**INSURANCE: TERMINOLOGY**

- **Insurance Policy:** A contract in which, for a stipulated consideration, one party (the *insurer*, or the *underwriter*) agrees to compensate the other (the *insured*), or the other’s heirs or assigns, for loss on a specific subject by a specified peril.

- **Premium:** The price paid by the insured to the insurer for a policy of insurance for a specified period of time.

- **Insurable Interest:** An interest either in a person’s life or well-being or in property that is sufficiently substantial that insuring against injury to or the death of the person or against damage to the property does not amount to a mere wagering contract.
THE INSURANCE CONTRACT

- **Application:** The insurance application is generally made a part of the contract if and when a policy issues; therefore, the applicant is bound by any false statements or misinformation in the application, which may void the policy if discovered.

- **Effective Date:** As a general rule, coverage does not begin until a policy is issued by the insurer, unless the insurer’s agent issues a *binder* -- a temporary policy in effect from the application date until the date the policy issues or is denied.

  It is important to distinguish between an insurer’s authorized *agent*, who has the authority to bind the insurer, and a third-party *broker*, who does not.

- **Provisions:** The “heart” of an insurance policy is the *coverage* afforded, as limited by the various *exclusions* and *exceptions* set forth in the policy. These provisions are interpreted and applied by courts according to their plain meaning. Any ambiguity is construed against the insurer.

- **Cancellation:** The insured may cancel a policy at will; the insurer must have cause and must give notice.
WILLS: TERMINOLOGY

- **Will:** An instrument prepared by or at the direction of a person (the *testator*) directing what is to be done with his or her property upon his or her death.

  - The testator may revoke any part or all of his or her will, and/or amend it by a *codicil*, during his or her lifetime.

  - Under the will, no interest in the testator’s property passes prior to the testator’s death.

- **Executor:** A person appointed by the testator in his or her will to see that the will is administered and the testator’s property disposed as the testator wished.

- **Administrator:** A person appointed by a (probate) court to handle the disposition of an intestate’s property or to handle the disposition of a testator’s property if the executor named by the testator cannot serve.

- **Types of Gifts**

  - **Devise:** A gift of real property by will to a *devisee*.

  - **Legacy:** A gift of personal property by will to a *legatee*.
WILLS: REQUISITES FOR VALIDITY

- Testamentary Capacity: The testator must be of legal age and sound mind at the time the will is made. Generally, a testator who is of legal age must:

  1. intend the document to be his or her last will,
  2. comprehend the kind and character of the property being distributed by the will, and
  3. comprehend and remember the “natural objects of his [or her] bounty” (i.e., the intended beneficiaries).

- Writing Requirement: Generally, a will must be in writing.
  - Holographic Will: A will that is completely handwritten.
  - Nuncupative Will: An oral will made and declared before witnesses (e.g., a “deathbed will”).

- Other Formalities: The testator’s signature must appear on the face of the will, and, in the case of non-holographic wills, must be declared before and signed by witnesses.
WILLS: REVOCATION

A testator may revoke his or her will at any time prior to his or her death. Revocation may be accomplished:

(1) **By Physical Act** -- intentionally burning, tearing, canceling, obliterating, or otherwise destroying the will or directing another to do so in the testator’s presence;

(2) **By Subsequent Writing** -- intentionally making a new will or amending or revoking any or all of a will by means of a codicil; or

**By Operation of Law** -- due to marriage, divorce, or annulment, or the birth of one or more child(-ren) after the will was executed.
**INTESTACY**

- **Intestacy:** When a person dies without leaving a valid will, he or she is said to have died *intestate*. In such cases, the deceased’s property passes according to law, rather than according to the deceased’s wishes.

- Generally speaking, an intestate’s property passes first to any surviving spouse and children.

- When the intestate has no surviving spouse or children, the general order of inheritance is to *lineal descendants*:
  
  (i) surviving grandchildren, if any; if none then  
  (ii) surviving siblings of the intestate, if any; if none then  
  (iii) surviving parents, if any; if none then  
  (iv) *collateral heirs* -- surviving nieces, nephews, aunts, and uncles of the intestate.

- **Stepchildren** are not entitled to inherit unless they are *adopted* by the intestate prior to his or her death.

- **Illegitimate children** inherit only from their mother unless paternity is established through the courts.
TRUSTS

- **Trust:** Any arrangement by which title to property (real and/or personal) owned by one person (the *grantor*) is held by another person (the *trustee*) for the benefit of a third person (the *beneficiary*). In addition to a designated beneficiary and a designated trustee, a valid trust requires:

  1. funds or other property **sufficiently identified** to enable title to pass to the trustee, and

  2. **actual delivery** by the grantor to the trustee with the **intent** that title pass to the trustee.

- **Inter Vivos Trust:** A trust created by the grantor and effective **during the grantor’s lifetime**.

- **Testamentary Trust:** A trust created by will and, therefore, not effective until the grantor’s death.

- **Resulting Trust:** An *implied trust* arising from the conduct of the parties, where one party holds legal title to another’s property, but only for the other’s benefit.

- **Constructive Trust:** An equitable trust imposed by a court in the interest of fairness and justice when someone wrongfully holds legal title to property.
TRUSTS: SPECIAL TYPES

- **Charitable Trust:** A trust in which the property held by a trustee must be used for a charitable purpose, such as the advancement of health, education, or religion.

- **Spendthrift Trust:** A trust created to protect a beneficiary from spending all the money to which he or she is entitled, by parceling out the trust proceeds over time.

- **Totten Trust:** A trust created by the deposit of a person’s own money in his or her own name as trustee for another.

  - A Totten trust is revocable at will until the grantor dies or completes the gift by some unequivocal act or declaration.