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## INSURANCE - EXECUTION FOR A CRIMINAL OFFENSE

Herman J. Bloom

*University of Michigan Law School*

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INSURANCE — EXECUTION FOR A CRIMINAL OFFENSE — The insured was convicted and legally executed for the crime of rape. The beneficiary sued on a life insurance policy which contained no express exemption from liability in the event of death resulting from the legal execution of the insured. The court *held* that the beneficiary was entitled to recover under the public policy as declared in the constitutional provision against corruption of blood and forfeiture of estate.<sup>1</sup> *Progressive Life Insurance Co. v. Dean*, (Ark. 1936) 97 S. W. (2d) 62.

<sup>1</sup> The Arkansas Constitution (1874), art. 2, § 17, provides: "No bill of attainder . . . shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate."

Where a life insurance policy has an express clause excluding death by legal execution for crime from the accepted risks, the authorities agree that there is no liability on the insurer.<sup>2</sup> In the absence of such a provision the federal courts<sup>3</sup> and a majority of the state courts<sup>4</sup> have reached a similar result by writing in, as a matter of law, an implied exception. This exception cannot be explained on the theory that such a risk is not covered by the contract of insurance, for the actual facts disclose that the premiums on life policies are computed on the basis of all kinds of deaths.<sup>5</sup> The real reason is the "public policy" argument against the removal of any of the restraints on the commission of crime.<sup>6</sup> It is noteworthy that at the time this public policy was announced the doctrine of corruption of blood and attainder prevailed in England, and that the present constitutional provisions against corruption of blood and forfeiture of estate were not discussed in the federal cases. This public policy argument was further bolstered by the belief that such a risk could not be expressly covered in the policy,<sup>7</sup> but at the present time insurers insert provisions of a similar nature in their policies.<sup>8</sup> There is a growing tendency on the part of the state courts to allow recovery where the policy is silent on this contingency.<sup>9</sup> These courts argue that a life insurance policy is a species of

<sup>2</sup> VANCE, *LAW OF INSURANCE* 812 (1930).

<sup>3</sup> *Burt v. Union Cent. Ins. Co.*, 187 U. S. 362, 23 S. Ct. 139, 47 L. ed. 216 (1902), affirming (C. C. A. 5th, 1900) 105 F. 419, 59 L. R. A. 393, noted in 16 HARV. L. REV. 453 (1903); 14 HARV. L. REV. 625 (1901); 3 COL. L. REV. 284 (1903); *Northwestern Mutual Life Ins. Co. v. McCue*, 223 U. S. 234, 32 S. Ct. 220, 38 L. R. A. (N. S.) 57 (1912), noted in 22 YALE L. J. 158 (1912), 7 MICH. L. REV. 673 (1909).

<sup>4</sup> *Supreme Commandery K. G. R. v. Ainsworth*, 71 Ala. 436, 46 Am. Rep. 332 (1882) (dictum); *Weil v. Travellers' Ins. Co.*, 16 Ala. App. 641, 80 So. 348 (1918), reversed in 201 Ala. 409, 78 So. 528 (1918); *Smith v. Metropolitan L. Ins. Co.*, 125 Misc. 670, 211 N. Y. S. 755 (1925), noted in 11 CORN. L. Q. 390 (1926); 26 COL. L. REV. 108 (1926); 39 HARV. L. REV. 394 (1926); 33 YALE L. J. 889 (1924); *Scarborough v. American Nat. Ins. Co.*, 171 N. C. 353, 88 S. E. 482, L. R. A. 1918A 896, Ann. Cas. 1917D 1181 (1916); *Collins v. Metropolitan Life Ins. Co.*, 27 Pa. Super. 353 (1905); *Collins v. Metropolitan Life Ins. Co.*, 30 Pa. Co. Ct. 257 (1905); *Amicable Soc. v. Bolland*, 4 Bligh N. S. 194, 5 Eng. Rep. 70, 2 Dow & Cl. 1, 6 Eng. Rep. 630 (1830).

<sup>5</sup> 11 CORN. L. Q. 390 (1926); 7 MINN. L. REV. 45 (1923).

<sup>6</sup> 14 L. R. A. (N. S.) 356 (1908); 36 A. L. R. 1255 (1925).

<sup>7</sup> *Burt v. Union Cent. Life Ins. Co.*, 187 U. S. 362, 23 S. Ct. 139 (1902); *Northwestern Mutual Life Ins. Co. v. McCue*, 223 U. S. 234, 32 S. Ct. 220, 38 L. R. A. (N. S.) 57 (1912); *Amicable Soc. v. Bolland*, 4 Bligh N. S. 194, 5 Eng. Rep. 70, 2 Dow & Cl. 1, 6 Eng. Rep. 630 (1830).

<sup>8</sup> An example is the provision in life insurance policies that the insurer will be liable in case of suicide after a specified period.

<sup>9</sup> *Collins v. Metropolitan Life Ins. Co.*, 232 Ill. 37, 83 N. E. 542, 122 Am. St. Rep. 54, 13 Ann. Cas. 129, 14 L. R. A. (N. S.) 356 (1908), noted in 6 MICH. L. REV. 489 (1908), 21 HARV. L. REV. 530 (1908); *American Nat. Ins. Co. v. Coates*, 112 Tex. 267, 246 S. W. 356 (1923), noted in 1 TEX. L. REV. 352 (1923), 23 COL. L. REV. 591 (1923); *Weeks v. New York Life Ins. Co.*, 128 S. C. 223, 122 S. E. 586, 35 A. L. R. 1482 (1924); *Fields v. Metropolitan Ins. Co.*, 147 Tenn. 464, 249 S. W. 798, 36 A. L. R. 1250 (1923).

property and that the denial of recovery because of the legal execution of accused would amount to a forfeiture of estate contrary to the constitutional provision against corruption of blood and forfeiture of estate. In treating the policy as a property right the courts are assuming the point in issue as to whether or not, after the insured is executed, the policy is valid.<sup>10</sup> But, when we have the rule against forfeitures expressed in the constitution, it seems immaterial whether it is considered as a contract or a property right. The public policy against forfeitures is further manifested in those statutes of wills and distribution in which the right to property is not made to depend on the cause of the death of the owner of the property.<sup>11</sup> If the relative equities of the parties are weighed, there is little doubt as to the soundness of the principal case. The appointees to the benefits of the policy are usually innocent and may have contributed to the payment of the premiums.<sup>12</sup> On the other hand, it is unjust to allow the insurer to retain both the premiums and this unexpected profit, when the insurer can adequately protect itself through its rates and by express stipulation.<sup>13</sup>

*Herman J. Bloom*

<sup>10</sup> 21 HARV. L. REV. 530 (1908); Summers, "Legal Execution of the Insured as a Defense to an Action on a Life Insurance Policy," 7 KY. L. J. (no. 2) 1 at 8 (1919); Thomas, "Public Policy as Affecting Property Rights Accruing To a Party as a Result of Wrongful Acts," 1 CAL. L. REV. 513 at 523 (1913).

<sup>11</sup> Weeks v. New York Life Ins. Co., 128 S. C. 223, 122 S. E. 586, 35 A. L. R. 1482 (1924); American Nat. Ins. Co. v. Coates, 112 Tex. 267, 246 S. W. 356 (1923).

<sup>12</sup> Richards, "Suicide and Execution for Crime," 22 YALE L. J. 292 (1913).

<sup>13</sup> 7 MINN. L. REV. 45 (1923); 25 MICH. L. REV. 200 (1927).