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INSURANCE BENEFICIARY'S RIGHT TO RECOVER WHEN HE HAS CAUSED DEATH OF INSURED

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INSURANCE — BENEFICIARY'S RIGHT TO RECOVER WHEN HE HAS CAUSED DEATH OF INSURED—The insured died from bullet wounds inflicted by a revolver in the hand of the beneficiary. After there had been an indictment for murder the beneficiary pleaded guilty to so much of the indictment as charged manslaughter. The beneficiary sued on the insurance policy. The Supreme Court of Massachusetts *held* that there was error in directing a verdict for the insurer because a beneficiary who is guilty of manslaughter, where there was no intentional injury of a kind likely to cause death, is not barred from recovering on the policy. *Minasian v. Aetna Life Insurance Co.*, (Mass. 1936) 3 N. E. (2d) 17.

The maxim of the common law, that no one should be allowed to profit by his own wrong,[1] is usually applied to prevent the beneficiary who has murdered the insured from recovering on the policy.[2] Anyone claiming through such a beneficiary is likewise barred.[3] The murder need not be committed for the purpose of accelerating the maturity of the policy.[4] The insurer is not, however, thereby relieved of liability, as it must pay the proceeds of the policy to the insured's estate.[5] When the beneficiary is the sole distributee of the insured's estate, the courts are in conflict as to the disposal of the fund.[6] If the policy is

[1] Wade, "Acquisition of Property by Willfully Killing Another—A Statutory Problem," 49 HARV. L. REV. 715 (1936); and see CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 41 (1921).

[2] COUCH, CYCLOPEDIA OF INSURANCE LAW, § 342 (1929); L. R. A. 1917B 671; New York Mutual Life Ins. Co. v. Armstrong, 117 U. S. 591, 6 S. Ct. 877 (1886). In Grossman, "Liability and Rights of the Insurer When the Death of the Insured is Caused By the Beneficiary or By an Assignee," 10 BOSTON UNIV. L. REV. 281 at 289 (1930), it was observed:

> "Some statements of the rule seem to require only that the insured be 'feloniously' killed, but in the cases where such statements are found, the requirement that the homicide be wilful as well as felonious usually appears more or less definitely from the language of the decisions as a whole."

[3] 2 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 342 (1929).

[4] 2 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 342 (1929); VANCE, INSURANCE, 2d ed., § 156 (1930).

[5] 2 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 342 (1929); 7 A. L. R. 828 (1920); Grossman, "Liability and Rights of the Insurer When the Death of the Insured is Caused By the Beneficiary or By an Assignee," 10 BOSTON UNIV. L. REV. 281 at 303 (1930). Most of the courts do not bother to seek a basis for allowing the insured's estate to recover, but some courts have held a resulting trust in favor of the estate of the insured. Schmidt v. Northern Life Assn., 112 Iowa 41, 83 N. W. 800 (1900). There is also a basis for the application of the constructive trust. RESTATEMENT, RESTITUTION AND UNJUST ENRICHMENT (Proposed Final Draft, 1936), § 189.

[6] Some courts have permitted the estate of the insured to recover and have then allowed the beneficiary of the policy to acquire the proceeds indirectly, because the statute of descent and distribution was unambigious. Murchison v. Murchison, (Tex. Civ. App. 1918) 203 S. W. 423. Such a rule is similar to the common-law majority rule in regard to the acquisition of property by a homicide in cases of inheritance and will. McAllister v. Fair, 72 Kan. 533, 84 P. 112 (1906), and annotation in 3 L. R. A. (N. S.) 727. But in Slocum v. Metropolitan Life Ins. Co., 245 Mass. 565, 139 N. E. 816 (1923), and annotation in 27 A. L. R. 1521 (1923), the administrator of the insured's estate was not allowed to recover when the beneficiary was sole distributee

purchased by the beneficiary with the intention of murdering the insured, it is void from the inception and the insurer is relieved from all liability.[7] Also, if there is a provision in the policy making it void if the beneficiary takes the life of the insured, the courts enforce the provision.[8] In such a policy its provisions determine the degree of homicide which will bar recovery. Other American courts which have had the question before them are in accord with the Massachusetts court in holding that the homicide must be intentional and that involuntary manslaughter will not be sufficient to bar the beneficiary's recovery.[9] A recent case, however, in interpreting a statute, held that the killing need not be felonious as long as it was intentional.[10] It seems doubtful whether or not the rule barring the beneficiary in case of murder should be extended to involun-

because (245 Mass. 565 at 570): "The same principle of public policy which precludes him from claiming directly under the insurance contract, equally precludes him from claiming under the statute of descent and distribution." As to the right of the state to insurance funds when the beneficiary who is also sole distributee of the insured, murders the insured, see 18 MINN. L. REV. 599 (1934). For a case denying recovery to the administrator of the decedent's estate in which the murderer and the deceased had a joint life policy payable to the survivor, see Spicer v. New York Life Ins. Co., (D. C. Ala. 1920) 263 F. 764, affd. (C. C. A. 5th, 1920) 268 F. 500, certiorari denied 255 U. S. 572, 41 S. Ct. 376 (1920). But see Equitable Life Assurance Society v. Weightman, Admr., 61 Okla. 106, 160 P. 629 (1916).

[7] Henderson v. Life Ins. Co. of Virginia, (S. C. 1935) 179 S. E. 680; Grossman, "Liability and Rights of the Insurer When Death of the Insured is Caused by the Beneficiary or By an Assignee," 10 BOSTON UNIV. L. REV. 281 at 307 (1930); and see the novel case of Goldstein v. New York Life Ins. Co., 225 App. Div. 642, 234 N. Y. S. 250 (1929).

[8] See Grossman, "Liability and Rights of the Insurer When the Death of the Insured is Caused by the Beneficiary or By an Assignee," 10 BOSTON UNIV. L. REV. 281 at 306-307 (1930); Markland v. Modern Woodmen of America, (Mo. App. 1919) 210 S. W. 921. All doubt will be resolved in favor of payment, Kascautas v. Federal Ins. Co., 189 Iowa 889, 179 N. W. 133 (1920).

[9] 2 COUCH, CYCLOPEDIA OF INSURANCE LAW, § 342 (1929); Schreiner v. High Court, 35 Ill. App. 576 (1890); Throop v. Western Indemnity Co., 49 Cal. App. 322, 193 P. 263 (1920). Compare Lundy v. Lundy, 24 Can. Sup. Ct. 650 (1895); In the Estate of Hall, [1914] Probate 1 at 7, where Hamilton, L. J., said:

> "It is that a man shall not slay his benefactor and thereby take his bounty; and I cannot understand why a distinction should be drawn between the rule of public policy where the criminality consists in murder and the rule where the criminality consists in manslaughter."

[10] Metropolitan Life Ins. Co. v. Hill, (W. Va. 1934) 177 S. E. 188 at 189, in which the court said: "That policy no more rewards an intentional misdemeanant than a felon. The one differs at law from the other simply in degree. Both set the law at naught." It is said in RESTATEMENT, RESTITUTION AND UNJUST ENRICHMENT (Proposed Final Draft, 1936), § 187 at p. 117: "Statutes in some states, however, have been interpreted to apply to all cases of unlawfully or feloniously causing the death of another, including manslaughter as well as murder." See, D. C. Code (1929), tit. 25, § 250; Iowa Code (1931), § 12033; Minn. Stat. (Mason 1927), § 8734; Neb. Comp. Stat. (1929), c. 30, § 120; Okla. Stat. (1931), § 1616; Ore. Code Ann. (1930), c. 10, § 213; S. C. Laws (1932), § 8874; Tex. Comp. Stat. (1928), Art. 5047; W. Va. Rev. Code. (1931), § 42-4-2; Wyo. Rev. Stat. (1931), c. 88, § 4009.

tary manslaughter,[11] although the maxim on which the rule is founded is broad enough to encompass such an extension.[12]

[11] See Wade, "Acquisition of Property by Wilfully Killing Another—A Statutory Problem," 49 HARV. L. REV. 715 at 722 (1936); RESTATEMENT, RESTITUTION AND UNJUST ENRICHMENT, §§ 187, 189 (1936). It is difficult to say just where the line should be drawn since such a line must be based on policy. As was said by Grossman, "Liability and Rights of the Insurer when the Death of the Insured is Caused by the Beneficiary or by an Assignee," 10 BOSTON L. REV. 281 at 290 (1930): "It is futile to attempt to arrive at a 'true rule' by pure logic."

[12] See 19 MICH. L. REV. 444 (1920), where it is suggested that there is room to argue for an extension of the rule to include manslaughter because otherwise there would be a premium placed upon gross negligence.