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## Rights in a Life Insurance Policy of a Beneficiary Who Has No Insurable Interest

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The latter exception was made because the court considered that it could not have been the intent of the parties that the oil and gas be removed from the land except through wells on the premises, and a condition might properly be implied which would require the lessee to protect the leasehold from drainage on penalty of forfeiting the lease. This is quite different from implying a condition which destroys the express provisions of the lease as is the case in *Johnson v. Armstrong*. If the lessor is willing to accept money in lieu of development why assist him to break his contract so long as the oil and gas remains undisturbed beneath his land? If the lease was obtained through fraud, why not cancel the lease for fraud? Because the lessor has made a bad bargain should a court make a better one for him by resorting to implications contrary to the express language of the contract? *Johnson v. Armstrong* does not even appear to be a case where there would have been any particular injustice to the lessor. It is submitted that the language of the parties in an oil and gas lease ought to be given its ordinary and usual meaning and that any other policy leads to confusion and uncertainty as to important property interests. The implied condition above mentioned logically applies to every oil and gas lease which purports to give the lessee an option to drill or pay delay rentals. It is submitted that it is unwise thus to upset what have been considered for a long time as settled principles of the law of real property.

—J. W. S.

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RIGHTS IN A LIFE INSURANCE POLICY OF A BENEFCIARY WHO HAS NO INSURABLE INTEREST.—It is held that one may not in his own name and at his own expense procure insurance for his own benefit on the life of another without having what is known as an insurable interest in the life.<sup>1</sup> On the other hand, it is held by a heavy preponderance of authority that one who procures insurance on his own life on his own initiative and at his own expense may name as beneficiary one who has no insurable interest in the

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<sup>1</sup>*Continental Life Ins. Co. v. Volger*, 89 Ind. 572, 46 Am. Rep. 185; *Griffens v. Equitable Assurance Soc.*, 119 Ky. 856, 84 S. W. 1164 (1905); *Ruse v. Insurance Co.*, 23 N. Y. 516 (1861); *Burbage v. Windley*, 108 N. C. 361, 12 S. E. 839, 12 L. R. A. 409 (1891); *Crismond v. Jones*, 117 Va. 34, 37, 83 S. E. 1045 (1915) (*dictum*).

life.<sup>2</sup> The reasons given for these divergent results show the cause for the difference. In the first situation the fact that pecuniary benefit without any counter-balancing loss to the one who procured the policy would result from the death of the insured, makes such policies clearly wagers and therefore void at their inception.<sup>3</sup> The chief ground of objection in the early English cases to such policies was based upon their being wagers and not upon the possible sinister motive to cause the death of the insured,<sup>4</sup> though the public policy involved in the increased possibility of the murder of the insured if the taking out of insurance on any life were open to the whole world of the unscrupulous has had its effect. That "the law has no universal cynic fear of the temptation opened by a pecuniary benefit accruing upon a death" is shown by the permission of remainders after life estates and the universal allowance without question of executory devises, bequests, and provisions for support and maintenance.<sup>5</sup> In the second class of cases above noted, the insured is regarded as having an insurable interest in his own life<sup>6</sup> which prevents the policy from being void in its inception as a wager, and can be trusted not to name as beneficiary one who would be inclined to take the life of the insured, thus removing the principle of public policy at least in its most convincing form.<sup>7</sup> Akin to the second class of cases are those where one for his own purposes has secured a valid policy on his own life, but later assigns it to one having no insurable interest. Here the weight of authority holds that the policy is enforceable in the hands of the assignee.<sup>8</sup> This may be supported on the ground that here also the insured may be trusted not to assign to one who

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<sup>2</sup>Langford v. National L. & A. Ins. Co., 116 Ark. 527, 173 S. W. 414 (1915); Reynolds v. Prudential Insurance Co., 88 Mo. App. 679 (1901); Dolan v. Benefit Association, 152 Mich. 266, 116 N. W. 383, 16 L. R. A. (N. S.) 555 (1908). See cases collected in 1 COOLEY, BRIEFS ON INSURANCE, 252-7; 25 L. R. A. 627; 16 L. R. A. (N. S.) 555. It is believed that Tate v. Commercial Building Ass'n., 97 Va. 74, 33 S. E. 382, 45 L. R. A. 243, 75 Am. St. Rep. 770 (1899) is not *contra*.

<sup>3</sup>Grigsby v. Russell, 222 U. S. 149, 154 (1911).

<sup>4</sup>Grigsby v. Russell, *supra*.

<sup>5</sup>Union Fraternal League v. Walton, 109 Ga. 1, 34 S. E. 317, 46 L. R. A. 424, 77 Am. St. Rep. 350 (1899); Grigsby v. Russell, *supra*.

<sup>6</sup>Union Fraternal League v. Walton, *supra*. See RICHARDS, LAW OF INSURANCE, 3 ed., 40; 1 COOLEY, BRIEFS ON INSURANCE, 252.

<sup>7</sup>Grigsby v. Russell, *supra*.

<sup>8</sup>Grigsby v. Russell, *supra*; Bloomington, etc. Association v. Blue, 120 Ill. 121, 11 N. E. 331 (1887); Mutual Life Ins. Co. v. Allen, 138 Mass. 24 (1884). The contrary holdings of Crismond v. Jones, 117 Va. 34, 83 S. E. 1045 (1915) and other Virginia cases are overruled by VIRGINIA CODE, 1904, §§2678, 2679. See cases collected in 6 L. R. A. (N. S.) 128.

would be likely to take his life, and because it is desirable that the assignability of such policies as property be kept as free as reasonable safety permits.<sup>9</sup>

Difficult cases arise where, although the policy has been taken out by the insured in his own name, yet there is evidence that he did so as a cloak to enable some one else lacking an insurable interest to procure an insurance on his life. Thus, where the insured agrees to assign the policy upon its delivery to one who in fact procures the policy and promises to pay the premiums, the policy is void as a wager.<sup>10</sup> It would seem that the same result should be reached where a person who has no insurable interest induces the life to take out the policy and name such person as beneficiary in consideration of money paid to the life and an agreement to meet the premiums as they fall due. Thus, the policy was held to have been void where the nominal beneficiary, who had an insurable interest, agreed to pay the bulk of the proceeds of the policy upon death of the insured to another who, having no insurable interest, had procured the insurance and paid the premiums.<sup>11</sup>

From these cases it seems clear that the vital question is whether the insured in good faith procured the policy himself for his own purposes or was merely lending himself because of his own insurable interest in his own life, to cover up the lack of insurable interest on the part of some one else who thereby sought to procure a policy which would have been void in its inception as a wager if he had procured it in his own name.<sup>12</sup>

The recent West Virginia case of *Burdette v. Columbus Mutual Life Ins. Co.*<sup>13</sup> presents a situation where the policy was taken out by a foster daughter, apparently at her own wish and initiative, naming as beneficiary the foster mother, who paid the first premium. It was held that the trial court erred in excluding the plaintiff's testimony and entering a *nil capiat*. In holding that a foster mother may have an insurable interest as such in the life

<sup>9</sup>*Grigsby v. Russell, supra.*

<sup>10</sup>*Warnock v. Davis*, 104 U. S. 775 (1881); *Brockway v. Mutual Benefit Life Ins. Co.*, 9 Fed. 249 (1881); *McRae v. Warmack*, 98 Ark. 52, 135 S. W. 807 (1911); *Bromley's Adm'r. v. Washington Life Ins. Co.*, 122 Ky. 402, 92 S. W. 17 (1906); *Keystone M. B. Ass'n v. Morris*, 115 Pa. 446, 8 Atl. 638, 2 Am. St. Rep. 572 (1886); *Clement v. New York Life Ins. Co.*, 101 Tenn. 22, 46 S. W. 561 (1898).

<sup>11</sup>*Cisna v. Shelbley*, 88 Ill. App. 385 (1899).

<sup>12</sup>*Connecticut Mutual Life Ins. Co. v. Schaefer*, 94 U. S. 457 (1876).

<sup>13</sup>93 S. E. 366 (W. Va. 1917).

of her foster daughter who lived with her, there is supporting authority.<sup>14</sup> If such insurable interest exists, of course it is immaterial that the beneficiary paid the premium. If it does not exist, then it is material as evidence on the question whether the insurance was procured by the foster mother merely as a screen to cover up her own lack of insurable interest.<sup>15</sup> There is authority to the effect that the payment of the premium by the beneficiary is not alone sufficient to prove the *mala fides* of the transaction.<sup>16</sup>

—H. C. J.

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<sup>14</sup>Thomas v. National Benefit Ass'n, 84 N. J. Law 281, 86 Atl. 375, 46 L. R. A. (N. S.) 779, Ann. Cas. 1914D, 1121.

<sup>15</sup>See 1 COOLEY, BRIEFS ON INSURANCE, 257-8. See cases collected in 25 L. R. A. 629-30, note.

<sup>16</sup>Langford v. National L. & A. Ins. Co., 116 Ark. 527, 173 S. W. 414 (1915); see cases collected in 1 COOLEY, BRIEFS ON INSURANCE, 257-8. See Aetna Life Ins. Co. v. France, 97 U. S. 561 (1877) where it was regarded as immaterial who paid the premiums. See also Life Insurance Co. v. Grimes, 138 Ky. 338, 123 S. W. 65 (1910) where it was held that the foster mother of the insured could not recover upon a policy on which she paid the premium after the life had decided to discontinue payments and had left the home of her foster mother.