LIFE POLICIES & HOMICIDE

by
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There are very few reported cases in England or Australia relating to the liability of an assurance company where a person whose life is assured under one of its policies commits suicide, dies at the hands of the law, or is feloniously killed by one who stands to benefit under the policy, or to problems of title which may arise where the life either of such a person, or one having some interest in the policy, is terminated in the manner last mentioned.

Ex Turpi Causa Non Oritur Actio

It is a rule of public policy that a man will not be permitted to benefit by his own criminal wrongdoing. It has been said that "no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person" and, even more strongly, that "no person can obtain, or enforce, any rights resulting to him from his own crime; neither can his representatives claiming under him, obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence." 1. 2.

Beresford v. Royal Insurance Co., Ltd. is an example of the application of this rule. 3. Some years before the incidents which gave rise to the claim, Major Rowlandson had effected assurance on his life with the Royal Insurance Co., Ltd. for amounts totalling £81,000. He had been forced to cancel some of these policies, but those in force on his life in July, 1934 were for sums assured amounting to £50,000. Major Rowlandson had borrowed about £60,000, of which over £40,000 was from friends, to finance an invention for hardening steel, and this had been a failure. When the time for paying certain premiums under his policies ran out on 16th July, 1934, he found himself unable to meet them. The Royal Insurance Co., Ltd. gave him gratuitous extensions of time which finally expired at 3 p.m. on 3rd August of that year. On this day he was in debt to the extent of more than £60,000 with no assets. At two or three minutes before 3 p.m., he shot himself in a taxi cab, leaving a letter which showed that he proposed to commit suicide to enable his debts, or most of them, to be paid from the policy moneys. Suicide was then a felony (though the position in this regard was subsequently changed by the Suicide Act, 1961, which enacted that "the rule of law whereby it is a crime for a person to commit suicide is hereby abrogated"). The

1. Cleaver v. Mutual Reserve Fund Life Ass.(1892) 1 Q.B.147,at p.156 per Fry L.J.
2. In the Estate of Crippen (1911) P.108, at p.112 per Sir Samuel Evans P.
3. (1938) A.C.586

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House of Lords held that a man's personal representative should be regarded as standing in the same position as the man himself, and accordingly could not be permitted to benefit by the latter's suicide.

It will be seen at once that the same considerations apply in two other sets of circumstances:

(1) Where the deceased dies at the hands of the law as the result of committing a felony. It was decided over a century ago in Amicable Society v. Bolland 4. that where the person whose life was assured was convicted of perjury and executed, it was not possible for a person claiming through him to sustain a claim for the policy moneys. Much more recently a similar decision was given in Canada in Deckert v. Prudential Insurance Co. where the life assured, 5. being the owner of the policy in question, was executed for the murder of his wife.

(2) Where the life assured is murdered by the owner of the policy or by some other person having an interest in it. The best known case in which this occurred is Cleaver v. Mutual Reserve Fund Life Association. A policy had 6. been effected under the English Married Women's Property Act, 1882, for the benefit of the wife of the life assured. She subsequently poisoned him. The decision of the court was to the effect that the wife could not benefit under the policy. It was held, however, that public policy did not preclude payment of the policy moneys to the deceased's personal representative, who in any event would have been entitled to them as trustee. The wife had lost all rights to benefit in respect of the policy moneys in consequence of her crime, and there was accordingly a resulting trust in favour of the deceased's estate. The following remarks of Lord Esher M.R. are of particular importance in 7. illustrating the limits which the court considered should be placed on the operation of the principle: "No doubt there is a rule that, if a contract be made contrary to public policy, or if the performance of a contract would be contrary to public policy, performance cannot be enforced either at law or in equity; but when people vouch that rule to excuse themselves from the performance of a contract, in respect of which they have received the full consideration, and when all that remains to be done under the contract is for them to pay money, the application of the rule ought to be narrowly watched, and ought not to be carried a step farther than the protection of the public requires" as also are those of the same judge: "But this doctrine ought not 8. to be stretched beyond what is necessary for the protection of the public; and, if the matter can be dealt with so that such person should not be benefited, I do not see any reason why the defendants in such a case should be allowed to say, though they might have received premiums for thirty years and still retained the same, that public policy forbade their paying the sum of money which they had contracted to pay."

4. (1830) 4 Bli.(N.S.) 194
5. (1943) 3 D.L.R. 747
6. (1892) 1 Q.B. 147
7. Ibid. p.151
8. (1892) 1 Q.B. 147, at p.153

Legislative Modifications

The legislature in at least some states in Australia felt that it was unjust that a life office should be able to avoid payment of policy moneys in circumstances similar to those considered in the Beresford Case on the grounds of 9.
public policy. Before the end of 1938, the New South Wales Parliament had passed the Life, Fire and Marine Insurance (Amendment) Act, 1938, which provided as follows: "A policy for an insurance upon the life of any person ... shall not be and shall be deemed never to have been void or voidable merely on the ground that such person died by his own hand or act, if, upon the true construction of the policy, the insurance company has thereby agreed to pay the sum assured in the events that have happened." In the parliamentary debates relating to this legislation it was stated that this amendment had the support of some at least of the largest mutual life offices, which had cases before them in which they considered that they should pay, but had not done so because, in the light of the Beresford decision, they feared that it might be 10.
claimed by policyowners that any such payments were voluntary ones and were being made at their expense. Similar legislation was enacted in Victoria and South Australia in the following year: Instruments (Insurance Contracts) Act 1939 (Vic); Life Assurance Companies Act Amendment Act, 1939 (S.A.). The provisions of these three Acts were superseded by s.120 of the Commonwealth Life Insurance Act, 1945-1961 which reads: "A policy shall not be avoided merely on the ground that the person whose life is insured died by his own hand or act, sane or insane, or suffered capital punishment, if, upon the true construction of the policy, the insurance company has thereby agreed to pay the sum assured in the events that have happened."

Implied Term that Policy Does Not Cover Wilful Killing

Most life policies contain a suicide clause which provides that the policy moneys will not be payable, or will be payable only to the extent of any interest of a third party which has been acquired in good faith and for adequate consideration, in the event of the life assured committing suicide within a limited period after issue of the policy. The policy considered in Beresford's Case included a clause of this kind. The words of this clause 11.
implied that the company was undertaking to pay the policy moneys even in the event of suicide if the life assured survived the limited initial period referred to in it, which he had. Thus the decision in that case was that notwithstanding the fact that the policy appeared to provide for payment of the policy moneys in the circumstances which had arisen, it was contrary to public policy to allow them to be paid, as this would mean that the deceased's estate would obtain financial benefit from his suicide. However, Lord Atkin went further and discussed what the position would have been if there had been no clause in the policy relating to suicide in the following terms: "If there is no express reference to suicide in the policy, two results follow. In the 12.

9. (1938) A.C.586
10. Ibid
11. (1938) A.C.586
12. Ibid., pp.594, 595

first place intentional suicide by a man of sound mind, which I will call sane suicide, ignoring the important question of the test of sanity, will prevent the representatives of the assured from recovering. On ordinary principles of insurance law an assured cannot by his own deliberate act cause the event upon which the insurance money is payable. The insurers have not agreed to pay on that happening. The fire assured cannot recover if he intentionally burns down his house, nor the marine assured if he scuttles his ship, nor the life assured if he deliberately ends his own life. This is not the result of public policy, but of the correct construction of the contract. In the second place this doctrine obviously does not apply to insane suicide, if one premises that the insanity in question prevents the act from being in law the act of the assured." There is authority both in England and America to support this proposition. Thus, in Britton v. The Royal Insurance 13.
Co. Wills J. is reported as having made the following statement: "A fire insurance is a contract of indemnity; that is, it is a contract to indemnify the assured against the consequence of a fire, provided it is not wilful. Of course, if the assured set fire to his home, he should not recover. That is clear." In Ritter v. Mutual Life Insurance Co. of New York, Harlan J. asked: 14.
"But is it not an implied condition of such a policy that the assured will not purposely, when in sound mind, take his own life, but will leave the event of his death to depend upon some cause other than wilful, deliberate self-destruction?" and stated: "When the policy is silent as to suicide, it is to 15.
be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind." Brewer J. said in Burt v. Union Century Life 16.
Insurance Co.: "It cannot be that one of the risks covered by a contract of insurance is the crime of the insured. There is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy."

In Ritter's Case the court decided in favour of the assurance company on 17.
two grounds, namely that on ordinary principles of insurance law the company was not liable when the assured had by his own wilful act destroyed the subject matter of the contract, and that it would be contrary to public policy to require the company to pay on the suicide of the assured. It is claimed in the United States that this case has been overruled by the subsequent decision of the Supreme Court of the United States in Northwestern Mutual Life Insurance 18.
Co. v. Johnson and is now discredited. The policy considered in Ritter's 19.
Case, however, contained no suicide clause, whereas that in the later case did. 20.
The Supreme Court of the United States ruled in the later case, as did the House of Lords in Beresford's Case, that a policy containing such a clause 21.
should be construed as embodying an undertaking to pay if suicide should occur outside the period named in the clause. Hence it was unnecessary for it to consider the first ground for the decision in Ritter's Case. The Court did 22.
decide that in the circumstances the payment of the policy moneys was not

13. (1866) 4 F. & F. 905, at p.908
14. (1898) 169 U.S. 139, at p.151
15. Ibid., at p.154
16. (1902) 187 U.S.362, at pp.365,366
17. (1898) 169 U.S.139
18. (1920) 254 U.S. 96
19. Vance on Insurance Law, 3rd ed., pp.560, 561
20. (1898) 169 U.S. 139
21. (1938) A.C. 586
22. (1898) 169 U.S.139

contrary to public policy, and overruled the earlier decision to this extent, but the House of Lords, while considering these two cases, declined to follow the Supreme Court of the United States on this aspect.

It follows logically from the above statement of Atkin L.J. that an own-life 23.
policy issued without a suicide clause would be construed as being subject to an implied term or condition that death by suicide while of sane mind was not covered by it, and MacMillan L.J. in the same case agreed that this would be the position. It seems that the representatives of the assured under such a policy would in Australia be unable to invoke s. 120 of the Commonwealth Life Insurance Act 1945-1961, as this is operative only where "upon the true construction of policy" the assurance company has contracted to pay the policy moneys in the events which have happened. This may well be thought to be unsatisfactory. Nevertheless, it must be remembered that the Commonwealth provisions on this matter closely follow those of New South Wales and that these were drafted as a consequence of the decision in the Beresford Case and, 24.
presumably, after full consideration had been given to what that case had decided.

Two comments on this implied term or condition should be made at this stage:

(1) The wilful destruction of whatever may be the subject matter of the insurance is not made wrongful by it; what is prohibited is the making of a claim thereunder based on this destruction. A man may be entitled to burn 25
his own property or scuttle his own ship, but if he does so he cannot claim for loss under his insurance policy. Hence a defence based on wilful destruction may be available to an insurance company where it cannot refuse to pay on the grounds of public policy. Such a defence would presumably be available today in England where the policy did not contain a suicide clause even though suicide is no longer a crime in that country.

(2) The position is clear where the person who effected the policy is also the person who has wilfully destroyed the property and makes the claim. Where this is not the case, however, it may be necessary to delve further into what should be implied. For instance, if the policy has been assigned, is it a claim in respect of wilful destruction by the assignor, or one in respect of wilful destruction by the assignee, that is barred?

Types of Killing That Constitute Defences

It would be unusual to find today in Australia a policy without a suicide clause. Hence, in view of the provisions of s. 120 of the Commonwealth Life Insurance Act 1945-1961, it is unlikely that any defence

23. Supra, footnote 12
24. (1938) A.C.586
25. (1858) E.B. & E. 1038 at p.1045 per Bramwell B.; Welford & Otter-Barry, Law Relating to Fire Insurance, 4th ed., p.62

by an assurance company in this country to a claim for policy moneys will be based either on the suicide of the life assured (unless it contends that its liability has in the circumstances been excluded by the specific terms of the suicide clause) or on his legal execution. Thus decisions which relate to the liability of assurance companies in cases of this kind are likely to be of value only for their discussion of the principles to be applied when the life assured is feloniously killed.

There have been no statutory restrictions on an assurance company's liability where the life assured is feloniously slain by some person having an interest in the policy moneys. If a person who has effected a policy on the life of another murders the life assured, the company has a complete defence either on the grounds of public policy or on the grounds that the person who has contracted with it cannot bring a claim based on the wilful destruction by him of the subject matter of the contract. The position is entirely different where the killer was insane at the time of his crime. In these circumstances the words of Farwell J. in In re Pollock to the effect that 26.
"if the fatal act was done at a time when the person who committed it was of unsound mind he is not guilty of a felony and is not therefore disqualified from taking a benefit from the estate of the person whom he killed" are in point. Also, the destruction of life could not be said to be "wilful" if the killer were insane.

There are doubts as to what is the position where the death of the life assured resulted from manslaughter, While there are no English or Australian assurance authorities directly in point, it has been held in two English cases, Tinline v. White Cross Insurance Association, Ltd. and James v. British 27.
General Insurance Co. Ltd., that public policy does not preclude the insured 28.
from obtaining the benefit of indemnity under a motor policy covering him against claims by third parties where he has been found guilty of manslaughter. These two cases were decided before compulsory third party legislation was in force in England, and accordingly no consideration of the intention of the legislature to confer protection by it on third parties influenced the decisions. A distinction was made as between a criminal act arising from gross negligence (the type of act under consideration in these two cases) and one deliberately committed.

Haseldine v. Hoskin unfortunately raises a doubt as to whether the above 29.
two cases were correctly decided. A successful defendant found himself unable to recover his costs from the plaintiff. He discovered that the action had followed upon the plaintiff entering into a champertous arrangement with a solicitor. He accordingly sued the latter for the amount he was out of pocket through having to defend the action, and the solicitor settled. The solicitor then attempted to recover the amount paid in settlement under a

26. (1941) Ch. 219, at pp.222, 223
27. (1921) 3 K.B. 327
28. (1927) 2 K.B. 311
29. (1933) 1 K.B. 822

policy of insurance against loss arising by reason of any neglect omission or error while acting in his professional capacity. It was held that public policy precluded him from being permitted to do so. Scrutton L.J. considered Tinline's Case and James' Case distinguishable, since the claims in these 30, 31.
from the insurance companies were not due to any intentional acts, whereas that in the case for decision did arise from an act of this kind , namely the entry into the champertous arrangement. Scrutton and Greer, L.JJ. however expressly stated that they proposed to express no opinion on the correctness of the decisions in the two cases.

It was decided in In the Estate of Hall that a person guilty of mans- 32
laughter thereby disqualified herself from participating in her victim's estate. While the reports contain no details of the crime they do indicate that the charge was one of murder, and counsel stated in argument that the jury had negatived any intent to kill. In re Peacock, deceased was a case 33.
in which the testator was killed feloniously by his wife, who was indicted for his murder and found guilty of manslaughter. The court regarded it as being clear that in these circumstances the wife could take no benefit under the testator's will.

It was suggested in the first edition of an American work, Scott on Trusts, (1939), par.492.3, that the distinction in manslaughter cases may lie between intentional injury which is likely to cause death and intentional killing, the former not being a bar to the person responsible being permitted to benefit as a result of the death, but the latter excluding him from benefit. Homicide would seem to be more prevalent in the United States than in either England or Australia and there is much more authority on matters relating thereto available in that country. However, Scott did not cite any in support of the distinction being at this point and admitted that Hall's Case 34.
was against him. In his second edition the learned author modifies his views and advances the proposition that the rule of public policy does not apply in a case of manslaughter unless this involves intentional injury of a kind likely to cause death. He cites Minasian v. Aetna Life Insurance Co. 35.
The plaintiff in this case was the beneficiary under a policy on his wife's life. He killed her, but claimed that this occurred during a struggle for a revolver. The court was called upon to rule only on the admissibility of certain evidence, but did express itself in favour of Scott's later proposition. The decisions in Tinline's Case and James' Case on the one 36, 37.
side, and Hall's Case and Peacock's Case on the other, also suggest that 38, 39
an English or Australian court might be prepared to adopt this proposition if called upon to decide whether public policy should be invoked to defeat a claim following upon the manslaughter of the life assured by the policy owner.

30. (1921) 3 K.B. 327
31. (1927) 2 K.B. 311
32. (1914) P.1; 109 L.T.587
33. (1957) Ch.310; (1957) 2 W.L.R.793 (1957) 2 All E.R. 98
34. (1914) P.1; 109 L.T.587
35. (1936) 295 Mass.1.
36. (1921) 3 K.B. 327
37. (1927) 2 K.B. 311
38. (1914) P.1; 109 L.T.587
39. (1957) Ch.310; (1957) 2 W.L.R.793 (1957) 2 All E.R.98

There is no reported case in which it has been necessary to decide whether manslaughter of the life assured under a policy could in any circumstances be regarded as the wilful destruction of the subject matter of the policy and could afford the assurance company a defence on this ground. It would seem that, if the manslaughter involves an intentional killing, it must constitute "wilful destruction", but it is doubtful if it would do so in any other case. Thus different criteria may apply in determining whether the circumstances surrounding manslaughter absolve an assurance company from liability on this ground, to those applicable where the defence is based on public policy.

While in subsequent paragraphs it is the consequences following upon murder that are specifically discussed, it will be understood that the same consequences flow from manslaughter satisfying the criteria which bring the relative rule of public policy into operation, or those which qualify it as "wilful destruction", as the case may be.

Policy in Joint Ownership

There appears to be no English or Australian authority directly governing the position which arises where a person owning a policy jointly with the life assured murders the latter.

There have been a couple of Australian cases involving the murder of one joint tenant by another and, while they do not relate to policies of life assurance, the decisions in them are of importance when considering this problem. The first in point of time was In re Barrowcliff. A husband and 40.
wife were joint tenants of certain real property. The husband murdered the wife. Napier J. stated that he was bound to give effect to the relevant rule of public policy. This might be done by deciding either that the case constituted an exception to the right of survivorship or that the unlawful killing of one joint tenant by another effected the severance of the joint tenancy. He was unable to find any authority to assist him and decided in favour of the severance. This meant that the property was to be divided equally between the husband and the estate of the wife.

In a much more recent case, Re Thorp and the Real Property Act, 1900, 41.
Jacobs J. declined to follow the earlier one. He admitted the absence of authority and the necessity to give effect to the relevant rule of public policy but stated that, if murder did effect a severance of joint interests in the circumstances under discussion, he would have expected to find some mention of this in the cases or literature relating to forfeiture or escheat. The decision was to the effect that the Registrar of Titles must treat the murderer as the owner in law of the land which had been jointly owned. This land would be held subject to a constructive trust, but it was not necessary

40. (1927) S.A.S.R. 147
41. (1961) 80 W.N. (N.S.W.) 61; (1962) N.S.W.R. 889

to decide, and the court did not decide, the terms of the trust. The learned judge referred to Scott on Trusts, 1st ed. (1939), par.493.2, in which it is stated that American authority is very much at variance on this matter. In particular, there have been a number of American decisions relating to title to bank deposits on the murder of one of the persons having an interest in them by the other. Amongst these, authority may be found for the following conflicting propositions: (i) that the murderer is entitled to the whole of the deposits; (ii) that the murderer holds the deposits in trust for the deceased's estate; and (iii) that the murderer holds the deposits subject to a trust for the deceased's estate in respect of half of them. The author does not say which he favours. He makes brief mention of the position arising in relation to policies (at par.494.3) and here seems to consider that the surviving joint tenant would hold the policy moneys on trust for the deceased.

If public policy were the only defence available to an assurance company in such a case, the following results would flow from the two decisions: A court following that in Barrowcliff's Case would require the assurance company to pay only half the policy moneys, these passing to the estate of the deceased joint tenant. The effect of applying the decision in Thorp's Case is not certain. It is submitted, however, that in doing so the most reasonable course to adopt would be to require the whole of the policy moneys to be paid to the surviving joint tenant for the benefit of the deceased's representatives, as it does not seem contrary to the rule to require payment where the guilty party receives no benefit from it. 42. 43.

However, the implied term of the contract must be considered. The subject matter has been destroyed by one of the joint parties to it, and this does seem to give the assurance company grounds for refusing payment even where the ultimate recipients would, as the result of the operation of the law, be the representatives of an innocent party.

Where the life assured murders the other joint tenant, similar considerationsto those discussed above apply, the most attractive solution probably being that the surviving joint tenant holds the policy on trust for the deceased's estate. Here again, however, there is no English or Australian authority which establishes that this is the position.

Assigned Policy

Where the life assured is murdered by an assignee of the policy, and the assignment is absolute, the assurance company will not be liable to make any payment, since public policy will not permit the assignee to benefit from his crime.

42. (1927) S.A.S.R. 147
43. (1961) 80 W.N. (N.S.W.)61; (1962) N.S.W.R.889

Where the life assured is murdered by the original owner there can be no objection on the grounds of public policy to payment of the policy moneys to an absolute assignee. Liability can be avoided only if it is an implied condition of the policy that the person effecting it will not destroy the subject matter of the assurance.

At first sight the House of Lords' decision in Graham Joint Stock Shipping Co. Ltd. v. Merchants Marine Insurance Co. Ltd., by which a mortgagee was held unable to recover under a marine policy where the ship was scuttled by the assignor of the policy, seems to lend support to the proposition that a claim may be avoided on this ground. The English Marine Insurance Act, 1906, provides by s.50 (1) that a marine policy is assignable unless it contains terms expressly prohibiting assignment. Subsection (2) of this section is to the effect that, where a marine policy has been assigned, the insurer is entitled to rely on any defence he would have had if the claim had been made by the assignor, and it was on these express provisions that the case was decided. An owner of a life policy has power to assign it under s.87 of the Commonwealth Life Assurance Act 1945-1961. While this section also enacts that an assignee is subject to all the liabilities of the assignor under the policy, it does not go nearly as far as s.50 (2) of the Marine Insurance Act,1906. 44.

The operative part of a life policy usually contains specific reference to payment to an assignee of the original owner, thereby indicating that both parties to it have the possibility of subsequent transfer in mind when the policy is issued. If it is an implied term of every life policy that the policy moneys will not be paid in the event of the person effecting it wilfully slaying the life assured, this will bar the claim of an innocent assignee. It seems more reasonable, in view of the nature of a life policy, to argue that the implied term is that the company will not be liable if the life assured is wilfully killed by the owner of the policy for the time being. This would be consistent with the position as regards choses in action, where the debtor is entitled to raise any defences he had against the assignor before he received notice of the assignment, but not defences against the assignor which come into existence after the assignment.

If the assignee holds the policy as mortgagee, and the life assured has been murdered by him, public policy will prevent him taking any benefit under it. Public policy would not prevent the mortgagor enforcing his rights, but the question as to whether the construction of the policy would have this effect is a difficult one, depending on whether the implied term that the life office is not bound to pay on wilful destruction of the life by the owner relates to murder by the original owner, the person having the legal estate for the time being, or the owner of the equity in the policy.

Where the murder is committed by the mortgagor it does not seem to be contrary to public policy to allow the mortgagee to recover if the implied

44. (1924) A.C.294

term is not interpreted as excusing the assurance company from liability. It may be that public policy would operate to excuse the mortgagee from crediting moneys so received to the discharge of the debt, and that he would thus become entitled to double payment thereof. However, is this any more unjust than the alternative, which would be to deprive an innocent mortgagee of the protection which he thought he had acquired under the policy?

Family Insurance Policy

If the beneficiary under a family insurance policy, namely a policy falling within the terms of S.94 of the Life Insurance Act 1945-1961, has murdered the life assured, Cleaver's Case is in point. Where the beneficiary had an absolute interest in the policy moneys, this interest will be treated as having failed and the policy moneys will revert to the deceased's estate. If, on the other hand, the interest of the beneficiary was contingent, rather different considerations will apply. Consider the case where a policy has been issued for the benefit of the wife if she survives the husband, failing which for the benefit of the children. If the wife were to murder the husband she would be treated as if she had predeceased him, and the policy moneys would accordingly be payable to the children. This follows from the decisions in Re Jane Tucker, deceased and Re Sangal, deceased. In each of these cases one spouse was murdered by the other and an intestacy resulted; in each it was held that the deceased's estate should be distributed in the manner in which this would have been done if the murderer had been the first of the two spouses to die.

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46.
47.

If the life assured under a family insurance policy murders a beneficiary who has an absolute interest no problem arises, as that interest continues. Likewise, there is no problem if the beneficial interest of that person is to pass to someone other than the life assured, which is the position which would probably arise if the policy were expressed as being for the benefit of a wife if she survived her husband, failing which for the benefit of the children. Where, however, the normal effect of the beneficiary predeceasing the life assured is that there is a resulting trust in favour of the latter, it is submitted that equity would probably require the life assured's interest to be held for the beneficiary's estate. Deckert's Case is of interest in that the wife, who was murdered by her husband, was the beneficiary under the policy in dispute; while it was ultimately held that the assurance company in question was not liable under that policy it was agreed throughout the course of proceedings that in any case Mrs. Deckert's estate could not have claimed. This seemed to be based on the particular provisions of Canadian legislation relating to beneficiaries. Deckert had the right to change the beneficiary at any time and Mrs. Deckert was not regarded as having at her death any rights to the policy of a type which would be recognised in law, since in any case he might have cancelled her appointment as beneficiary had she lived. There was

48.

45. (1892) Q.B.147
46. (1920) 38 W.N. (N.S.W.) 28
47. (1921) V.L.R.355
48. (1943) 3 D.L.R. 747

a certain grim realism in this decision, as Deckert's actions hardly suggested that he was of a mind to provide or continue any benefits for his wife.

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