

INSURANCE AND WILLS AND TRUSTS

Insurance & Wills & Trusts ABL Fall 1999 O'Hara (C)

1

INSURANCE LAW

specialized contract with a heavy emphasis on jargon

RISK POOLING

insurance: allocate existing risk
gambling: create and allocate risk
average pricing
material information
unilateral mistake
moral hazard

INSURABLE INTEREST

property: time of loss
life: time of contract

Insurance & Wills & Trusts ABL Fall 1999 O'Hara (C)

2

ADHESION CONTRACTS

take or leave it
policy justification for one contract form
ambiguities interpreted against drafter
reasonable expectations

INSURER'S DUTY TO DEFEND

		WHO LIKES?	
		YOU	INSURER
not liable	not covered	X	X
not liable	covered	X	X
liable	not covered		X
liable	covered	X	

Insurance & Wills & Trusts ABL Fall 1999 O'Hara (C)

3

WILLS AND TRUSTS

distribute property upon death
probate varies by State, but UPC

valid will requires

capacity

age

intent

comprehend property

natural objects of your bounty

written

execution

witness

no interest

capacity

Insurance & Wills & Trusts ABL Fall 1999 O'Hara (C)

4

revocation

codicil

intestacy

spouse, children, lineal, collateral

per stirpes v. per capita distribution

TRUSTS: holding property for the benefit of
another more than a mere bailment

beneficiary

trustee

identified corpus

actual delivery

express v. implied

Insurance & Wills & Trusts ABL Fall 1999 O'Hara (C)

5

GOOD FAITH

consumer

subjective: honesty in fact

merchant

subjective: honesty in fact

objective: commercial reasonableness

UTMOST GOOD FAITH

fiduciary duty

subjective: honesty in fact

objective: personalized

Insurance & Wills & Trusts ABL Fall 1999 O'Hara (C)

6
