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## INSURANCE - INSURABLE INTEREST - OCCUPANT OR POSSESSOR OF REALTY

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INSURANCE — INSURABLE INTEREST — OCCUPANT OR POSSESSOR OF REALTY — Plaintiff sued upon an insurance policy, issued to her by the defendant, covering a building in which she was conducting a merchandising business. The building was owned in fee by the plaintiff's father-in-law, who had told the plaintiff that she might occupy it so long as she wished, and that he intended to deed it to her and her children. *Held*, plaintiff had an insurable interest in the building. *Liverpool & London & Globe Ins. Co. v. Bolling*, (Va. 1940) 10 S. E. (2d) 518.

It is almost universally held, either because of statute or on the grounds of public policy, that an insurable interest in the insured property is necessary to the validity of an insurance policy, and that if no such insurable interest exists the policy is void.<sup>1</sup> To allow one to insure property in which he has no interest is to permit him to make a wagering contract, which is against public policy. Also, to allow one to reap a benefit through insurance which will pay the assured although he suffers no loss is to invite the destruction of property. The large number of cases on this subject would seem to bear out the court's statement, in the principal case, that courts have had difficulty in determining just when an insurable interest exists. On the whole the term has been construed broadly. An insurable interest has been found to exist when the assured is a mortgagee of the insured property,<sup>2</sup> has a mechanic's lien in the insured premises,<sup>3</sup> is a stockholder in the corporation owning the property insured,<sup>4</sup> is contractually bound to indemnify the owner if the subject matter is destroyed,<sup>5</sup> has an equitable interest in the property,<sup>6</sup> is a lessee of the property,<sup>7</sup> has an option to buy the insured property,<sup>8</sup> is lessor of the insured property,<sup>9</sup> or has

<sup>1</sup> I COUCH, CYCLOPEDIA OF INSURANCE LAW, § 295 (1929); 29 AM. JUR. 289 (1940).

<sup>2</sup> *In re Reynolds Estate*, 94 Vt. 149, 109 A. 60 (1920).

<sup>3</sup> *American Equitable Ins. Co. v. Powderly Coal & Lumber Co.*, 225 Ala. 208, 142 So. 37 (1932).

<sup>4</sup> *International Marine Ins. Co. v. Winsmore*, 124 Pa. 61, 16 A. 516 (1889); *Riggs v. Commercial Mut. Ins. Co.*, 125 N. Y. 7, 25 N. E. 1058 (1890); *Berry v. American Cent. Ins. Co. of St. Louis*, 132 N. Y. 49, 30 N. E. 254 (1892).

<sup>5</sup> *Banner Laundry Co. v. Great Eastern Casualty Co.*, 148 Minn. 29, 180 N. W. 997 (1921); *Rice Oil Co. v. Atlas Assurance Co.*, (C. C. A., 9th, 1939) 102 F. (2d) 561.

<sup>6</sup> *Morrison v. Boston Ins. Co.*, 234 Mass. 453, 125 N. E. 698 (1920); *Home Ins. Co. of N. Y. v. Coker*, 43 Okla. 331, 142 P. 1195 (1914).

<sup>7</sup> *Royal Exch. Assur. Co. of London, England v. Almon*, 206 Ala. 45, 89 So. 76 (1921); *New Jersey Ins. Co. of Newark, N. J. v. Rowell*, 157 Ga. 360, 121 S. E. 414 (1924).

<sup>8</sup> *Crossman v. American Ins. Co. of Newark*, 198 Mich. 304, 164 N. W. 428 (1917).

<sup>9</sup> *Griffin v. W. L. Pfeffer Lumber Co.*, 285 Ill. 19, 120 N. E. 583 (1918).

a homestead interest in the property.<sup>10</sup> In these situations the insured has in relation to the property some right which is enforceable either at law or in equity, and courts uniformly hold that an insurable interest exists in such a case. However, when no such enforceable right exists and the insured is a mere licensee in possession, courts have more difficulty and are in some disagreement. Thus where a barn was owned by the plaintiff's wife as part of her separate estate and the plaintiff was using it by her consent, the Alabama court<sup>11</sup> held that the plaintiff's possession alone would not give him an insurable interest, but that since he occupied under a contract from her, his leasehold interest was insurable.<sup>12</sup> On the other hand, the Maine court, in *Getchell v. Mercantile & Manufacturers' Mutual Fire Ins. Co.*,<sup>13</sup> held that where the plaintiff occupied the premises under a voidable agreement with his mother that he might occupy them so long as she lived, he had an insurable interest which extended beyond the time required to evict him.<sup>14</sup> An extreme case was decided by the Illinois court. The insured buildings were purchased by the plaintiff's father, who placed the plaintiff in possession and told him that he had made a will devising the premises to him. The court held that this possession plus the expectancy of the inheritance of a fee gave the plaintiff an insurable interest.<sup>15</sup> In the light of these decisions it would seem that not all courts would reach the same result as that in the principal case, for the plaintiff could neither compel her father-in-law to allow her to continue to occupy the premises nor to execute the promised deed, since there was no consideration for either of these promises. However, this case seems to be well within the policy requiring an insurable interest, for since the plaintiff depended on the continued existence of this property for her livelihood it is clear she had such an interest therein as would negative the idea of a wagering contract, and would prevent any inducement to burn the building. Although her

<sup>10</sup> *Merrett v. Farmers' Ins. Co.*, 42 Iowa 11 (1875).

<sup>11</sup> *Royal Exch. Assur. Co. of London, England v. Almon*, 206 Ala. 45, 89 So. 76 (1921).

<sup>12</sup> In *Royal Ins. Co. v. Smith*, (C. C. A. 9th, 1935), 77 F. (2d) 157, reversing (D. C. Cal. 1933) 5 F. Supp. 435, where land was conveyed to a city, the grantor providing that the cottages thereon should not be rebuilt in case they were destroyed, the court held that since such cottages could be removed at any time, any occupant of such cottages was a bare licensee and had no insurable interest therein. The Iowa court held in *Schaeffer v. Anchor Mut. Fire Ins. Co.*, 113 Iowa 652, 85 N. W. 985 (1901), that since a tenant at will was entitled to a 30-day notice before he could be dispossessed, he had a term of 30 days fixed possession, which right was insurable, leaving the inference that if there was no such enforceable right there would be no insurable interest.

<sup>13</sup> 109 Me. 274, 83 A. 801 (1912).

<sup>14</sup> In the case of *Commercial Union Assurance Co. v. Jass*, (C. C. A. 5th, 1929) 36 F. (2d) 9, cert. denied 281 U. S. 758, 50 S. Ct. 410 (1930), the court held that a tenant occupying premises under a lease terminable by the lessor had an insurable interest, and the fact that the tenant's title could be defeated by a subsequent cancellation of the lease was immaterial. Where the insured property was a barn which was owned by the plaintiff's wife and the plaintiff was using it for farming purposes, the Washington court held that the plaintiff had an insurable interest. *Washington Fire Relief Assn. v. Albro*, 137 Wash. 31, 241 P. 356 (1925).

<sup>15</sup> *Home Ins. Co. of N. Y. v. Mendenhall*, 164 Ill. 458, 45 N. E. 1078 (1897).

legal interest, if any, in the insured property was slight, she had a very great interest in fact, and this factual interest is the important consideration in determining whether or not an insurable interest exists. If the assured has a pecuniary interest in the continued existence of the insured property, he then satisfies the reason and policy of the rule requiring an insurable interest.

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