

February 1935

Insurance–Liability Insurance–Excepted Risks–Effect of Absence of Causative Connection

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Recommended Citation

R. D. Halbritter, *Insurance–Liability Insurance–Excepted Risks–Effect of Absence of Causative Connection*, 41 W. Va. L. Rev. (1935).

Available at: <https://researchrepository.wvu.edu/wvlr/vol41/iss2/12>

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stockholder and officer in a corporation is incidental only, and not a sufficiently independent benefit to the promisor to take the case out of the statute.¹⁷ Thus, if we cannot establish a benefit to the defendant here as a depositor, the result must be explained by Chancellor Kent's erroneous doctrine of "new consideration of benefit or harm", based on plaintiff's forbearance to withdraw her deposit.

As a result, however, the instant holding may be desirable, in the light of current legal tendencies adding to the responsibilities of bank officials. Since rather vague words are sometimes construed by the courts to be promises, the instant holding might be deemed to impose too heavy a burden on bank officials asked about the condition of a bank, but do not both honesty and fairness to depositors require that their answers be accurate and discreet?

—HERSCHEL H. ROSE, JR.

INSURANCE — LIABILITY INSURANCE — EXCEPTED RISKS — EFFECT OF ABSENCE OF CAUSATIVE CONNECTION. — A collision policy provided for insurance against loss or damage to the insured's automobile occasioned by accidental means. There was a provision that it should not apply "when the automobile was being used or maintained by any person in violation of the law as to age or by any person under the age of sixteen years." The car was damaged while being driven by the insured's son, aged fifteen. Twelve years was then the legal age for drivers in South Carolina. No causal connection between the age of the driver and the accident was shown. Plaintiff brought suit and defendant's demurrer was overruled and defendant appealed. *Held*, in order for the company to be relieved from liability, there must be some causative connection between the accident and the fact that the car was being driven by a minor. *Affirmed. McGee v. Globe Indemnity Company.*¹

Since an insurer normally has the right to select the particular risks to be assumed, certain exceptions are usually set forth in the policy. The exception operates to exclude a specified risk²

¹⁷ *Hurst Hardware Co. v. Goodman*, *supra* n. 8; *Edwards v. Bryan*, *supra* n. 14; *Walther v. Merell*, *supra* n. 13.

¹ 175 S. E. 849 (S. C. 1934).

² *Boston v. American Mutual Accident Association*, 92 Wis. 83, 65 N. W. 861 (1896). *VANCE, INSURANCE* (2d ed. 1930) 822.

that otherwise would be included under the general language describing the risk assumed.³ In the case of an excepted loss the insurer has an entire immunity from any liability for the risk so excluded,⁴ and such immunity cannot be waived, since no liability, defeasible or otherwise, was ever assumed. There can be no liability where there has been no assumption of risk.⁵ To prevent companies from excluding ordinary risks by using such a device as exceptions, and thus achieving an unfair loop-hole in the policy where the coverage would presumably extend to the loss, courts have required the exception to be a reasonable one.⁶ Since an insurance policy is a contract of adhesion, courts are loath to hold the insured strictly to the terms because of gross injustice sometimes occasioned by such interpretation.⁷ While the courts cannot make new contracts for the parties, they go very far in construing away exceptions that would defeat the general purpose of the policy to afford indemnity. For example, in life or accident insurance, a method frequently used is to require a causative connection between the loss and the excepted risk. Thus the exception as to injuries "received in violation of the law" is construed to

³ An excepted peril does not in the least affect the binding force of the contract. If, for example, a fire insurance policy contains an exception exempting the insurer from liability while the building is vacant or unoccupied, and a loss occurs in either case, the insurer is not liable. Whether or not the house is reoccupied, prior to loss the contract relations of the parties continue unchanged. However, the breach of warranty or condition as to vacancy or occupation renders the entire contract voidable immediately at the election of the insurer. Waiver or estoppel may possibly prevent the forfeiture of a policy for breach of condition or warranty, but neither applies to exceptions.

⁴ Among the common types of excepted risks are: (1) in life insurance policies, — death from certain diseases, residing in prohibited districts, unauthorized occupations, military and naval service, intemperance, while in violation of law, suicide and at the hands of justice; (2) in fire insurance policies, — earthquake, explosions and fall of building; (3) in liability insurance, — operation of a vehicle by a driver under the age fixed by law or by the policy or while the automobile is being operated for the carriage of passengers for hire.

⁵ *Hearin v. Standard Life Insurance Company*, 8 F. (2d) 202 (E. D. Ark. 1925); *Mack v. Connecticut General Life Insurance Co.*, 12 F. (2d) 416 (C. C. A. 8th, 1926); *Flannagan v. Provident Life and Accident Insurance Company*, 22 F. (2d) 136 (C. C. A. 4th, 1927); *Wright v. Philadelphia Life Insurance Company*, 25 F. (2d) 514 (E. D. S. C. 1927); *Myers v. Liberty Life Insurance Company*, 24 Kan. 191 (1880); *Draper v. Oswego County Fire Relief Association*, 190 N. Y. 12, 18, 82 N. E. 755, 758 (1907).

⁶ *Draper v. Oswego County Fire Relief Association*, *supra* n. 5; *Rustin v. Standard Life and Accident Insurance Company*, 58 Neb. 792, 79 N. W. 712, 46 L. R. A. 253 (1899); *Standard Life and Accident Insurance Company v. Schmaltz*, 66 Ark. 588, 53 S. W. 49 (1899); *Daily v. Preferred Masonic Mutual Accident Association*, 102 Mich. 289, 55 N. W. 626 (1893); *Jones v. Pennsylvania Casualty Company*, 140 N. C. 252, 52 S. E. 578 (1905). In other words the exception must bear a reasonable relation to the increase in peril.

mean those resulting⁸ "in consequence of violation of the law".⁹ Where there is human life involved the excepted risk, to be available must be the direct cause of the injury or death.¹⁰ It must also be the proximate and not the remote cause.¹¹ In cases involving fire and property loss the courts are more likely to sustain the exception because of the opportunities afforded for fraud in this type of insurance. A comparison of the judicial technique as to exceptions in the life and fire cases indicates a tendency to favor the insured in the former, while the company is protected in the latter.¹² It would seem that the distinction may rest upon paramount social interests in the individual life and in conservation of social resources.¹³ Liability and collision policies fall in an intermediate category. It seems that when the loss involves injury to human beings the exceptions should be construed as in life insurance but when the damage is to property the court should interpret the exception as in fire insurance. It would follow that in collision policies, like the one involved in the principal case, the court should give effect to exceptions because the peril of child driving is clearly an increased hazard.

The reasoning of the court is unsound, but the correct result was reached, because there were conflicting provisions.¹⁴ Since there is doubt, force must be given to those provisions which sustain, rather than those which forfeit, the contract.¹⁵

—R. DOYNE HALBRITTER.

⁷ VANCE, INSURANCE, 201.

⁸ Jones v. U. S. Mutual Accident Association, 92 Iowa 652, 61 N. W. 485 (1894).

⁹ But exceptions relating to intoxication and injuries received in violation of the child labor law are generally construed not to require causal connection.

¹⁰ Wilkenson v. Travelers Insurance Company, 72 S. W. 1016 (Tex. Civ. App. 1906).

¹¹ Fetter v. Fidelity and Casualty Co., 174 Mo. 256, 73 S. W. 592, 61 L. R. A. 459 (1906).

¹² Possibly the fact that legislatures have prescribed standard fire insurance policies may help to explain the enforcement of exceptions in such policies.

¹³ See POUND, OUTLINES OF LECTURES ON JURISPRUDENCE (4th ed. 1928) 65-69.

¹⁴ Additional assured provision, that policy should "apply under the same conditions as applicable to the named assured to any person legally operating the car with the permission of the named assured."

¹⁵ Sun Life Insurance Company v. Taylor, 108 Ky. 408, 56 S. W. 668, 94 Am. St. Rep. 383 (1900).