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Torts - Duty of Insurer to Investigate Insurable Interest

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court appears to be protecting the tax debtor from speculation such as apparently existed here. Plaintiff paid only $425 for the property, while the conveyances derived from the debtor's heir involved sums of $4000. Nevertheless, it is submitted that the instant case presents a situation of conflict between the above-mentioned public policy and the public records doctrine. It would appear that the better result would have been to let the latter prevail.[33]

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TORTS — DUTY OF INSURER TO INVESTIGATE INSURABLE INTEREST

The plaintiffs sued three insurers for the wrongful death of the plaintiffs' young child. The plaintiffs charged that the defendants were negligent in issuing without proper investigation life insurance policies on the child's life to one having no insurable interest. Each of the insurers had insured the life of the child upon application of the child's aunt by marriage, who was named as beneficiary. The defendants made no effort to ascertain whether the aunt had an insurable interest in the life of the child, although agents of the defendants knew that the child and the aunt lived apart and neither depended on the other for support. The aunt subsequently killed the child,[1] hoping to collect on the three policies. The trial court rendered a judgment for the plaintiffs. On appeal, *held*, affirmed. When a policy of life insurance is unsupported by an insurable interest, a risk to the life of the insured person is created; and because of this risk, the insurer is under a duty to take reasonable care in ascertaining the existence of such an interest before issuing a policy. *Liberty National Life Insurance Co. v. Weldon*, 100 So.2d 696 (Ala. 1957).

In the early history of life insurance, it was common practice for insurers to issue policies of life insurance to persons with little or no personal connection with the person whose life was insured.[2] Such policies were and are still socially undesirable in two respects. A contract of this nature is considered an un-

construe redemption laws liberally. The object of the state is to collect its revenues, and not to deprive its citizens of any rights."

33. Wells v. Joseph, 95 So.2d 843 (La. App. 1957).

1. This fact was determined by the jury in the instant case and there had been a prior criminal conviction.

2. PATTERSON, ESSENTIALS OF INSURANCE LAW 156 (1957).

dignified wager having as its object the duration of human life.[3] More important, the person who procures the insurance and names himself as beneficiary,[4] hereinafter referred to as the assured beneficiary (for purposes of simplicity) is given an unnecessary temptation to murder the insured.[5] Consequently, most jurisdictions have required, either by statute or judicial decision, that there be an insurable interest at the inception of the policy in order for it to stand.[6] If none exists, the contract is held void as against public policy.[7] An insurable interest, generally defined, is such an interest in the life of the insured that the assured beneficiary will gain by the continuance of the insured's life or lose by his death.[8] The term "insurable interest" has always been construed to include a pecuniary relationship between the assured beneficiary and the insured,[9] and today it is generally held that close ties of blood in themselves are also sufficient to support insurable interests.[10] However, a relative by affinity, as in the instant case, does not have an insurable inter-

3. VANCE, HANDBOOK ON THE LAW OF INSURANCE 184 (1951); PATTERSON, ESSENTIALS OF INSURANCE LAW 158 (1957).

4. It must be pointed out that throughout the instant case there is discussed only that situation in which the person named as beneficiary has also taken out the insurance. A person taking out a policy on his own life may name whomsoever he pleases as beneficiary, no insurable interest being needed. See Annot., 45 A.L.R. 1181 (1926). See also LA. R.S. 22:613(A) (1950), wherein it is stated that a person may not take out insurance on the life of another unless it is "payable to the individual insured . . . or to a person having, at the time when such contract was made, an insurable interest in the individual insured." Under the wording of the statute one could take out a policy on the life of another and designate a third person as beneficiary. The third person under these circumstances must have an insurable interest.

It would appear that there is no substantial reason why the rule of the instant case would not be extended to require an insurance company to reasonably investigate whether a third person beneficiary has an insurable interest. The issuance of a policy which names a beneficiary who has no insurable interest would create the same temptation to kill regardless of whether the beneficiary or another person procured the policy.

5. 100 So.2d 696, 705 (Ala. 1951).

6. VANCE, HANDBOOK ON THE LAW OF EVIDENCE 184 (1951).

7. *Ibid.*

8. Warnock v. Davis, 104 U.S. 777 (1881); Rombach v. Piedmont & Arlington Life Ins. Co., 35 La. Ann. 233 (1883); United Brethren Mutual Aid Soc. v. McDonald, 122 Pa. 324, 15 Atl. 439 (1888).

9. Bush v. Victory Industrial Life Ins. Co., 165 So. 486 (La. App. 1936) (a grandaunt having no reasonable expectation of financial support, no insurable interest); Goodwin v. Federal Mutual Ins. Co., 180 So. 662 (La. App. 1938) (creditor has insurable interest in life of debtor); Powell v. Mutual Ben. Life Ins. Co., 123 N.C. 103, 31 S.E. 381 (1898) (partners have insurable interest in each other's lives). See also LA. R.S. 22:613 (1950); VANCE, HANDBOOK ON THE LAW OF INSURANCE 183 (1951).

10. LA. R.S. 22:613 (1950); VANCE, HANDBOOK ON THE LAW OF INSURANCE 183 (1951). See Goodwin v. Federal Mutual Ins. Co., 180 So. 662 (La. App. 1938) (wherein it is stated that husband and wife are considered as blood relationship for purposes of insurable interest. The insurable interest here lies because of love and affection and the reciprocal duty of support).

est in the life of another in the absence of circumstances which would create a pecuniary interest.[11]

Statutes which require an insurable interest impose no obligation upon the insurer not to issue a policy to one who has no insurable interest, but merely make such policies unenforceable. Thus, while the instant case could not be governed by those cases predicating negligence upon the breach of a criminal statute,[12] the question arises whether tort liability may be imposed upon parties purely because they enter into an unenforceable contract. While declaring a contract unenforceable represents, in effect, a finding by the law maker that the social evil in such a contract outweighs any advantage to be gained from its enforcement, the determination of whether one is under a duty in tort to refrain from entering an unenforceable contract involves a different balancing of interests.[13] Although the social advantage of suppressing the evil may remain the same if tort liability is imposed, the resultant restrictions on a party's conduct would be more severe than the social disadvantages which would result from merely negating the contract.[14] Hence if insurers were required by a tort duty to investigate insurable interests before issuing policies, the difficulties thus encountered may discourage the issuance of valid policies or substantially raise costs.

However, in the instant case, the court felt that the inconvenience to the insurers in having to make a reasonable investigation of insurable interest were outweighed by the interest in

11. 1 COOLEY, BRIEFS ON THE LAW OF INSURANCE 386 (1927). Brothers-in-law have no insurable interest in each other's lives: Chandler v. Mutual Life & Industrial Ass'n, 131 Ga. 82, 61 S.E. 1036 (1908); Lyon v. Rolfe, 76 Mich. 146, 42 N.W. 1094 (1889). Nor sisters-in-law: Hotopp v. Hotopp, 9 Ky. L. Rep. 649 (1887); King v. Cram, 184 Mass. 103, 69 N.E. 1049 (1904). Sons-in-law have no insurable interest in life of mother-in-law: Rombach v. Piedmont & Arlington Life Ins. Co., 35 La. Ann. 233 (1883).

12. The theory of these cases is that if the injury committed by breaching the statute is one that the statute seeks to prevent, and the injured party is a member of that class sought to be protected by the statute, the lawbreaker is to be deemed negligent. See Janssen v. Mulder, 232 Mich. 183, 205 N.W. 159 (1925); Brown v. Shyne, 242 N.Y. 176, 151 N.E. 197 (1926); Hardy v. Dahl, 210 N.C. 530, 187 S.E. 788 (1936); Willett v. Rowekamp, 134 Ohio St. 285, 16 N.E.2d 457 (1938). See also RESTATEMENT, TORTS § 286 (1934).

13. In Mogul S.S. Co. v. McGregor, Gow & Co., 23 Q.B.D. 598 (1889), it was argued that a contract in restraint of trade, since it was unenforceable, gave rise to delictual liability of the parties entering into it. The court quashed this contention, Justice Bowen stating: "Contracts, as they are called, in restraint of trade, are not, in my opinion, illegal in any sense, except that the law will not enforce them. It does not prohibit the making of such contracts; it merely declines, after they have been made, to recognise their validity. The law considers the disadvantage so imposed upon the contract a sufficient shelter to the public." *Id.* at 619.

14. See RESTATEMENT, TORTS §§ 291-293 (1934).

protecting human life. Because insurance companies normally require proof of an insurable interest from an assured beneficiary before payment of benefits, the court felt that it would be no more a burden to require an insurance company to use reasonable care before a policy is issued than after the insured dies. The great advantage of imposing tort liability upon the insurer is that strong teeth are put into a policy of the law designed to suppress a temptation to take life. The responsibility of preventing this temptation from occurring is placed into the hands of the person best able to prevent it, the insurer.

The holding of the instant case is in accord with well-accepted principles of balancing interests to determine whether a risk is unreasonable.[15] The fact that the risk resulted from the creation of a temptation is no novelty in tort law.[16] However, since the concept of insurable interest in life insurance is a limitation on the enforceability of insurance contracts, the use of this concept in defining the scope of tort liability may provoke further comment. Perhaps the duty imposed in the instant case upon the insurer is so broad that it would lead to injustice in cases of uncertainty as to the existence of an insurable interest. The answer to such a possible criticism would lie in the fact that the insurer is only under a duty to the prospective insured to make a reasonable investigation to ascertain the absence of an insurable interest which would preclude the issuance of a policy. There is no absolute obligation to ascertain the existence of an insurable interest before issuing a policy. From the standpoint of the protection afforded to human life, the rule of the instant case may be criticized as too narrow. There may arise a case where the applicant for a life insurance policy would have an insurable interest in the life of the proposed insured, but the insurer would have knowledge of suspicious circumstances which would indicate a danger to the insured if the policy were issued. The rule of the instant case would have to be broadened to afford protection under such circumstances. This could be done

15. 2 HARPER & JAMES, TORTS 928 (1956); PROSSER, TORTS 119 (2d ed. 1955).

16. See Filson v. Pacific Express Co., 84 Kan. 614, 114 Pac. 863 (1911) (bailor failed to give adequate safety to goods tempting to burglars); Jesse French Piano & Organ Co. v. Phelps, 47 Tex. Civ. App. 385, 105 S.W. 225 (1907) (defendants left door open, making house easy subject for burglary). See also Annot., 78 A.L.R. 471 (1932); RESTATEMENT, TORTS § 448, Comment b (1934).

by evaluating the risks and the conduct of the parties irrespective of the existence of an insurable interest.[17]

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17. Several problems may present themselves if the instant case is adopted by the Louisiana courts. LA. R.S. 22:616 (1950) requires the consent of the insured person in addition to an insurable interest. If either of these requirements were absent in a policy, the court would have to decide whether the presence of one of the requirements without the other substantially lessens the risk so that no liability results. Another problem concerns whether the rule of the instant case can be carried over into the field of property insurance. For instance, if a policy holder having no insurable interest burned the property in question for the policy proceeds, the question may arise whether the owner of the property can collect under the rule of the instant case. The answer to this question would seem to be in the negative, owing to the distinctly different natures of the two concepts of insurable interest in life and property insurance. While the insurable interest in life insurance is designed to protect life, the insurable interest in property insurance was not designed to protect property. In the property insurance contract, the insurer agrees to indemnify the assured for whatever loss he suffers, that loss being tantamount to the insurable interest. Hence the insurable interest here arises from the principle of indemnity basic to property insurance, and was not designed to protect property.