Syllabus – Personal Injury Practice – Spring, 2016

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Texts: Massachusetts Personal Injury Law Sourcebook & Citator (MCLE) – Recommended, Not Required
Workers’ Compensation (MCLE) – Recommended - Not Required

Grading Policy: 1. Demand Package – 25%
2. Final Exam –75%

Course Outline

I. Automobile Accident Claims:

January 19, 2016 - Auto Accident Intake, Initial Claim Evaluation & Insurers
- Client Interview
- 1st Party Coverage v. 3rd Party Coverage
- File Set-Up.
- Reserves & Disclosure of Policy Limits
- Documentation of Calls
- 3rd Party Requests for Statements & IME

January 21, 2016 - Ethical Considerations in Undertaking Representation
- M.G.L. c.221, §§43 & 44 Prohibition against employing runners; Disqualification for violation of §43.
- M.G.L. c.266, §111C – Fraudulently obtaining benefits under insurance contract; runners; punishment.

January 26, 2016 - Massachusetts Automobile Insurance Policy, 8th Edition

a. Compulsory Insurance–M.G.L. c.90, §34A
- Bodily Injury to Others (/discussion/case review):
(1994)(guest occupants right of recovery from uninsured provision) and

- **M.G.L. c.175, §112C** – Mandatory disclosure of Policy Limits.

January 28, 2016 -  

**Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Personal Injury Protection (P.I.P.)—M.G.L. c.90,§34A & 34M**

February 2, 2016 -  

**Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Personal Injury Protection (P.I.P.)—M.G.L. c.90,§34A & 34M**

February 4, 2016 -  

**Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Personal Injury Protection (P.I.P.)—M.G.L. c.90,§34A & 34M**


February 9, 2016 - **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Bodily Injury Caused by Uninsured Auto-M.G.L.c175, §113L**
  - **Notice** – MAIP 7th, p.32; *Goodman v. American Casualty Co.*, 419 Mass. 138, 643 N.E. 2nd 432 (1994)(prompt notice of uninsured claims);

February 11, 2016 - **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Bodily Injury Caused by Uninsured Auto-M.G.L.c175, §113L**
  - **Amounts Recoverable** – MAIP 8th, p. 9
  - **Arbitration** - MAIP 8th, p. 9
  - **Permission to Settle** - MAIP 8th, p. 10

February 16, 2016 - **Massachusetts Automobile Insurance Policy, 8th Edn (cont.)**

b. **Optional Insurance:**
   - **Optional Bodily Injury to Others (/discussion/case review)**


February 18, 2016 - **Massachusetts Automobile Insurance Policy, 8th Edition (cont.)**

- **Optional Bodily Injury to Others (discussion/case review)**


February 23, 2016 - **Medical Payments Coverage (discussion/case review)**

- **Stacking of Med Pay Policies**;

- **Coordination of Med Pay & PIP Coverages** – *Massachusetts Division of Insurance Bulletin B-90-2* (February 21, 1990) & *Massachusetts Division of Insurance Letter to Andrew Aloisi, Esq. dated February 25, 2003*. **Note:** These documents can be found within MCLE’s *Mass Motor Vehicle Torts, Volume 1, chapter 2, exhibits 2D & 2G*. This volume is on reserve in the library!


- **Metropolitan Property and Casualty Insurance Co. v. Blue Cross and Blue Shield of Massachusetts, Inc.**, 451 Mass. 389, 885 N.E. 2nd 825 (2008) (Coordination of Med Pay, PIP & Health Insurance);

- “2008-12 Clarification of Coordination of Benefits under M.G.L. c.90. §34A and the Interrelationship by and among PIP, Health Insurance and Medical Payments.” http://www.mass.gov The Circle is Complete!
February 25, 2016 - Massachusetts Automobile Insurance Policy, 8th Edition (cont.)
- Underinsured Motorist Cov. (discussion/case review)

March 1, 2016 - Case Evaluation, Demand & Settlement
- Valuing a Case
  o Special Damages – Medical Expenses, Wage Loss & Replacement Services.
  o General Damages – Pain & Suffering, Permanency & Disfigurement, Quality of Life, Future Medical Problems, Vocational Rehabilitation/Counseling, Liability, Social Security Life Tables.

March 3, 2016 - Case Evaluation, Demand & Settlement (cont.)
- Demand Preparation
  o Use of Experts
  o Preparation of Demand Letter
  o M.G.L. c.93A & 176D

NOTE: DEMAND PACKAGE MATERIALS PRESENTED!

March 8, 2016 - Case Evaluation, Demand & Settlement (cont.)
- Settlement & Release
  o Release Document
  o Settlements Involving Minors M.G.L.c231, §140C1/2.
  o Liens – Workers Comp, Hospital, Medical Providers and compromise of liens; Meyers v. Bay State Health Care, Inc. 414 Mass. 727, 610 N.E.2nd 303 (1993)(Proceeds received from Underinsurance
coverage not subject to HMO’s statutory lien.) M.G.L. c.111, §§70A & 70B.

March 10, 2016 - **Litigation & Alternative Dispute Resolution**
  o Complaint – Superior v. District Court
  o Discovery – Interrogatories, Document Requests, Requests for Admissions, & Depositions
  o Medical Certification - M.G.L. c.233, §79G

SPRING BREAK – MARCH 14, 2016 THROUGH MARCH 20, 2016

March 22, 2016 - **Litigation & Alternative Dispute Resolution (cont.)**
  - **Alternative Dispute Resolution**
    o Binding High/Low Arbitration
    o Mediation

II. **Workers’ Compensation Claims:**

March 24, 2016 - **Overview of Massachusetts Workers’ Compensation**
  o Intake Interview
  o Benefits Scheme: M.G.L. c.152, §§ 30, 34, 34A, 35 & 36.
  o Amount of Weekly Benefit

March 29, 2016 - **Uninsured Employers**
  o O’Malley’s Case, 361 Mass. 504, 281 N.E. 2nd 277 (1972); (Independent Contractor Designation to avoid Procurement of Workers’ Compensation Insurance)
  o Uninsured Subcontractors – M.G.L. c.152, §18
  o Massachusetts Workers’ Compensation Trust Fund: M.G.L. c.152, §§ 65 & 66.

March 31, 2016 - **Workers’ Compensation - Injury**
  o Demand for Employee’s Statement -M.G.L. c. 152, §7B


April 5, 2016 -

**Injury (cont.)**


April 7, 2016 -

**Injury (cont.)**


- NOTE: DEMAND PACKAGE DUE!!

April 12, 2016 -

**Workers’ Compensation Claims Procedure**

- 452 C.M.R. 1.01 thru 1.08

April 14, 2016 -

**Workers’ Compensation Claims Procedure (cont.)**

- 452 C.M.R. 1.10 (Conferences)

April 19, 2016 -

**Workers’ Compensation Claims Procedure (cont.)**

- 452 C.M.R. 1.11 (Hearings)

April 21, 2016 -

**Workers’ Compensation Claims Procedure (cont.)**

- 452 C.M.R. 1.12 (Discovery and Depositions)

**Workers’ Compensation Claims Procedure (cont.)**

- Lump Sum Settlements and Fee Petitions pursuant to
M.G.L. c.152, §15. See, Curry v. Great American Insurance Co., 80 Mass. App. Ct. 592 (2011). (Any portion of a 3rd party award or settlement designated as “pain & suffering” is not subject to WC insurer’s right to recovery Pursuant to M.G.L. c.152, §15.)

April 26, 2016 - Review for Final Exam (Auto & Workers’ Compensation or Make-up Class)

April 28, 2016 - Review for Final Exam (Auto & Workers’ Compensation or Make-up Class)

May 2, 2016 - Last day of classes – Spring 2016

May 3, 2016 through May 8, 2016 - Study Week

May 9, 2016 through May 20, 2016 - Final Exams

Personal Injury Final Exam - TBA

NOTE: ALL FINAL EXAMINATION SCHEDULING CONFLICTS MUST BE BROUGHT TO MY ATTENTION WHEN THE TENTATIVE FINAL EXAMINATION SCHEDULE IS RELEASED. STUDENTS WHO FAIL TO SERVE NOTICE OF A CONFLICT WILL NOT BE ACCOMODATED!

The instructor reserves the right to modify and/or amend the content of this syllabus.