

---

# Table of Contents

## Introduction:

- A. Insurance and the Lawyer
- B. Ancient Forms of Insurance
- C. Structure
- D. Use of the Book

## Chapter 1: The History of Insurance

- A. The Context of Insurance
  - 1. The Historical Basis for the Covenant of Good Faith and Fair Dealing

## Chapter 2: The Contract of Personal Indemnity

- A. Property Insurance

## Chapter 3: Construction of Insurance Contracts

- A. Rules of Insurance Contract Interpretation
- B. Investigation Now Required

## Chapter 4: Differences between Property and Liability Policies

- A. All Insurance is Not the Same
  - 1. Property
  - 2. Liability

## Chapter 5: Rescission of Insurance Policies

- A. Rescission
  - 1. An Equitable Remedy
  - 2. Required Proof
  - 3. Rescission Deprives the Innocent of Ability to Obtain Insurance Proceeds
  - 4. Return Consideration
  - 5. Concealment or Misrepresentation
  - 6. Materiality
  - 7. The Marine Rule

## Chapter 6: Duties of the Insured and the Insurer

- A. Good Faith
  - 1. The Implied Covenant of Good Faith and Fair Dealing
- B. Tort of Bad Faith
- C. The Tort of Outrage – A Substitute for The Tort of Bad Faith
- D. Coercive or Abusive Practices
- E. Conduct During Litigation
- F. Statutory Bad Faith
- G. Abuses of the Tort of Bad Faith
- H. Exposure of Insured to Other Claims
- I. Defenses to the Tort of Bad Faith – The Genuine Dispute Doctrine

---

## **Chapter 7: Conditions, Warranties, and Exclusions**

- A. Conditions
- B. Warranties
- C. Exclusions
- D. Exclusion for Inherent Vice
- E. Wear and Tear or Corrosion

## **Chapter 8: Fortuity**

- A. Other Intentional Acts Exclusions
- B. Fortuity
- C. Assault and Battery
- D. The “Loss in Progress” Rule

## **Chapter 9: The Trigger of Coverage**

- A. Policy Format and Structure

## **Chapter 10: Appraisal**

- A. Appraisal is Arbitration
- B. Appraisal is Not Arbitration
- C. Grounds to Set-Aside Appraisal Awards
- D. Waiver

## **Chapter 11: Independent Counsel and the Law of Unintended Consequences**

- A. The Right to Independent Counsel
  - 1. The Cumis Doctrine
  - 2. Criminal Conduct

## **Chapter 12: Fraud and False Swearing**

- A. False Swearing

## **Chapter 13: Subrogation**

- A. The Equitable Remedy of Subrogation

## **Chapter 14: “Other Insurance” Clauses**

- A. How Insurers Deal with Multiple Insurance Covering the Same Loss
  - 1. Excess Clauses
  - 2. Escape Clauses
  - 3. Contingent Escape Clauses
  - 4. Other “Other Insurance” Clauses
- B. Resolution of Conflicts Involving “Other Insurance” Clauses
  - 1. Excess Clause v. Escape Clause

## **Chapter 15: Punitive Damages**

## **Chapter 16: Preemption and the Power to Control Insurance**

## **Conclusion**