations of the parties, as well as the types of situation giving rise to loss and the limits of the insurer's responsibility to pay for losses incurred.

- *Note*: Failure to disclose all material information may later lead to the contract being rescinded by the insurer.

- ***Discussion***: Why do you think the disclosure of factual circumstances is important in the formation of an insurance contract? Why do you think the effective date is an important concept for insurance contracts?

- ***Practice Question***: ABC Corp identifies a risk of customer injury on its premises. ABC approaches 123 Insurance, Inc., about purchasing a policy to cover this risk. What is the process for establishing an insurance contract?

- ***Resource Video***: http://thebusinessprofessor.com/what-is-an-insurance-contract-or-policy/

3. What is an "insurable interest"?

For a party to seek insurance against a potential loss, the insured must have some form of interest in the insured property or be subject to a particular loss from an occurrence or event affecting the insured property or individual. This is known as having an "insurable interest". An insurable interest may be any form or legal or equitable interest in the property, including security interests in the property as collateral. Individuals may have an insurable interest in the life of other persons, but the individual whose life is subject to the policy must agree to such coverage. In some situations, contractual rights or the potential to suffer damages from non-performance of a contract may give rise to an insurable interest. This is the case for professional liability coverage.

- *Note*: An exception exists to the insurable interest requirement for certain types of financial instruments. These instruments effectively insure against an occurrence in which the holder of the instrument has little or no financial interest.

- *Example*: One person cannot take out a life insurance party on a complete stranger without that person's permission. There must be some special relationship between the individuals to justify the policy. This could be a family or business relationship. In any event, the insured individual must generally agree for the insurer to issue a life insurance policy to a third party. In health and life insurance policies, the individual applying for the policy must have an insurable interest in the insured's life at the time that the policy takes effect. In property insurance contracts, the individual applying for insurance must have an insurable interest in the property at the time of loss to the covered property.

- ***Discussion***: Why do you think insurance contracts require that an individual have an insurable interest? Can you think of contracts that are similar to insurance policies that do not require a party to have an insurable interest? Hint: Think of the 2007 economic recession.

- ***Practice Question***: Amy is a huge fan of a popular singer, Justin. Though she has never met him, she would be distraught if anything were to happen to him. In the event of his untimely demise, she wants to make certain that she would be able to create a shrine and pay homage to the singer. Can Amy take out an insurance policy covering Justin's life?

- ***Resource Video***: http://thebusinessprofessor.com/what-is-an-insurable-interest/

4. What are the common categorizations of insurance?

An insurance policy may have any of the following characteristics:

- *Individual vs Group* - Insurance policies may cover individuals or groups of individuals for identified risk(s).
    - *Example*: Ralph purchases a life insurance policy to cover him individually. Sam purchases a group health policy to cover his entire family.
- *Personal vs Commercial* - Insurance policies may cover personal or commercial activity or property.
    - *Example*: ABC Corp purchases a property insurance policy to cover its business location and equipment. Quentin purchases a homeowner's policy to cover damages caused to his home by wind, fire, etc.
- *Liability Insurance* - Liability insurance policies may indemnify the insured or categories of third parties from potential liability for losses incurred in a specific instance or situation. It is commonly associated with losses suffered as a result of negligent conduct, but also may cover property damages.
    - *Example*: Doug is a medical doctor. He purchases liability insurance to cover damages to a patient from negligent performance of his services.
- *Property & Casualty Insurance* - Property and casualty insurance generally insures against damage to the subject property.
    - *Example*: Dough purchases a policy that insures his home against damage from all natural elements, such as wind, fire, or ice.

A policy may cover any or all of the above types of contingent risk.

- ***Discussion***: Can you think of other categories or characteristics of insurance contracts?
- ***Practice Question***: Bernard owns a small, home-based business. He has two employees who work at his home and these employees regularly meet with clients at this location. He is looking for an insurance policy to cover the risk of individuals coming onto his property and getting injured? Also, he wants to cover his property against potential theft or damage by clients. What types of coverage does he need?
- ***Resource Video***: http://thebusinessprofessor.com/common-characterizations-of-insurance/

5. What are the common types of insurance coverage?

Individuals may purchase insurance coverage for nearly any foreseeable risk. The following are common types of insurance policies:

- *Automobile Insurance* - Vehicle insurance covers damages suffered by either the individual or automobile pursuant to any number of risks. Common risks covered in vehicle insurance policies include the following:
    - *Liability Coverage* - This type of policy covers, up to the policy amount, the costs and damages suffered by third parties as a result of operating the insured vehicle.
        - *Note*: This type of vehicle insurance coverage is mandatory in every state.
    - *Collision Coverage* - This is a form of property insurance that will pay the value of the damages suffered to a vehicle in a crash, up to a stated amount or up to the total value of the vehicle.
        - *Note*: This type of insurance is generally required by a lender when purchase of a vehicle is financed?
    - *Comprehensive Coverage* - This type of insurance coverage insures the vehicle against forms of damage other than collision, such as vandalism, theft, hazardous weather, etc.
    - *Uninsured (& Underinsured) Motorist Coverage* - This type of insurance coverage provides indemnification for injuries suffered by the driver and passengers of the covered automobile when another party without insurance causes personal injury in a crash.
        - *Note*: It also covers situations where a third party causing the damage or harm is unidentifiable. This type of coverage is mandated in many states.
    - *Other Coverage* - Other insurance coverage in a vehicle policy may include towing and rental car expenses, additional medical payment coverage, and accidental death coverage.

    - ***Discussion***: Why do you think there are so many special types of coverage applicable to ownership and operation of a vehicle? How does the cost-benefit vary with each type of vehicle insurance?
    - ***Practice Question***: Donald is purchasing a new car. He is financing the car through his bank. What types of insurance will Donald likely have to purchase?
    - ***Resource Video***: http://thebusinessprofessor.com/what-is-automobile-insurance/

- *Health Insurance* - Health insurance pays the medical expenses incurred by an individual pursuant to treatment of covered health risks. Health plans may include medical, pharmaceutical, dental, and vision services by health providers. A health insurer will often disclaim or limit coverage for known conditions of the insured present within a stated period of time prior to purchasing insurance. This is known as excluding "preexisting conditions". Most health insurers are limited in the ability to exclude preexisting conditions for more than two years following issuance of the policy. The Affordable Care Act of 2010 (ACA) limits the ability for insurers to exclude preexisting conditions, while placing additional tax burdens on those who do not purchase a qualified health insurance plan. It also authorizes the establishment of state and federal insurance exchanges where individuals can purchase an insurance plan. This system allows individuals to purchase insurance plans at rates comparable to those of large, employer-sponsored, insurance plans. As part of an insurance plan, an insured may be responsible for:

- *Premiums* - Payments for insurance coverage.

- *Deductibles* - This is a minimum amount that an insured must pay towards the cost of services addressing a contingent risk or occurrence before the insured will begin to pay.

- *Co-Insurance* - This is an amount or percentage for which the insured is responsible for any costs incurred pursuant to the occurrence of a covered event.

- *Co-pay* - This is a fixed amount that an insured must pay toward costs incurred as part of a contingent event.

• Common types of health insurance include:

  - *Preferred Provider Organizations (PPO)* - These policies provide a rate of expense coverage for medical treatment received within a specific network of physicians, hospitals, and clinics. The PPO will generally provide a lower rate of expense coverage when the insured receives treatment outside of the established network.

  - *Health Maintenance Organization (HMO)* - These policies provide a rate of coverage for medical treatment received within a specific network of physicians, hospitals, and clinics. The key characteristic is that the insured is assigned to a primary care physician who must refer the insured for treatment at any of the network participants. The insurer provides a rate of coverage for these in-network providers. The insurer provides no coverage for treatment received outside of the network, except in the case of emergency treatment.

  - *Exclusive Provider Organization (EPO)* - EPO plans cover specific types of medical treatment within a specific provider network. These plans are more limited in their coverage than HMO plans, but the costs for the plan are generally lower. Any treatment received outside of the EPO is not covered.

  - *Point of Service (POS)* - A POS plan is similar to a PPO plan in that it provides a rate of expense coverage for in-network healthcare providers. The insured is assigned to a primary care physician or network for certain types of services. The insured has flexibility, however, to visit out-of-network healthcare providers, but the expense coverage is lower than in-network.

  - *High Deductible Health Plan (HDHP)* - A HDHP is a plan that provides a stated rate of health expense coverage after a high annual deductible amount is paid by the insured. Once the insured covers her medical expenses up to the deductible amount, the insurer will pay a stated percentage of costs. HDHP plans are generally grouped with a Health Savings Account (HSA). A HSA allows an individual to make tax-free contributions to a qualified trust account to cover the costs of medical expenses. These contributions allow the insured to pay for much of the deductible costs of HDHPs with pre-tax funds.

    - *Note*: HSA funds must generally be used in the years of contribution or they are lost.

- *Flexible Spending Account (FSA)* - This is a form of self-insurance that is similar to an HSA. An FSA is an employer-sponsored account that allows the employee to make pre-tax contributions to a healthcare (or childcare) spending account. While an HSA is only available with a HDHP, the FSA is available along with any healthcare plan. An employer must sponsor the FSA for its employees.

- ***Discussion***: Why do you think the government has an interest in citizens obtaining health insurance? Why do you think health insurance plans are linked to employers? Why do insurance companies seek to exclude preexisting conditions of a covered insured? Why do you think insurers divide disability coverage into long-term and short-term? What types of professions are most likely to need disability insurance?

- ***Practice Question***: Doug is an employee of a small business that does not sponsor a health insurance plan. Doug is seeking to purchase an individual plan. What are his options for purchasing insurance? What are some of his options for types of plan to purchase?

- ***Resource Video***: http://thebusinessprofessor.com/common-health-insurance-plan-characteristics/

- *Disability Insurance* - Disability insurance provides financial benefits to someone who becomes disabled and is unable to continue working in a given profession or function. Disability insurance coverage is generally divided into short-term and long-term disability.

    - *Note*: Long-term disability insurance is generally in addition to any benefits provided by social security for permanent disability status.

- ***Resource Video***: http://thebusinessprofessor.com/what-is-disability-insurance/

- *Life Insurance* - Life insurance provides financial benefits in the event a covered individual passes away. The beneficiaries of the policy are generally third parties rather than the insured or the insured's estate. An insured must provide permission or consent for a third-party to purchase a policy covering her. The following are common categories of life insurance:

    - *Whole-Life Plan* - A whole-life policy provides a benefit to a named beneficiary upon the insured's death. Coverage lasts for the remainder of the insured's life. Because of the certainty of payout of the policy, the policy has a cumulated cash value that can be cashed out or used to secure a loan during the insured's life. The owner of the policy pays regular premiums (that are generally locked in at a fixed rate) until the time of the insured's death.

    - *Limited-Payment Life* - This is a variation upon the whole-life policy. All things are similar under these plans, except that the policy becomes fully funded after a certain number of payments. Once these payments are met, the owner of the policy no longer pays a recurring premium.

    - *Term-Life Policy* - Term life insurance provides benefits to a named beneficiary for a specific term from the initiation of the policy. The owner of the policy pays premiums until the end of the term. At the end of the term, if the insured is alive, the policy ends and no longer offers benefits.

- *Endowment Insurance* - This is a less common form of life insurance in which the owner of the policy pays premiums for the term of the insurance. At the end of the term, a fixed amount is paid to the beneficiary on a certain date.

- *Life Annuity Policy* - This form of policy requires the owner of the policy to make a single lump-sum payment or a series of premium payments to the insurer. The insurer agrees to begin making recurring payments to the beneficiary after a certain date. The payments will last until a specific date or (more commonly) until the end of the insured's life. The lump sum is paid at one time and recurring payments to the beneficiary generally terminate upon the death of the insured.

- *Universal Life Policy* - This type of policy combines term and life insurance into a combination policy.

These policies often exclude specific causes of death, such as suicide, war, criminal death sentence, or murder of the insured by the beneficiary.

- ***Discussion***: Why do you think people seek to purchase life insurance? Why do you think an insured's consent is required for a third party to insure her life?

- ***Practice Question***: John is considering purchasing life assurance. He has specific plans to leave funds for individuals after he passes away. What are some of John's options of life insurance policies?

- ***Resource Video***: http://thebusinessprofessor.com/characteristics-of-life-insurance-policies/

• *Homeowner's & Renter's Insurance* - Homeowner and renter's insurance are combination policies that protects property as well as individuals present on the property. The primary characteristics of a homeowner and renter's policies are as follows:

- *Property Coverage* - The homeowner or renter's policy will generally insure the subject property against damages from specific types of occurrence, such as fire, theft, flood, etc. It will generally cover the physical residence as well as private buildings located on the real estate.

- *Liability Coverage* - The homeowner or renter's policy generally provides protection (or indemnification to the property owner) against losses resulting from personal injuries suffered on the insured property.

• *Fire Insurance* - Fire insurance insures specific property for a specific amount against damages from fire and fire-related damages (such as smoke, water, etc.) These policies exclude coverage for certain types of fires, such as certain fireplace fires or arson. These policies often place other conditions on coverage, such as the policy owner living at the location where the insured property is located.

- ***Discussion***: Why do you think these are common forms of property coverage? Can you think of a reason why mortgage holders would require a homeowner to purchase such a policy? How do you feel about the ability of an insurer to select specific instances of damage or causes of damage to exclude from coverage?

- ***Resource Video***: http://thebusinessprofessor.com/insurance-policies-relevant-to-real-property-land/

- *Business Liability Insurance*: Business liability insurance can have any number of property and liability protections. The most common form of business liability insurance is a "comprehensive general liability" (CGL) policy. These policies will insure any number of risks commonly faced by businesses, such as premises liability, product liability, professional malpractice, negligence, environmental liability, etc.
    - *Note*: It is common for insurers to require separate policies for product liability and professional malpractice liability coverage.
- *Professional Liability Insurance* - Professional liability insurance, often called "malpractice insurance", protects the insured from losses incurred as a result of a specific type of negligent professional practice. A specific type of professional liability insurance is "director & officer liability" insurance, which is purchased by a business to indemnify its officers and directors from losses suffered in the performance of their business duties.
- *Others* - Other common types of insurance include: crime, flood, pollution, mortgage insurance, title insurance, worker's compensation, unemployment, cyber privacy, etc.

An individual or business may purchase any of the above-referenced types of insurance, as well as many other common types of insurance. Some of the types of insurance may be required by law or by professional trade industry in a given jurisdiction.

- ***Discussion***: What types of professional practitioners do or are generally required to purchase these types of policy? Why do you think companies purchase D&O insurance to cover its officers and directors? Why do you think many businesses purchase these types of policies? Can you think of a situation where a business would not benefit from such a policy?
- ***Resource Video***: http://thebusinessprofessor.com/common-types-of-business-insurance/

6. What are the primary obligations of the insurer?

The primary duties of an insurer in an insurance contract are as follows:

- *Payment for Losses* - An insured is responsible for indemnifying the policyholder or paying for the losses suffered by the insured or a third party as a result of a covered risk.
    - *Example*: Lynn gets into an automobile accident that is his fault. The insurance carrier may be obligated to pay the cost of Lynn's injuries, the injuries to the other driver, and the cost of damages to both Lynn and the other driver's car.

- *Duty to Defend* - An insurer generally has the duty to defend or pay the legal expenses of an insured who is subject to a legal action for the covered risk.

    - *Example*: Hank has professional liability insurance for his accounting practice, the insurer will be obligated to defend Hank if a client brings a civil action against Hank alleging negligence in his accounting services.

- *Subrogation* - An insured inherits the identified interest of the insured based upon the occurrence of the covered risk. The insurer may then seek recovery or contribution for harm suffered (funds paid to the insured or third parties) based upon the harm to the insured's interest.

The majority of all civil litigation in the United States involves insurance coverage. Failure of an insurer to comply with its duties under an insurance policy is a common subject of litigation, known as "bad-faith refusal".

- ***Discussion***: How do you feel about the duties of an insurer? What should be the rights of an insured if an insurer fails to perform its duties, such as pay the insured's losses or defend the insured in a legal action? Should an insured have the option of paying a claim or defending a legal action? Why or why not?

- ***Practice Question***: Eric has an automobile liability coverage policy with ABC insurance. Eric gets into a wreck with another car, which the police deem to be Eric's fault. The other drive sues Eric. Generally, what are ABC's obligations in this situation?

- ***Resource Video***: http://thebusinessprofessor.com/duties-of-an-insurer/

7. What are the primary obligations of the insured?

The primary duties of an insured in an insurance contract are as follows:

- *Duty to Disclose Information* - The insured must inform the insurer of any events relevant to the contingent risk transferred to the insurer. This includes disclosing information in the application for policy coverage and disclosing incidences of damage to the insured person or property or harms resulting from the insured's conduct. A failure to disclose such information may lead to the loss of insurance coverage.

- *Duty to Cooperate* - An insured has a duty to cooperate with the insurer in the identification, investigation, and resolution of any event or circumstance giving rise to losses born by the insurer.

    - ***Discussion***: What do you think about the insured's duties? Why do you think they are necessary?

    - ***Practice Question***: ABC Corp has a policy with 123 Insurance covering any damage to ABC's facilities or equipment. ABC suffers a huge loss when a fire engulfs the facility. What would ABC's obligations as an insured be in this situation?

    - ***Resource Video***: http://thebusinessprofessor.com/primary-obligations-of-an-insured/

8. What is the general structure of an insurance contract?

- *Declarations* - The declarations section of an insurance contract identifies the parties to the contract and dictates that the following provisions constitute an insurance contract. It will generally state the intentions of the parties with regard to the subject-matter of the insurance, the term of the policy, the risks covered by the policy, the limits on payment in the event an insured risk occurs, and the financial obligations of the insured (premiums, deductibles, co-payments, etc.).

- *Definitions* - Most insurance contracts contain a defined terms section that provides the common understanding of certain terms or phrases used throughout the insurance agreement. This section can be very important for avoiding ambiguities in the agreement.

- *Terms of Insurance* - This section, often called the “insuring agreement”, lays out the promises of the insurance company to indemnify the insured against certain risks of loss. Specifically, it will describe the type of risks insured against and the person, property or subject matter covered under the policy. There are two basic forms of an insuring agreement:

    - *Named Perils Coverage* - This form of agreement insures perils specifically listed in the policy. If the peril is not listed, it is not covered.

    - *All-Risk Coverage* - This form of agreement insures all losses suffered to a person or specific property except those losses specifically excluded. If the loss is not excluded, it is covered.

- *Exclusions* - Exclusions are types of contingent risk that are not covered or insured under a policy. There are three major types of exclusions:

    - *Excluded Perils or Causes of Loss* - For example, homeowner’s insurance may exclude damages caused by flooding.

    - *Excluded Losses* - For example, an automobile policy may exclude normal wear and tear from everyday use.

    - *Excluded property* - For example, a homeowner’s policy may not include certain personal property located within the home.

- *Conditions* - Conditions are contractual provisions that require a certain fact or circumstance come about before duties or obligations arise under the contract. If policy conditions are not met, the insurer is not obligated to insure against the loss that is subject to that condition. That is, the insurer will deny a claim for losses if an applicable condition in the policy is not satisfied. For example, the insurer may make filing a claim and providing proof of loss a condition to coverage.

- *Endorsements* - These are forms attached to the main insurance policy used to modify the duties or obligations under the policy. Often endorsements will place some condition on the insurer’s duty to indemnify the insured or cover a particular type of loss. They may also modify or delete express clauses present within the core of the insurance policy. This is the primary method by which underwriters tailor a specific policy to cover a particular insured.

- *Policy riders* - Policy riders are amendments to an existing policy. The rider contains the amended terms and becomes part of the original insurance contract. An insurer will use a rider any time that the terms of coverage change under an insured's policy.

- *Policy Jackets or Binders* - Insurers often issue a policy within a policy jacket. The jacket is a cover, binder, envelope, or folder containing the policy. The binder will often contain boilerplate provisions of the insurance policy. Some insurers now append material to the insurance policy that contains the standard boilerplate provisions, instead of including those provisions on the jacket.

- ***Discussion***: You will notice that an insurance contract follows a similar format to most contracts, but it contains several insurance-specific provisions. Why do you think that insurance contracts employ endorsements and riders to modify the terms of the existing agreement and the duties of the parties? How do you feel about the use of exclusions and conditions in the insurance policy? How do you balance the insured's need for these policies against the potential abuse of insured parties?

- ***Practice Question***: ABC Corp has a general liability policy with 123 Insurance. What terms are likely covered in the policy? ABC wants to modify the policy by increasing the coverage limits. What will ABC need to complete to modify the policy?

- ***Resource Video***: http://thebusinessprofessor.com/general-structure-of-an-insurance-contract/

9. What are the common provisions in an insurance contract subject to legal dispute?

State law requires that insurance contracts contain certain provisions protecting the rights of the insured against the insurer. These provisions are commonly the subjects of litigation. An insurer that fails to pay an insurance claim for which it is legally obligated may be subject to a "wrongful dishonor" action by the insured. Some of these common provisions in many types of insurance policy include:

- *Incontestability Clauses* - An "incontestability clause" protects the insured by preventing an insurer from denying coverage based upon certain misrepresentations by the insured when applying for the policy. These clauses generally do not protect against fraudulent statements made with the specific purpose of deceiving the insured into granting a policy. Incontestability clauses are effective after a stated period of time, the "contestability period". The theory is that a misrepresentation that does not give rise to an issue in coverage within the stated period was not material at the time of the application for coverage.

- *Anti-Lapse Clauses* - An "anti-lapse clause" prevents an insurer from automatically canceling an insurance policy at the end of a specific policy term. In addition, state statutes require that the insurer give the insured sufficient notice of the policy's termination date and inform the insured of what is required to continue coverage for a future coverage period. If the insurer fails to meet the notice and information requirements, the insured may be able to claim coverage or renew the policy beyond the posted termination date.

- *Appraisal Clause* - Appraisal clauses seek to avoid litigation of disputes as to the replacement or repair value of covered items. Specifically, these provisions require that the insured and insurer submit any disputes as to valuation to qualified third-party appraisers. These appraisers arrive at a value that binds both parties. The parties split the cost of hiring appraisers to determine the dispute.

- *Duty to Preserve Clause and Notice of Claims* - Nearly all insurance contracts require that the insured seek to preserve evidence surrounding a particular claim and provide notice to the insurer as soon as the insured has a reasonable belief that a claim has arisen. This is particularly true in an indemnification situation where the insurer is responsible for defending and paying any losses awarded through civil litigation.
    - *Preserve Evidence* - The insured must preserve any evidence relevant to the situation once the insured reasonably anticipates litigation on the matter.
    - *Notice of Claims*- These provisions require an insured to provide notice to its insurer of any circumstance that may give rise to a claim under the existing policy. Failure to provide a notice of claim prior to the end of the policy may diminish the ability of the insured to make a claim for injuries or losses incurred.
- *Co-Insurance Clause* - These provisions require that an insured purchase separate insurance on insured property up to a specific percentage of the insured property value. An insured who fails to purchase insurance to meet the required percentage of the property value may forfeit any or all of the coverage under a particular policy.
- *Multiple Coverage Clause* - These clauses limit the insurer's responsibility to pay for losses when multiple insurance policies cover the same property or loss. Generally, these clauses provide that an insurer will be a secondary insurer to any existing insurance. Alternatively, these policies state that the insurer will pay only a *pro rata* share of losses along with the other insurer.
- *Dispute Clause* - Dispute clauses are provisions aimed at curbing insurance litigation. These provisions require the insured and insurer to submit any dispute to binding arbitration, rather than initiating a civil action. Many states will not enforce these provisions and allow parties to initiate litigation.

- ***Discussion***: Why do you think the above-listed clauses are frequently the subject of litigation?
- ***Practice Question***: ABC Corp has an insurance policy with 123 Corp. It also has a policy with XYZ Corp. If ABC suffers an insured loss, what are some of the issues it may encounter when submitting a claim to ABC or 123 Corp?
- ***Resource Video***: http://thebusinessprofessor.com/common-legal-disputes-over-insurance-agreement/

10. What is required for termination of an insurance contract?

An insured may terminate an insurance policy at any time. Generally, it requires that the insured express intent to cancel the policy. This may include notifying the insurer in writing or discontinuing payment of premiums. If the insured stops paying the insurance premiums, the insurer must provide the insured with notice of its intention to cancel the policy. If the insurer fails to provide notice within the statutory period, the insured may be able to resume her insurance contract by resuming payments. An insurer is generally limited by statute in its ability to cancel a policy. Below are the common situations in which an insurer may cancel a policy.

- *Void by Insurer* - An insurer may void a contract if the insured supplies false or misleading information to the insurer to obtain insurance. To void the contract, the insurer must demonstrate that the insured made a fraudulent or material misrepresentation. Further, the insurer must demonstrate that it would not have entered into the insurance relationship with the insured if it had known of the misrepresented facts.
    - *Note*: This right is limited by the incontestability period or clauses in the contract.
- *Conditions in Policy* - An insurance policy may contain any number of conditions that can cause cancellation of the insurance policy. These are normally limited by state law and rules of equity.
    - *Example*: A professional liability or malpractice policy may contain a clause terminating a policy if a person loses a professional licensure.
- *End of Policy Term* - An insurer may be able to terminate an insurance policy at the end of a stated insurance term. State law may limit the ability of the insurer to deny an insured the ability to renew a policy that has not lapsed. This is particularly true with health and life insurance policies.
    - *Example*: A term life insurance policy has a stated period during which the insurance provisions are effective.

- ***Discussion***: How do you feel about the requirements for terminating an insurance policy? Why do you think the law places these limitations? Do you have an opinion regarding the above-listed situations allowing an insurer to cancel a policy?
- ***Practice Question***: ABC Corp holds an insurance policy with 123 Corp. ABC has made lots of claims in the past years and 123 is considering canceling the policy. What will 123 have to do procedurally to cancel the policy? What conditions provide 123 the ability to cancel the policy?
- ***Resource Video***: http://thebusinessprofessor.com/requirements-for-cancelling-and-insurance-contract/