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INSURANCE - INSURABLE INTEREST IN LIFE - RIGHT OF INSURED TO DESIGNATE BENEFICIARY WITHOUT INSURABLE INTEREST

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INSURANCE — INSURABLE INTEREST IN LIFE — RIGHT OF INSURED TO DESIGNATE BENEFICIARY WITHOUT INSURABLE INTEREST — The Metropolitan Life Insurance Company issued a group insurance policy in the sum of $500 upon the life of appellant's husband. The husband paid all the premiums and designated a niece, appellee, the beneficiary therein. Several years prior to the issuance of the policy appellant had ceased to live with the insured, although a divorce had never been obtained. Appellant contested the recovery of the proceeds by appellee on the ground that said niece had no insurable interest in the life of insured. *Held*, judgment of the trial court awarding proceeds to appellee affirmed, on the ground that appellee had established an insurable interest by providing insured a home in his old age. *Smith v. Metropolitan Life Ins. Co.*, (Tex. Civ. App. 1939) 123 S. W. (2d) 956.[1]

Life policies taken out by the beneficiary or other person upon the life of another must be distinguished from those taken out by the insured upon his own life.[2] In the first class of policies, a strict and unyielding rule requires as a prerequisite to recovery that the beneficiary have an insurable interest in the insured's life.[3] But in the second class, embracing the principal case, the question of insurable interest is in every jurisdiction except Texas considered utterly immaterial on the theory that every man has an insurable interest in his own life.[4] The Texas doctrine, however, substantially delimits even the right of the insured to select a beneficiary of a policy on his own life by requiring that

[1] See also Jackson v. Connecticut General Life Ins. Co., (Tex. Civ. App. 1939) 131 S. W. (2d) 177, decided seven months after the decision in the principal case, in which the aunt-beneficiary was required to sustain the burden of establishing an insurable interest in the life of insured, even though, as in the principal case, the insured took out the policy in his own name and himself paid the premiums.

[2] This latter type of policy may be made payable either to the insured, or to his estate in case it matures only at death, or to any person designated as beneficiary. See VANCE, INSURANCE, 2d ed., 151 (1930).

[3] "To allow such insurances to be made by persons having no other interest in the continuance of the lives insured than springs from the prospect of making gain through their early termination, would be intolerable." VANCE, INSURANCE, 2d ed., 154 (1930).

[4] Manuel v. Peoples Industrial Life Ins. Co., (La. App. 1939) 189 So. 311; Lawrence v. Travelers' Ins. Co., (D. C. Pa. 1934) 6 F. Supp. 428; Colgrove v. Lowe, 343 Ill. 360, 175 N. E. 569 (1931); Haberfeld v. Mayer, 256 Pa. 151, 100 A. 587 (1917); Grigsby v. Russell, 222 U. S. 149, 32 S. Ct. 58 (1911); Martin v. Stubbings, 126 Ill. 387, 18 N. E. 657 (1888), to the effect that a person having insured his own life may provide for payment of the insurance money to an assignee who has no

nobody without an insurable interest in the life of the insured may be the beneficiary of a policy on the life of a human being.[5] In the event that a beneficiary without an insurable interest should be named, the court will not treat the policy as void, but rather will fasten a constructive trust upon the proceeds of the policy in the hands of the named beneficiary for the benefit of those legally entitled thereto.[6] Although the Texas courts have long given lip-service to this unique doctrine of insurable interest, an examination of the cases reveals that in all adjudications prior to the principal case the first and subsequent premiums were paid by the beneficiary,[7] and not, as in this case, by the insured. Such cases closely approach the situation where the policy is taken out in reality by the beneficiary, although in the name of the insured, in order to evade the requirement of insurable interest.[8] The principal case inserts definite reality into the doctrine, however, since the insured therein manifestly paid all the premiums himself, and still the beneficiary named by him was required to prove insurable interest in the insured's life in order to quarantine herself from the constructive trust doctrine.[9] There is, without question, a variance in doctrine on this point between Texas and the forty-seven other states. It is submitted that the Texas rule is unduly solicitious of the insured to the point of hampering him materially in his desire to designate a beneficiary who has no insurable interest in his life.[10] The insurable interest concept has been designed to assure the good faith of the

insurable interest in his life; Pashuck v. Metropolitan Life Ins. Co., 124 Pa. Super. 406, 188 A. 614 (1936), wherein the court invoked the Act of May 17, 1921, Pa. Stat. (Purdon, 1930), tit. 40, § 512: ". . . Any person may insure his own life for the benefit of any person, copartnership, association, or corporation but no person shall cause to be insured the life of another, unless the beneficiary named in such policy . . . has an insurable interest in the life of the insured." For further citations, see VANCE, INSURANCE, 2d ed., 152, note 54 (1930).

[5] Note the language of Folley, J., in the principal case, 123 S. W. (2d) at 957. See also Cheeves v. Anders, 87 Tex. 287, 28 S. W. 274 (1894), and authorities therein cited.

[6] American Nat. Ins. Co. v. Wallace, (Tex. Civ. App. 1918) 210 S. W. 859; Wilton v. New York Life Ins. Co., 34 Tex. Civ. App. 156, 78 S. W. 403 (1904); Mayher v. Manhattan Life Ins. Co., 87 Tex. 169, 27 S. W. 124 (1894).

[7] Cheeves v. Anders, 87 Tex. 287, 28 S. W. 274 (1894) (premiums paid out of partnership assets, one partner being beneficiary); Mayher v. Manhattan Life Ins. Co., 87 Tex. 169, 27 S. W. 124 (1894) (premiums paid by father of infant beneficiary); Wilton v. New York Life Ins. Co., 34 Tex. Civ. App. 156, 78 S. W. 403 (1904) (premiums paid by the beneficiary herself); American Nat. Ins. Co. v. Wallace, (Tex. Civ. App. 1918) 210 S. W. 859.

[8] Home Life Ins. Co. of New York v. Masterson, 180 Ark. 170, 21 S. W. (2d) 414 (1929); Mutual Aid Union v. White, 166 Ark. 467, 267 S. W. 137 (1925); O'Connor's Admr. v. Equitable Life Assurance Soc., 170 Ky. 715, 186 S. W. 502 (1916).

[9] Accord: Jackson v. Connecticut General Life Ins. Co., (Tex. Civ. App. 1939) 131 S. W. (2d) 177.

[10] It might be contended that the insured should not be permitted to make one outside the family the beneficiary of his life insurance policy to the exclusion of his widow or other dependents. But said exclusion may be accomplished even in Texas in favor of any outside party with an insurable interest.

parties, and it would seem reasonably certain that the insured would not himself name as his beneficiary one whom he did not trust.[11] Granting that a beneficiary without an insurable interest is subject to the same temptation to take the insured's life whether the policy was taken out by the beneficiary or by the insured,[12] the selection of the beneficiary by the insured affords sufficient guaranty that a bond of confidence exists which the law should not disturb or deny. The logical result of rigid enforcement of the Texas rule may well be relaxation in that state of the definition of insurable interest, especially where the insured has in good faith named a beneficiary who, although having no insurable interest in the strict sense of the term, stands in need of the proceeds of the policy, and would suffer if declared a constructive trustee for others less deserving.

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[11] It is true that the insured might occasionally be misled as to the good faith of a beneficiary, or that blackmail and related pressure-methods might be used by a prospective beneficiary without an insurable interest to force the insured to make the policy payable to him, and that the Texas rule would eliminate such possibilities. But such instances are so rare as to fail to justify the broad rule militating against them.

[12] See Schmidt v. Northern Life Assn., 112 Iowa 41, 83 N. W. 800 (1900), for concrete evidence. This would seem to express the most potent argument in support of the Texas rule.