Singapore Journal of Legal Studies
[1996] 79 – 110

SUICIDE AND LIFE POLICIES – A FRESH PERSPECTIVE

Although there are no reported local decisions considering the effect that an assured's suicide has on a claim under his life policy, the prevailing assumption is that the local position is no different from the English position prior to the Suicide Act 1961 (which resulted in suicide being no longer an offence in England). According to this approach, the claim would be barred on a contractual level because the assured cannot be the author of his own loss, and on a broader level because the law will not allow him to benefit from his criminal act. This paper examines the question of whether this approach can be applied *in toto* in Singapore. It will be argued that the *Beresford* approach may not be appropriate in the local legislative framework and cultural background.

I. INTRODUCTION

THERE is a growing awareness today of the financial safety net of a life policy. With this growing awareness and prevalence of life policies as a means of providing financial security in the event of an unfortunate death of one of the breadwinners of the family, it becomes imperative to clarify the position at law with regards to the effect that suicide has on the validity of a claim under such a life policy.

Here the concern is with the effect of illegality on life policies, the effect of the assured's suicide on claims by his personal representatives and assignees and the refusal by the courts to allow an assured who has caused his own death or anyone claiming through him to benefit from the life policy.[1]

It is perhaps beneficial to first look at the common law position relating to the question of how an assured's suicide affects a claim under a life policy. One may then extract crucial questions that need to be answered before a conclusion may be reached as well as the possible ramifications that such an event will have on the claim. The logical place to begin the enquiry would be to look at the question of illegality itself.

While considering the question of illegality and the limitations which public policy places on the right of parties to enter into and to enforce contracts of insurance, it should be noted that where the assured's loss has been proximately caused by a deliberate and illegal act of the assured, the assured's claim is barred on yet another ground, namely that on ordinary

[1] See Poh Chu Chai, "Life Assurance Policies and Suicide" (1981) 23 Mal LR 147.

principles of insurance law, an insured cannot by his own deliberate act bring about the event upon which the insurance money is payable. Furthermore, a distinction must be made between contracts which are illegal at inception and claims which cannot be made under a valid contract of insurance because the claims have become tainted with some form of illegality. Needless to say, whether a contact is illegal at inception or the claim cannot be countenanced because it has become tainted with illegality, the insured's inability to benefit from the policy is due to considerations of public policy.

As a general rule, it is for the insurer who is refusing to indemnify the insured on the ground of illegality to prove his case but it must be borne in mind that where the insured's claim ought to be barred on the ground of illegality, the court must take note of the illegality even though the plea of illegality has not been raised as a defence to the insured's claim. Where illegality has been established, the onus shifts to the insured to rebut the plea of illegality.

Although a contract of insurance may been validly made, no claim which is tainted with illegality can be made under the contract against the insurer.

II. The Common Law Position

The default position at common law is that where there is no reference made in the policy to the question of suicide, then recovery by the estate of the insured is open to two possible defences by the insurance company. The first is based on contract and the second on public policy.

The first defence is based on a fundamental rule of insurance, *ie*, an insured who deliberately brings about the insured event will not be allowed to recover under the policy, as it would be a risk different from that which the insurers have undertaken.

It follows as a matter of construction of the contract that where the life insurance is silent on the question of suicide, then sane suicide is not a risk which is covered by the policy. On the other hand, if the assured was insane when he committed suicide, his action would not in law be regarded as deliberate or intentional and the risk would be covered by the policy.

The second defence which can be raised by the insurer in the event of the assured committing suicide is based on public policy. The basis of this stems from the fact that the law is reluctant to render its assistance to any person to obtain or enforce a right arising from his own crime.

A. *Beresford* v *Royal Insurance Co*

With regards to these two possible barriers to any claim in the event of the suicide of the insured, the decision of Lord Atkin in the House of Lords

decision of *Beresford* v *Royal Insurance Co*[2] is particularly instructive.

In 1925, the assured had effected a number of life policies with the defendants. Each policy contained a provision to the effect that if the assured should die by his own hand, whether sane or insane, within one year from the commencement of the assurance, the policy would be void against any person claiming the policy moneys. In 1934, due to mounting financial difficulties, the assured found himself increasingly unable to continue paying the premiums due under the policies. The assured obtained successive extensions of the deadline for payment of the premiums. Shortly before the expiry of the last extension, the assured shot and killed himself while travelling in a taxicab. At the time of his death, the assured was in debt for more than £60,000. The suicide occurred well after the said one-year period and at a time when suicide was still a crime in England.[3]

When the administratrix of the his estate claimed the net insurance proceeds, it had to be decided whether it was contrary to public policy for a court of law to allow her to claim the proceeds of the policies.

The House of Lords, led by Lord Atkin, held that the insurers were not liable to pay the sum claimed. They proceeded to consider the issue through two stages:

(1) As a matter of construction, a life policy will be read as one which does not cover sane suicide unless the contrary has been provided for. This is because on the ordinary principles of insurance law, the assured cannot, by his own deliberate act cause the event upon which the insurance money is payable. This is not a result of public policy, but of the correct construction of the contract.

The rights given to the parties to the contract must therefore be ascertained according to the ordinary rules of construction. It is only after such ascertainment that the question of public policy arises.

On the facts, the proper construction of the contract, the insurer promised to pay the assured's executors or assignees if he should, in full possession of his senses, kill himself. The reasoning being that since the insurers had provided that the policy would not pay if the assured should kill himself within a year of taking out the policy, it must follow that the policy would pay if he did so after this one year period.

2 [1938] AC 586.

3 Suicide is no longer a crime in England after the Suicide Act 1961 (9 & 10 Eliz 2 c 60). See s 1 of the Suicide Act 1961.

(2) Regardless of the provisions of the policy, the law will not, on public policy grounds, allow the assured's personal representative to claim the policy proceeds if the assured has committed suicide while sane for the courts will not recognise a benefit accruing to a criminal from his crime.

This principle applies equally when the criminal is dead and his personal representative is seeking to recover the benefit which only takes shape after his death. The principle includes the increase of the criminal's estate amongst the benefits which he is deprived of by his crime. His executor or administrator claims as his representative, and, as his representative, falls under the same ban. No criminal can be allowed to benefit in any way by his crime.

Although the question did not arise, Lord Atkin added that he however could see no objection to a claim under the policy by an assignee who gave value for the assignment before the assured's suicide if the policy contains an express promise to pay upon sane suicide and if the payment extends to the actual interest of the assignee.

B. *The Beresford Approach*

Thus, the approach taken by the House of Lords is useful for any consideration of the issue of suicide in the context of a life policy. There are, therefore, to be two stages of enquiry, or rather two possible bars to the claim, which need to be considered in answer to the issue of whether a claim in such an event under a life policy would be allowed to stand.

Firstly, there is the question of construction. On the construction of the policy, has the insurer undertaken to pay out the sum insured in the event of a suicide? If nothing is expressly provided for in the policy, then on the application of the fundamental principle in insurance law that the insured shall not be able to recover under the policy if he should have deliberately caused the insured event to occur, the claim will fail as it is not within the risk undertaken by the insurers. If, however, there is provision in the policy that the policy shall not pay for sane suicide within a particular time frame, it must follow, as a matter of construction, that the policy will pay if the suicide were to occur after the stipulated time frame. But, this is only part of the enquiry.

Secondly, the question of a public policy bar arises. The principle which applies here is that no man should be allowed to benefit from his crime, nor should he be able to get the courts to render its assistance in obtaining or enforcing any rights arising from his own crime. This second bar is a bar which supercedes any contractual arrangements which may have been

made to the contrary, as the public policy bar is not something which the parties can contract out of.

It can be seen that the crucial part of the enquiry would be at the second stage. The question has then to be whether suicide is a crime. If it is, then there is really no difficulty at the second stage as it is an absolute rule that the Courts will not recognise a benefit accruing to a criminal from his crime.[4]

C. *Suicide Under Common Law*

Under the common law in England, right up to the time of the Suicide Act 1961, suicide was a felony. It was considered to be 'self-murder' as it comprised the same elements as murder of another person – the taking of a life with malice aforethought.

The earliest statement of the rationale behind the legal prohibition of suicide was offered by *Hales* v *Petit*,[5] a decision of the Court of King's Bench in 1561. According to the court, suicide:

> is an offence against nature, against God, and against the King. Against nature, because it is contrary to the rules of self-preservation, which is the principle of nature, for every thing living does by instinct defend itself from destruction, and then, to destroy one's self is contrary to nature, and a thing most terrible. Against God, in that it is a breach of His commandment, thou shalt not kill; and to kill himself, by which act he kills in presumption his own soul, is a greater offence than to kill another. Against the King in that hereby he has lost a subject, and (as Brown termed it) he being the head has lost one of his mystical members. Also he has offended the King, in giving such an example to his subjects, and it belongs to the King, who has the government of the people, to take care that no evil example be given them, and an evil example is an offence against him.[6]

In 1736, Sir Matthew Hale's *History of The Pleas of the Crown* summed up the two-fold rationale for suicide being a crime:[7]

4 See Lord Atkin in *Beresford* v *Royal Insurance Co*, *supra,* note 2, at 598. See also the detailed analysis of the case and the implications of the decision in Furmston, "The Analysis of Illegal Contracts" 16 U of Toronto LJ 267, at 272-274.

5 75 ER 387.

6 *Ibid*, at 399-400.

7 At 411-412.

No man hath the absolute interest of himself, but

1. God almighty hath an interest and propriety in him, and therefore, self-murder is a sin against God.

2. The king hath an interest in him, and therefore the inquisition in case of self-murder is *felonice and voluntarie seipsum interfecit and murderarit contra pacem domini regis*.[8]

It is thus interesting to note that the main rationale behind the strict prohibition of suicide is that it is against both God and king. The first limb of this rationale may well be dubious in a secular state like Singapore where ecclesiastical affairs are kept separate from secular matters. Of course, the greater objection would be that it would impose a morality which may not be shared by the various races and religious groups in Singapore. The second limb offers a much more promising avenue because it focuses on the Sovereign's interest in the preservation of his subjects as well as that it would be an offence as it sets a bad example to others. It will be discussed in greater detail later when broad public policy questions are considered.

Of course, as one might expect in a case where the accused is dead, punishing a person who had committed suicide presented a unique problem – he was, by the nature of the crime, beyond the reach of the law to punish. Unlike other felons, he could not be executed. Therefore, the law made an attempt to deter suicides by targetting two things which would survive the death of an individual – his soul and his earthly possessions. His soul would be imperilled by the denial of a Christian burial. He would also be subject to the dishonouring of his corpse in that his body would be buried at night at crossroads of highways with a stake driven through his body. Such ecclesiastical censures and contemptuous burial were accompanied by secular sanctions providing for the forfeiture of his earthly possessions to the Crown. However, the forfeiture of the suicide's material possessions were confined to his goods and chattels, while his lands were still preserved to his heir.[9] It is clear that such measures were taken out in the hope of deterring any contemplative suicides, out of fear for the welfare of their families and heirs and their souls.

By the nineteenth century, these two sanctions were repealed. There were public calls to remove the penalties for suicide by the beginning of the nineteenth century. The severity of the sanctions for suicide led to their non-enforcement in that coroner's juries would more often than not turn

[8] 'Feloniously and voluntarily killed and murdered himself against the peace of the lord king.'

[9] Glanville Williams, *The Sanctity of Life and the Criminal Law*, 1958, at 231-237; Sir James Fitzjames Stephen, *A History of the Criminal Law of England*, vol III, 1883, at 105-107; Leon Radzinowicz, *A History of English Criminal Law*, vol 1, 1948, at 195-199.

in a verdict of temporary insanity to avoid the harsh results of a verdict of sane suicide.[10] Such reactions to these sanctions led to their gradual removal by Parliament. The practice of contempuous burial was abolished in 1823 by the Right to Burial Act,[11] which provided that it would no longer be lawful for any coroner to order that the burial of a *felo de se* 'in any public highway'. He was to order the body to be privately buried in a churchyard, or other burial ground, 'without any stake driven through the body', between nine and twelve at night, and without any religious rites. This was further altered in 1882 by the Interments (*felo de se*) Act, 1882,[12] which provides that the body of a suicide may be buried in any way authorised by the Burial Laws Amendment Act, 1880,[13] *ie*, either silently or with such Christian and orderly religious service at the grave as the person having charge of the body thinks fit. The law with regards to forfeiture of chattels for felony was abolished in 1870[14] by virtue of the Abolition of Forfeiture Acts.[15] So, the strange state of affairs existed right up to the complete abolition of suicide as a crime in 1961, by virtue of the Suicide Act, that suicide remained a felony, albeit without any criminal sanctions.

D. *After the Suicide Act 1961*

The complexion of Lord Atkin's approach is somewhat changed by subsequent legislative changes in England. The passing of the Suicide Act 1961 has rendered suicide in England no longer a crime.[16] Under the 1961 Act, attempted suicide is also no longer a crime, but criminal liability still attaches to a person who is involved in the suicide or attempted suicide of another.[17] This, of course, raises questions as to the continued efficacy and validity of the analysis adopted by the House of Lords in *Beresford* v *Royal Insurance Co.*[18] The approach, as enuniciated earlier, is a two-stage one. Firstly, there is the question of whether the insurer is contractually

[10] Glanville Williams, *ibid*, at 236. See also Hoffman & Webb, "Suicide As Murder at Common Law" (1981) 19 Criminology 372, at 377-380.

[11] 4 Geo 4, c 52.

[12] 45 & 46 Vic, c 19.

[13] 43 & 44 Vic, c 41.

[14] According to Glanville Williams, *ibid*, at 235-6:

> During the eighteenth century it became the practice for the Crown to waive the forfeiture in cases where the suicide was not committed to avoid conviction of felony, and later the forfeiture was waived even in this case. Thus the provision in the Forfeiture Act, 1870, which abolished forfeiture for suicide or other felony, did no more than to give legal effect to the established practice.

[15] 33 & 34 Vic, c 23.

[16] S 1 of the Suicide Act 1961.

[17] S 2 of the Suicide Act 1961.

[18] *Supra*, note 2.

undertaking to pay out in the event of a self-induced loss as in the case of a suicide. Secondly, there is the public policy bar on the grounds that to allow such a person or his estate to recover would be to allow a criminal to obtain a benefit from his ow crime. Since the first possible bar is one based purely on the construction of the policy, and as such a purely contractual question, this change in the legislative framework does not affect it and the analysis remains as it was. However, with regards to the second stage of enquiry, it must appear that the legislative change has the effect of removing the public policy bar as an impediment to a claim under the policy.

The position in England, subsequent to the coming into force of the Suicide Act 1961, would be that the entire enquiry would turn on the question of construction alone – whether the insurers have undertaken to pay out in the event of a suicide. In other words, the public policy question in the context of a claim under a life policy may well have become a non-issue.[19]

III. Beresford and the Penal Code

The position in Singapore is in a curious state of conjecture. There are no reported cases which have dealt with the issue of a claim under a life assurance policy in the event of the assured committing suicide in the local context. If one were to peruse the Penal Code,[20] one can find no reference to suicide being an offence. Of course, attempted suicide is an offence under section 309. This has led to arguments that even though suicide itself is not an offence under Singapore law but because the attempt of it has been criminalised and made punishable under the Code, it is arguable that the act of suicide *a fortiori* must also be illegal,[21] and as such, the public policy

[19] Davies, *Houseman and Davies: Law of Life Assurance*, (10th ed, 1984), at 81:

> The Suicide Act 1961 abolished the rule that suicide was a crime. There is no provision in the Act relating to life assurance policies. The position therefore is that the policy moneys will become payable on the life assured death by suicide unless payment is excluded expressly or impliedly by the terms of the contract made between the parties.

[20] Cap 224, Singapore Statutes, Rev Ed 1990.

[21] *Supra*, note 1, at 153. See also Poh Chu Chai, *Law of Insurance*, (3rd ed, 1993), at 535, although the learned author does admit that there are no reported local decisions in Singapore and Malaysia on the question of how the suicide of the assured affects a claim under a life assurance policy. Tan Lee Meng, *Insurance Law in Singapore*, (1988), at 213 opines that:

> This second ground on which the personal representatives of an assured who has committed suicide while sane are denied the right to enforce the assured's life policy is no longer relevant in England for with the coming into force of the Suicide Act 1961, suicide is no longer a crime in England. However, this Act does not apply in Singapore and both the above-mentioned grounds for denying the personal representatives of an assured who has committed suicide while sane the right to enforce the assured's policy remain valid in Singapore.

bar is alive and well in the local context. This then means that the two-step approach taken by the House of Lords in *Beresford* v *Royal Insurance Co*[22] is still of considerable importance and interest to us.

A. *Suicide and the Penal Code*

This proposition raises real questions of the construction of a Code. The first observation to be made here is that it appears to be trite law in India that suicide itself is not an offence.[23] It was also observed by Punjab Chief Court, albeit in *dicta*, in *Mussammat Thakri and Anor* v *Emperor,*[24] that:

> By section 309, Indian Penal Code, an attempt to commit suicide is punishable but there is no section of the Code making suicide itself an offence, obviously because in that case there would be no offender who could be brought within the purview of the law.

In another case, *Banerjee* v *Basudeb Mukherjee,*[25] the court observed as follows:

> To commit suicide ... is certainly not to do an act punishable by Penal Code. Suicide is no doubt self-murder. But one committing suicide places himself or herself beyond the reach of the law, and necessarily beyond the reach of any punishment too. But it does not follow that it is not forbidden by the Penal Code. It is very much indeed. Section 306 of the Penal Code punishes abetment of suicide. Section 309 punishes an attempt to commit suicide. Thus, suicide as such is no crime, as, indeed, it cannot be. But its attempt is; its abetment is too. So, it may very well be said that the Penal Code does forbid suicide.[26]

B. *The Beresford Approach and the Penal Code*

Although the Indian decisions and commentators are making observations about suicide as an offence in the context of the Indian Penal Code, they are nonetheless of highly persuasive authority not least because the local

[22] *Supra*, note 2.

[23] In fact, the editors of Ratanlal, *Law of Crimes*, Vol 2 (23rd ed, 1988), at 1116, have commented that s 309 is the only instance, in the Penal Code, in which an attempt to commit an offence is punishable but where actual commission cannot be punished.

[24] 1911 (12) Crim LJ 425, at 426.

[25] AIR 1969 Cal 293.

[26] *Ibid*, at 299 to 300.

Code is derived from the Indian Penal Code.[27] As such, it is pertinent to observe how the Indian courts have dealt with the approach laid down by the House of Lords in *Beresford* v *Royal Insurance Co,*[28] especially with regards to the issue of the public policy bar in a jurisdiciton where suicide is not an offence.

1. *Northern Indian Insurance Co* v *Kanhaya Lal*

In this respect, it is perhaps telling that the Indian decisions have declined to follow the approach in *Beresford* v *Royal Insurance Co.*[29] The first decision to be looked at is that of *Northern Indian Insurance Co* v *Kanhaya Lal.*[30] On 1st June 1932, the assured took out a life policy with the appellant insurers. It was provided, *inter alia*, that in the event of the person whose life was assured dying by his own hand before the policy had been in existence for one year, the policy was to be void and all premiums were to be forfeited. On 22nd November 1932, the assured assigned the policy in favour of his son, and on 9th August 1933 the assured committed sane suicide. The respondent son, as assignee, made a claim under the said life policy. On the insurers' failure to pay out, he instituted proceedings to recover under the policy. Liability was repudiated by the insurers, *inter alia*, on the basis that the assured had committed suicide with the deliberate object of enriching his estate and as such the claim was therefore void. The trial court held that as the assured had killed himself after the lapse of the one year period from the date of the issue of the policy as stipulated under the policy, the claimant was entitled to the sums claimed under the life policy.

The main argument canvassed by the appellant insurers on appeal was the respondent was not entitled to to any relief as he could not be allowed to benefit as a result of the crime committed by the assured. Great reliance was placed on *Beresford* v *Royal Insurance Co*[31] and the House of Lords holding that since under English law suicide was a felony, the descendants of the assured were not entitled to recover under the policy.

[27] The precursor of the Singapore Penal Code is the Penal Code of the Straits Settlements which was derived from the Indian Penal Code. The Straits Settlements Penal Code was passed by the Legislative Council of the Straits Settlements in 1871 as Ordinance No 4 of 1871 and came into force on 16 September 1872. Although the Singapore Penal Code has been amended from time to time, it still retains its main original provisions.

[28] *Supra*, note 2.

[29] *Supra*, note 2.

[30] AIR 1938 Lahore 561.

[31] *Supra*, note 2.

This reliance on *Beresford* v *Royal Insurance Co*[32] did not go down well with the Indian court who held that the case was inapplicable in the Indian context as the decision was premised upon the fact that under English common law, suicide was a felony. This is to be contrasted with the position under the Indian Penal Code. As pointed out by Abdul Rashid J[33] the committing of suicide is not an offence in India. Attempted suicide and abetment of suicide are punishable under the Penal Code,[34] but, however, the committing of suicide in itself is not and cannot be regarded as a crime in India. The learned judge pointed out:

> In this respect the English Common law is inapplicable to India as the criminal law of India is the creation of Statute.[35]

As such, since there is no provision for suicide being an offence under the statute and the public policy bar cannot be applied in this case, all that remained to be considered with the question of construction of the policy itself. Here, since the suicide occurred after the one year period, about eighteen months after the issue of the policy, there was no reason why the insurers should not be made to comply with their contractual obligation under the policy.

2. *Scottish Union and National Insurance Co* v *NR Jahan Begum*

A much more important and instructive case in which the Indian courts have distinguished *Beresford* v *Royal Insurance Co*[36] is the case of *Scottish Union and National Insurance Co* v *NR Jahan Begum.*[37] Here the assured took out a life policy with the defendant insurers in 1928. In subsequent years, the assured took out several other policies with the defendants. On 31st August 1935, the assured submitted fresh proposals for twelve more policies, along with the payment for the first premium for all of these policies applied for. These proposals were accepted by the defendants insurers and the receipts were issued in due course on 11th September 1935. The understanding was that the policies were to follow once they had been received from the Head Office in England. On the night between 12th and 13th September 1935, the assured shot and killed himself after shooting his second wife while resolving some domestic disputes. There were various

32 *Supra*, note 2.
33 *Supra*, note 30, at 562.
34 Under s 309 and s 306 of the Indian Penal Code respectively.
35 *Supra*, note 30, at 562.
36 *Supra*, note 2.
37 AIR (32) 1945 Oudh 152.

grounds on which the insurers defended the action by the wife of the assured. The only one which need detain us is the plea of a public policy bar against the claim under the policy. The learned court offered comprehensive reasons why they would decline to follow the case of *Beresford* v *Royal Insurance Co.*[38]

The court perused the decision of both the Court of Appeal and the House of Lords in *Beresford* v *Royal Insurance Co*[39] with regards to the question of the public policy bar. The court placed particular emphasis on the following passage in the judgment of the Court of Appeal:

> Opinions may differ whether the suicide of a man while sane should be deemed to be a crime, but it is so law. The old inquisition in the case of self-murder was *felonice et voluntarie seipum inter fecit et murderavit* – Hale's Pleas of the Crown (Ch 31, p 412). It may be that both ecclesiastical and civil penalties have been mitigated or abolished *but the criminal law still remains. Only the Legislature in this country can change the law in this matter if it should so will. While the law remains unchanged the Court must, we think, apply the general principle* that it will not allow a criminal or his representative to reap by the judgment of the Court the fruits of his crime.[40]

One can see the reason why the Indian court placed such great emphasis on this conclusion by Lord Wright MR. If the reason why the English courts had felt constrained to hold that in England, suicide would bar a claim by anyone tainted by the assured's title under a life policy, and that any change in the common law should be initiated by Act of Parliament, then in India, as in Singapore, the answer may be simple. This is because under the Penal Code, although the abetment of suicide and an attempt at suicide is an offence, the act of suicide itself is not criminalised. Thus, following from that line of reasoning, one cannot help but come to the irresistible conclusion that the public policy bar should not apply in a Penal Code jurisdiction.

In fact, the court came to the conclusion that the question of whether suicide is against public policy has to depend on the system of jurisprudence and criminal justice in place in the country in question. It cannot be, therefore, the case that every act which is considered by English law to be a crime is necessarily so regarded in India or some other country. The court relied on a couple of examples to illustrate this point. It was then a crime in England

[38] *Supra*, note 2.
[39] *Supra*, note 2.
[40] *Per* Lord Wright MR, *Beresford* v *Royal Insurance Co* [1937] 2 KB 197, at 219, as quoted in *supra*, note 37, at 157.

not to send a child to school whereas it was not an offence in India not to do so. Another illustration would be with regards to champerty – the crime of champerty was well known to English law, whilst in India, it was neither an offence nor was it against public policy.[41]

(i) *Suicide not mentioned in the Penal Code*

The court also examined the statutory framework of the Penal Code and came to the conclusion that suicide is not an offence. As far as the learned court was concerned, the determination of the issue was largely dependant upon the definition of the word 'offence' under section 40 of the Penal Code. Here, 'offence' is defined as a thing punishable under the Code, or by the various sections of special or local as therein specified.[42] Moreover, section 2 of the Indian Penal Code[43] provides that:

> Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within British India.

The court also drew comfort from the definition section in the Criminal Procedure Code of India, under which section 4(1)(o) provides that an offence is 'any act or omission made punishable by any law for the time being in force'.[44] The conclusion was therefore that suicide was not punishable under the Penal Code or any other law and as such could not be reckoned as an offence within the meaning of section 40 of the Penal Code or section 4 of the Indian Criminal Procedure Code. The fact that the abetment of suicide and the attempt of suicide are made offences does not alter the analysis of the issue or the conclusion.

The approach of the Indian Court can also be supported by the guidelines offered by the House of Lords in the case of *Bank of England* v *Vagliano Brothers*,[45] where their Lordships had to deal with questions relating to the English Bills of Exchange Act 1882.[46] The main argument canvassed before their Lordships was a proposition based on a perusal of the state of law

41 *Supra*, note 37, at 158.

42 Under s 40 of the Singapore Penal Code, the word 'offence' is generally described as a thing which is punishable under the Code or under any other law for the time being in force.

43 S 2 of the Singapore Penal Code reads the same except for the reference to British India, which is substituted with a reference to Singapore.

44 S 2 of the Singapore Criminal Procedure Code, Cap 68, Singapore Statutes, Rev Ed 1990, defines 'offence' in the same terms.

45 [1891] AC 107.

46 45 & 46 Vict, c 61.

at the time the Bills of Exchange Act was passed into law. The judgment of Lord Herschell is particularly instructive in the interpretation of codes of the law in any area. His Lordship was of the opinion that the proper course in approaching questions arising in the area of law codified is to first look at the statute and give the language contained therein its natural meaning, uninfluenced by any consideration derived by the previous state of the law. One should not begin with the enquiry as to how the law stood previously and then, on the assumption that Parliament probably did not intend to alter it, to see if the words of the statute will bear an interpretation consistent with this view of the law. His Lordship felt very strongly that:

> If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utitility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions...[47]

Lord Herschell, of course, was not of the opinion that resort may never be made to the previous state of case law for the purpose of aiding in the interpretation of the provisions of the code. He conceived of two situations whereby it would be perfectly legitimate to have recourse to previous authorities. One would be for the resolution of words or provisions of dubious import. The other would be where particular words have acquired a technical meaning, different from their ordinary meaning, resort may be had to previous cases and the same meaning may well be given to them when used in the code. His Lordship did not purport for the categories, where it is legitimate to make an enquiry into the previous state of law, to be closed; but he did caution that such resort can only be justified on special grounds. In the first instance, the proper step would always be to interprete the language of the enactment.

Applying these guidelines to the interpretation of the Penal Code, one must come to the conclusion that suicide itself is not an offence under the Penal Code, regardless of how the common law might have stood at the time when the Penal Code was drafted. In fact, if one were to look at the historical background of the drafting of the Indian Penal Code and the philosophical beliefs of the first Indian Law Commissioners, one would

[47] *Supra*, note 45, at 145.

discover that it is a myth that the Code was intended to just be a codification of English law. In fact, the only reason why all too often one looks to English law when trying to fathom certain provisions of the Penal Code, in the words of a learned commentator, 'may well be that the minds of Asian lawyers are still crippled by the legacy of colonialism'.[48]

In any event, it may well be that the maxim '*expressio unius est exclusio alterius*', *viz*, express mention of one thing is the exclusion of the other, may apply here. The Penal Code makes express provision for the offences of the attempt of as well as the abetment of suicide, and yet fails to provide for the criminalisation of the act of suicide itself. This omission to provide that suicide is an offence may well be deliberate.

(ii) *Suicide as Self-Murder*

Of course, a perusal of the Penal Code itself may offer an interesting argument that the words of section 299 and section 300, which relate to the offences of culplable homicide and murder, would admit the possibility of a person who murders, not another person, but himself, *ie*, self-murder, may be liable thereunder. Although this argument is on the face of it plausible, the court in the present case exposed the argument as being fallacious.[49] The reason being that for murder, the punishment for murder under section 300 is death.[50] This would lead to strange results in that a dead person who succeeds in committing suicide is then tried and sentenced to death. Of course, by way of Exception 5,[51] if the person who has committed suicide is above the age of 18, it would be reduced to the offence of culpable homicide, and punishable under section 304(a) with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall be also liable to fine or to caning. But should the person who has committed suicide be below the age of 18, he will then not be able to rely on Exception 5 to section 300 and he will be then liable for murder under section 300 which is punishable by death, which of course presents problems as he

[48] Sornarajah, "The Definition of Murder under the Penal Code" [1994] SJLS 1, at 7. See his concise but excellent discussion of the approach of the drafters of the Indian Penal Code and their aims and influences at 2-7. See also Andrew Phang, "Of Codes and Ideology: Some Notes on the Origins of the Major Criminal Enactments of Singapore" (1989) 31 Mal LR 46, at 48-63, for a comprehensive account of the ideology behind the drafting of the Indian Penal Code and the history behind the Singapore Penal Code.

[49] *Supra*, note 37, at 159.

[50] S 302.

[51] Which reads as follows:

> Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.

is by necessity already dead. This is would indeed be a strange result. Even more alarming is that if the person who has committed suicide should be suffering from unsoundness of mind under section 84, he will be completely exculpated from any criminal liability. In that case, the person who has abetted him will be liable under section 305 to be punished by death or imprisonment for life, or with imprisonment for a term not exceeding 10 years, and shall also be liable to fine. What would happen here is that a person who has abetted a non-criminal, if the person who committed suicide was suffering from unsoundness of mind, will be liable to a greater punishment than a person who has abetted a criminal, if the person who committed suicide was above 18 and as such would only be liable for culpable homicide by virtue of Exception 5. Since there are no specific provisions for the punishment for abetment of culpable homicide, one would have to turn to section 109 which provides that:

> Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

The person who has committed suicide while labouring under unsoundness of mind would be considered not to have committed a crime, and yet his abettor would be liable for up to death under section 305. On the other hand, if the person is not so encumbered but has the defence of consent, by virtue of Exception 5, he would only be liable for culpable homicide, and as such liable under section 304(a) for a maximum of life imprisonment. His abettor would then be liable for the same punishment by reason of section 109. This result the Indian court found to be objectionable because it would turn on its head the basic premise as embodied in section 109 that the abettor should, as a general rule, suffer the same punishment as the person he abetted. However, because of section 305, we may have the result where the person who has abetted a non-criminal is punished more severely than a person who has abetted a criminal.

On the same issue of the possibility of culpable homicide and murder being read to cover a situation of suicide as self-murder, an intriguing question arises as to the impact on all this by the illustration to Exception 5 of section 300, which reads:

> A by instigation, voluntarily causes Z, a person under 18 years of age, to commit suicide. Here, on account of Z's youth he was incapable of giving consent to his own death; A has therefore abetted murder.

The first observation that comes to mind has to be that if A has abetted murder, then it must follow that what Z has done, although described as suicide, must have been murder. This may well lend support to an argument that suicide may well fall within the ambit of the offences of culpable homicide or murder. The second thing that one must notice is the inconsistency between the characterisation of A's act as abetment of murder and section 305, which purports to cover the offence of abetment of suicide by a child under the age of 18 years.

The question must then be – what effect does this illustration have on the substantive provisions as found in section 300 and section 305? The Indian Court also dealt with this question even though it was not raised by counsel. The opinion of the court was that the sole purpose of an illustration is not so much to control the substantive provisions of the Act but to exemplify the meaning of the provision to which it is attached.[52] The court relied on an observation by their Lordships of the Privy Council, in dealing with the role of an illustration to the Contract Act:

> Nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.[53]

Some guidance can also be derived from another Privy Council decision where their Lordships, in hearing an appeal from the Supreme Court of the Straits Settlements, had to deal with the relevance of illustrations in the Straits Settlements Evidence Ordinance. Lord Shaw of Dunfermline in delivering the decision of the Judicial Commission has this to say:

> ...in the construction of the Evidence Ordinance it is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.[54]

[52] *Ibid*, at 159.
[53] *Bengal Nagpur Railway Co Ltd* v *Buttanji Ramji and others* AIR (25) 1938 PC 67, at 70.
[54] *Mahomed Syedol Ariffin* v *Yeoh Ooi Gark* [1916] 2 AC 575, at 581.

Thus, it is seen that under the guidelines laid down by the Privy Council in the two cases, there is no suggestion that the illustrations themselves have the effect of changing the nature or substance of the main provisions themselves. They are there merely to explain and exemplify the substantive provisions. As such, it may well be difficult to say that the illustration to Exception 5 of section 300 lends much weight towards the argument that suicide falls within the ambit of culpable homicide or murder. In fact, *Ratanlal* in his commentary on the illustration to Exception 5 simply makes the cross reference to section 305.[55]

Perhaps a more fundamental problem with characterising suicide as self-murder and, as such, within the ambit of sections 299 and 300 is that it would have to admit of the interpretation that culpable homicide and murder under the Penal Code would encompass not just what is done to another person but also what is done to oneself. The former understanding of the nature of homicide is well-established, and has always been the presumed position as far as the courts and commentators on criminal law in the Penal Code jurisdictions are concerned. To adopt a wider view of homicide to include death inflicted onto oneself as well would require a fundamental rethink and review of the way these offences are viewed.

C. *Applicability of the Beresford Approach Since Suicide is not an Offence*

In England, at least, suicide is no longer a crime, and thus, the question of whether recovery can be made under a life policy which has no clause excluding death by suicide on the suicide of an assured who is not insane remains to be determined.[56] What is clear, however, is that the general principle in insurance law that the assured cannot by his own deliberate act cause the event upon which the insurance money is payable has no application in a situation where the policy expressly or by necessary implication includes the risk of sane suicide.[57] In fact, the editors of MacGillivray & Parkington on Insurance Law[58] go as far as to suggest that since suicide is no longer a crime in England, there is now no rule of public policy to prevent the recovery of policy moneys payable under

55 *Supra*, note 23, at 1116.

56 *Halsbury's Laws of England* (4th Ed), Vol 9, at para 390.

57 *Ibid*, at note 15.

58 *MacGillivray & Parkington on Insurance Law (relating to all risks other than marine)* (8th ed, 1988).

59 *Ibid*, at para 495:

> So far as the law of England and Wales is concerned, the Suicide Act 1961 provides that suicide is no longer a crime, with the result that no rule of public policy prevents the recovery of the policy money by the assured's personal representatives or by his

a life policy.[59]

If it is accepted that suicide is not, and has never been, a crime under the Singapore Penal Code, there is no reason why the second limb of Lord Atkin's test in *Beresford* v *Royal Insurance Co*[60] should continue to apply so that there is a public policy bar in the local context. Then, the only question that needs to be asked on the issue of whether the estate of the assured who has committed suicide is allowed to recover under the life policy must surely turn on the first stage of the test only, *ie,* on the construction of the policy itself.

IV. The Public Conscience Test

It is perhaps pertinent to note that even if the argument based on the illegality of suicide, or even of the possibility of an offence of culpable homicide or murder under sections 299 and 300 respectively of the Penal Code, should fail on the basis of the persuasive authorities of the Indian courts on the same question, there is still a possible barrier introduced by the decision of the English Court of Appeal of *Euro-Diam Ltd* v *Bathurst.*[61]

A. *Euro-Diam Ltd* v *Bathurst*

The insured, an English Company dealing with diamonds, effected a policy on their diamonds with the defendant insurers. Some of the plaintiff's diamonds, which had been sent to be sold in Germany were stolen. When the plaintiffs made a claim under the policy, one of the questions which arose was whether the plaintiff's right to make a claim under their policy was affected by the fact that the German wholesalers, to whom the diamonds had been sent, had committed the offence of tax evasion and tax endangerment under German law (the invoice given by the plaintiffs to the Germans understated the value of the goods so that their customers could pay less customs duties; the goods were insured at the invoice value).

Hearing the case at first instance, Staughton J distinguished *Geismar*

assigns. The act of the assured in taking his own life is no longer illegal, so that the reasoning of the decision in the *Beresford* case no longer applies to invalidate a payment to the assured's estate or to his successors in title, or to assignees, whether for value or not.

60 *Supra*, note 2.

61 [1990] 1 QB 1.

62 [1978] QB 383. The plaintiff had effected 3 policies against loss through theft of the contents of his house with the defendants. The plaintiff brought into the UK some items of jewellery which were not declared for the purpose of payment of customs duty. Subsequently, several of these items were stolen from the plaintiff's house during the currency of the policy. The defendant insurers refused to indemnify the plaintiff in respect of the loss of these items

v *Sun Alliance and London Insurance Ltd.*[62] on the ground that the illegality in that case went directly to the plaintiff's possession of the goods which had been stolen whereas in the present case, the title to the goods was in no way affected by any illegality and the acts of illegality complained of were merely incidental to the insured's claim.

A claim was to be considered to be tainted with illegality, if the plaintiff had to rely on his illegal conduct in order to establish his claim or if the claim was so closely connected with the proceeds of the crime as to offend the conscience of the Court.

The insurers appealed and the Court of Appeal affirmed the decision of the lower court. Although the plaintiffs probably realised that the invoice would be used by their customer to deceive German customs, they did it for their customer and not for their own purposes. It was also found that the plaintiffs did not have to rely on the invoice to establish their claim against the insurers as the valuation of the articles insured was based on what was recorded in the plaintiff's register and this contained a correct record of the value of the diamonds.

The Court of Appeal opined that the *ex turpi causa* defence rests ultimately on the principle of public policy that the court will not assist the plaintiff who has been guilty of illegal (immoral) conduct of which the court should take notice. The *ex turpi causa* defence will *prima facie* succeed where:

(1) Plaintiff seeks to, or is forced to, found his claim on an illegal contract; or to plead its illegality to support his claim; or

(2) Where the grant of relief to the plaintiff would enable him to benefit from his criminal conduct.

(3) Where, even though neither (1) nor (2) is applicable to the claim, the situation is nonetheless covered by the general principle.

However, Kerr LJ did caution that the *ex turpi* defence should be approached

on the ground that it was against public policy to indemnify the insured in respect of loss of items for which customs duty had not been paid.
Talbot J pointed out that this was not a case of unintentional importation or of innocent possession of uncustomed goods but one involving a deliberate breach of the law. The court accepted that a contract of insurance, which is separate and apart from the illegal act complained of, is not rendered unenforceable but added that if the contract of insurance purports to cover property which the law forbids the insured to have, then the contract is directly connected with the illegal act and is unenforceable. To allow the plaintiff to recover under the policies in this case would be to allow him to recover the insured value of goods which might have been confiscated at any moment and which were potentially of no value to him. In the circumstances, the plaintiff's claim was dismissed.

pragmatically and with caution, depending on the circumstances. There is therefore a need to distinguish from these categories cases where the plaintiff's claim is not founded on any illegal act; but some reprehensible conduct on his part is disclosed in the cause of the proceedings. In such a case, the *ex turpi* defence will not succeed.

In the present case, the understated invoice had no bearing on the loss of the diamonds. It involved no deception of the insurers, since the true value of the diamonds was recorded and the correct premium was paid. Thus, public policy does not require the rejection of the claim.

B. The *Euro-Diam* Approach

In the course of the Court of Appeal's decision in the present case, Kerr LJ took the opportunity to examine the cases on the illegality bar in insurance claims and laid down the following guiding principles in the application of the ex turpi defence in the context of insurance claims:

(1) The guiding rule was that the court would not assist a plaintiff who had been guilty of illegal or immoral conduct of which the court should take notice. The court should prepared to disallow recovery where a successful action would be an affront to the public conscience in that the court would be seen to be assisting in an illegal or immoral design.

(2) The *ex turpi causa* defence will *prima facie* succeed in a number of cases, including:

  (a) where the plaintiff is forced to found his claim on his own illegal act;

  (b) where the grant of relief to the plaintiff would enable him to benefit from his own criminal conduct;

  (c) in residual circumstances falling outside the above, but still covered by (1).

(3) The *ex turpi causa* principle is to be approached pragmatically and with caution, so that not every act of illegality prevents recovery.

Of particular interest to us in the context of our discussion is the so-called residual category under the illegality bar, where although the plaintiff need not found his claim on his illegal act, nor will he derive any benefit from his criminal conduct, he may still be barred if to allow the claim would nonetheless be an affront to the public conscience. The first thing that

comes to mind is the width of this residual ground for disallowing a claim. Obviously, if the plaintiff has committed some illegal act, there may be grounds for saying that to allow the claim will be allowing the courts to be seen to assist him in his wrongdoing. However, to extend it to a situation where it covers 'immoral designs' may well make it rather obscure. It obviously cannot be taken to be equated with sexual immorality because it would then add nothing to the law because the bar against contracts which are sexually immoral is well established. If it means the greater morality, it would then be opening the Pandora's Box of questions as to the particular society's morals. It may well be that this would lead to the courts having to pronounce on questions of morality, for which it is respectfully suggested, they may well not be equipped.[63] In addition to the objection that this is really the realm of the Legislature, it may well lead to the dangers of the court riding the unruly horse of public policy without the benefit of a saddle.

C. *The Public Conscience Test and Illegality*

A more fundamental objection of using the residual jurisdiction of the court not to grant relief on the 'public conscience' test, in the context of claims arising after the suicide of the assured, is that it would appear to apply only where the plaintiff asking for relief before the court has committed some illegality.[64] A perusal of the authorities relied upon by the courts in *Euro-Diam Ltd* v *Bathurst*[65] in arriving at the conclusion that there is this residual jurisdiction to deny relief on the grounds of a successful claim before the courts possibly offending the public conscience will reveal that these cases all dealt with situations where there is some form of criminal

63 For a contrary view, see Andrew Phang, *infra*, note 99.

64 See Andrew Phang, *Cheshire, Fifoot and Furmston, Law of Contract, Singapore and Malaysian Edition* (1994) at 363, where the learned author assumes that the context in which this residual jurisdiction operates is where there is some illegality. See also *supra*, note 61, at 35-36 where Kerr LJ cautions against confusing situations where the plaintiff's claim is not founded on any illegal act with situations which would be caught by the *ex turpi* defence. Even where some reprehensible conduct on the part of the plaintiff is disclosed in the course of the proceedings, the *ex turpi* defence will not succeed.

65 *Supra*, note 61.

66 *Eg*, *Thackwell* v *Barclays Bank Plc* [1986] 1 All ER 676 (where the criminal act involved was a fraudulent financing scheme); *Saunders* v *Edwards* [1987] 1 WLR 1116 (where there had been a deliberate misstatement of the values of the premises leased so as reduce the stamp duty payable on the transaction); *Pye* v *BG Transport Service Ltd* [1966] 2 Lloyd's Report 300 (where goods were invoiced at less than true value in order to deceive the customs authorities).

67 *Ibid.*

or illegal conduct involved.[66] In fact, in *Thackwell* v *Barclays Bank Plc*,[67] on which Kerr LJ placed great reliance for the residual jurisdiction, Hutchison J was making his comments in the context of illegality and its effect on claims before the courts.[68] Thus, it is clear that the 'public conscience' test presupposes that there is some form of illegality disclosed on which the plaintiff does not have to rely on, nor is he seeking to benefit from, but which nonetheless may cause the courts to be loathe to grant relief.

An example of this view would the approach taken by the courts in the case of *Sim Tony* v *Lim Ah Ghee*.[69] The plaintiff, who was at the material time a CPIB officer, helped a vendor find buyers for several of his properties. He then notified two estate agents of the sale. The sale was effected to one of the prospective buyers introduced by these estate agents. After the introduction of the buyer, but before the sale was concluded, it was alleged by the plaintiff that there was an agreement for him to share in the commission earned on the sale.

The case was disposed of on two main grounds. Firstly, the court found as a fact that there was no agreement prior to the introduction of the buyer to share the comission with the plaintiff. Secondly, that being the case, the act of introducing the buyers, which would have formed the consideration for the agreement to share the commission earned, occurred prior to the agreement and as such the consideration was *prima facie* past. This was especially so since the plaintiff had initially rendered assistance gratuitously not expecting any reward.

Counsel for the defendants raised the further argument that even if there had been a valid agreement, the plaintiff would not have able to enforce the agreement on the grounds that the agreement, although not *ex facie* illegal, was tainted with illegality in that it had some connection with some illegal conduct such that it would be an affront to the public conscience if by affording the plaintiff the relief he sought the court was seen to be indirectly assisting or encouraging the plaintiff in his criminal act. The instruction manual (IM) which governs the conduct of public servants was raised, under which it is prohibited for any public servant to engage in any trade or business without the written approval of the Permanent Secretary

[68] *Ibid*, at 687:

> ... the court in looking at the quality of the illegality relied on by the defendant and all the surrounding circumstances, without fine distinctions, and seeking to answer two questions; first, whether there had been illegality of which the court should take notice and, second, whether in all the circumstances it would be an affront to the public conscience if by affording him the relief sought the court was seen to be indirectly assisting or encouraging the plaintiff in his criminal act ...

[69] [1994] 3 SLR 224; [1995] 2 SLR 466.

[70] Rule 145, Section L, IM No 2.

(Finance) (Public Service).[70] Lai Siu Chiu J adopted the approach of first determining the legal status of the instruction manual. The court found that the instruction manual did not carry the force of law, being merely internal regulations and being in essence the terms of employment laid down by the Public Service Commission. As such, there would be no breach of section 168[71] of the Penal Code since he was not legally bound by the instruction manual not to engage in trade or business. Lai J referred to section 43 for the Penal Code for the meaning of 'legally bound'. And since the breach of the instruction manual would only lead to disciplinary action and does not fall within any of the definitions in section 43,[72] there would be no breach of section 168. Since the agreement is not tainted with illegality in that it is not connected with any activity or conduct which is illegal as defined under section 43 of the Penal Code, the High Court came to the conclusion that there could be no objection that it was unenforceable on the grounds of public policy.

The Court of Appeal, in hearing the appeal from the instant case, affirmed the decision of the High Court on all counts and dismissed the appeal. Chao J, in delivering the decision of the Court of Appeal, agreed that since the instruction manual did not have the force of law, such an agreement entered into in breach of a service condition could not be rendered unenforceable on the ground of public policy.

D. *Demise of the Public Conscience Test?*

Of course, even if one were to take the view that the 'public conscience' test is wide enough to cover a situation where there is no illegality disclosed on the facts, the authority of the Court of Appeal's decision in *Euro-Diam Ltd* v *Bathurst*[73] as well as the whle line of cases that gave credance to the 'public conscience' test must be in grave doubt after the decision of the House of Lords in *Tinsley* v *Milligan*.[74] In this case, there was a dispute as to property rights over premises which were registered in the plaintiff's name only so as to deceive the Department of Social Services, even though it was the understanding that the plaintiff and the defendant were joint beneficial owners. The two fell out and the plaintiff then took out an action

[71] This section reads: "Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

[72] This section reads: "The word 'illegal' is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be 'legally bound to do' whatever is illegal for him to omit."

[73] *Supra*, note 61.

[74] [1994] 1 AC 340.

claiming sole ownership of the property. The defendant counterclaimed for an order for sale and a declaration that the property was held by the plaintiff on trust for the parties in equal shares. The Court of Appeal had held that the property was indeed held on trust and that in the circumstances the public conscience would not be affronted if the defendant's counterclaim were to succeed.

Lord Goff's judgment is particularly instructive because he undertook a thorough survey of the line of authorities that suggest the 'public conscience' test.[75] Lord Goff finds the development of the 'public conscience' test difficult to justify. Firstly, he found that the principle was inconsistent with many decisions binding on the Court of Appeal. Secondly, in his survey of the cases relied on by the Court of Appeal in deriving the test, he could not find this test as forming part of the decisions in the cases in question. His Lordship's most serious objection to the test was that it amounted to stating that the court has a discretion whether to grant or refuse relief. Even though there were no House of Lord's decision, and as such the House was free to depart from the line of authorities which laid down the strict rules,[76] his Lordship was doubtful if it was preferable to replace them with a 'wholly different discretionary system'.

Thus, it would appear that the 'public conscience' test enunciated by Kerr LJ in *Euro-Diam Ltd* v *Bathurst*[77] has met its demise in *Tinsley* v *Milligan*.[78] It would appear then that the views expressed by Kerr LJ in *Euro-Diam Ltd* v *Bathurst*[79] are of little assistance to casting light on the issue of suicide and the illegality bar. For one thing, it appears to work only if there is, to begin with, an illegality involved, which appears not to be the case with suicide in the local context. Of greater importance is that the case of *Euro-Diam Ltd* v *Bathurst,*[80] insofar as the decision stands

[75] Lord Goff's judgment was a dissenting one, but is nonetheless authoritative because although he differed from the majority on the correct principle to be applied in a case where equitable property rights are acquired as a result of an illegal transaction, they did not doubt his opinion that the consequences of being a party to an illegal transaction cannot depend on the extent to which the public conscience would be affronted by recognising rights created by illegal transactions.

[76] That claims would be barred on grounds of public policy if the party claiming relief would either have to rely on an illegal act, or to grant him relief would be to allow him to benefit from his wrongdoing.

[77] *Supra*, note 61.

[78] See Andrew Phang, *supra*, note 64, commenting on cases like *Euro-Diam Ltd* v *Bathurst*, *supra*, note 61, at 563: "It should, however, be noted that in so far as these ... decisions endorse the 'public conscience test' with regard to the issue as to whether or not to grant or refuse relief in cases of illegality, this is probably no longer the law after the very recent decision by the House of Lords in *Tinsley* v *Milligan*."

[79] *Supra*, note 61.

[80] *Supra*, note 61.

[81] But, of course, it remains to be seen whether the local courts will follow suit and disavow the 'public conscience test'. It is interesting, of course, to note that no mention was made

as authority for the public conscience test, is now of dubious authority.[81]

V. Public Policy

Although the 'public conscience test' has seen its last days, there remains the question of whether, aside from the possible bar on the basis of the assured benefitting from his own criminal act, there is any other basis why the courts will refuse to enforce the claim under the life policy in such circumstances. Any agreement which tends to be injurious to the public or against the public good may be invalidated on the grounds of public policy. The application of this rule varies with the principles which for the time being guide public opinion.[82] In fact, the Indian Court in *Scottish Union and National Insurance Co* v *NR Jahan Begum*[83] opined that public policy with regards to suicide must be determined by the sense in which the law and public opinion of the country in which it takes place understands it. It therefore came to the conclusion that suicide is not against public policy in India whether measured by the normal conception of society or by its laws.[84] The question then remains as to to the normal conception of society in Singapore as to whether suicide should then be contrary to public policy, even if it is not an offence under the criminal law of Singapore.

One has to trace the origins of why suicide is frowned upon by the law in England and compare the cultural and philosophical background in the

in either the High Court or Court of Appeal decision in *Sim Tony* v *Lim Ah Ghee*, *supra*, note 69, where the High Court, in particular, relied heavily on *Euro-Diam Ltd* v *Bathurst, supra*, note 61, and *Thackwell* v *Barclays Bank Plc, supra*, note 66. These cases were decided after *Tinsley* v *Milligan, supra*, note 74, was reported.

82 *Halsbury's Laws of England* (4th Ed), Vol 9, at para 392. Although these points were made in the context of discussion of on the meaning of public policy under contracts invalidated by public policy, the Court of Appeal in *Sim Tony* v *Lim Ah Ghee, supra*, note 69, at 474, relied on this in the context of deciding whether to enforce a contract which was not *per se* illegal, but whether public policy would dictate that it will not lend its hand in enforcing the contract. Andrew Phang, *supra*, note 64, at 532, also takes the view that since public policy reflects the mores and fundamental assumptions of the community, the content of the rules should vary from country to country and from era to era.

83 *Supra*, note 37.

84 *Supra*, note 37, at 460, where the court concluded that:

> Public policy in regard to suicide must, therefore, be public policy determined by the sense in which the law and public opinion of the country in which it takes place understand it. Suicide in India under certain circumstances is approved, and we conceive that in a country like Japan, for example, suicide is considered to be highly meritorious in certain circumstances. We remember that one time the murder of a gallant combatant in a duel was by no means looked at with disfavour by the law of France. In India we would unhesitatingly hold that suicide is not against public policy as exhibited by the normal conception of society or as conceived by its laws.

local context for a meaningful exploration of the issue. As pointed out earlier, the English courts criminalised suicide because it was considered to be an offence against both God and king. It was an offence against God because it violated the Sixth Commandment 'thou shalt not kill'. Since God had brought each person onto this world, it was for God to decide on life and death and not for the individual himself.[85] It is interesting, of course, that the earlier civilisations of Greece and Rome did not emphatically reject suicide, nor indeed did the early Christians nor is there anything in the Old or New Testament which expressly prohibits suicide. This view of suicide being an offence against God can be traced to Saint Augustine in the fifth century.[86]

To be contrasted with this view that suicide is an absolute sin is the view that suicide can sometimes morally laudable or even morally neutral. In the local context, it is therefore appropriate to explore the significance of suicide to the culture of the local populace. Studies have shown the different cultural groups in Singapore have varying degrees of tolerance for suicidal behaviour. The Chinese culture has very much mixed views on suicide. On the one hand, it glorifies suicides by generals and statesmen in moments of despair, and many incidents of suicide are romanticised in classic novels; on the other hand, Confucianism frowns upon self-mutilation or self-destruction as it runs counter to its basic tenet of filial piety. But, even then, it is looked upon with some degree of pity and mercy. As such, it is not really all that clear the Chinese culture views suicide with the same abhorrence as Christianity does.[87] Hindu Indian culture shows the same ambivalence, if not tolerance, towards suicidal behaviour.[88] On the other hand, Malay culture views suicide as a violation of the divine commandment of the Koran which provides that the soul dies only with the permission of Allah.[89]

So, it is clear, at least in relation to the heterogeneous cultural backgrounds of Singaporeans, that it cannot be generally said that suicide is a 'wrong'. In fact, it has been concluded by one study that:

> The ... analysis of the meaning of suicide in the Chinese, Indian and Malay cultures ... does indicate that unlike the cultural logic of Malay Muslim society the cultural logic of the Chinese and (Hindu) Indian societies does not condemn suicide explicitly. The Chinese and Indian

[85] Glanville Williams, *supra*, note 9, at 240.
[86] Glanville Williams, *supra*, note 9, at Ch 7.
[87] Riaz Hassan, *A Way of Dying: Suicide in Singapore* (1983), at 42-46; Chia Boon Hock, *Suicidal Behaviour in Singapore* (1981), at 8.
[88] Riaz Hassan, *ibid*, at 46-48; Chia Boon Hock, *ibid*, at 6-7.
[89] Riaz Hassan, *ibid*, at 49-50; Chia Boon Hock, *ibid*, at 6, 8.

> cultures in fact sanction certain types of altruistically motivated self-sacrifices by their respective members. As we have also seen, both of these cultures are more tolerant of suicide than the Malay culture which, following the Islamic tenets, strongly condemns suicide. The differences in cultural meaning of suicide are in fact reflected in the suicide rates for the Chinese, Indians and Malays and, in the light of different cultural attitudes, it is not surprising, therefore, that the Malays have significantly lower suicide rates than the Chinese and the Indians, whose cultures are more tolerant of suicide as a way of dying.[90]

It is therefore safe to conclude that the ethics and morality of suicide in Singapore society remains unresolved as it can by no means be said to be unanimous. As such, it will be very difficult for the courts to hold that suicide is against public policy as being clearly and universally contrary to the views of Singapore society.

Presumably, part of the rationale for disallowing the claim under the life policy by the estate of a suicide would be to deter suicides in that it will be apparent to any prospective suicides that they (or rather, their estates) will not be able to benefit from his suicide. This possible motivation for disallowing claims under life policies in cases of death by suicide, even if it is assumed that it may be possible to classify suicide as a 'wrong' in the local context and thereby falling within the public policy bar, would run up against the statistics on the causes of suicide. The main causes of suicide in Singapore are mental illness (29 percent), physical illness (26 percent), interpersonal problems (23 percent), economic and employment problems (13 percent), social problems (6 percent), and chronic alcoholism and opium addiction (2 percent).[91] It can be seen that it is misleading to think that suicides are motivated by material gains of any sort. In fact, it has been observed that:

> ... it is a well-recognised fact that suicidal attempts are meant to elicit a response from others. Suicide gestures are attempts to improve relationships with other persons rather than expressions of a wish to die. Suicidal attempts or gestures are often cries for help.[92]

It may also be noteworthy that even if there is sufficient consensus on the

[90] Riaz Hassan, *ibid*, at 50; see also Chia Boon Hock, *ibid*, at 8-9.

[91] Chia Boon Hock, "Singapore" in *Suicide in Asia and the Near East* (Lee A Headley ed, 1983), Ch 4 at 120.

[92] *Ibid*, at 125.

'wrongness' of suicide, to compound the bereavement of the family of the suicide by penalising them by the denial of a claim under the suicide's life policy would not serve any useful purpose.

The futility of denying claims by a suicide's estate on his life policy is further borne out by the fact that the efficacy of such an exercise would only be real if it can act as an effective deterrent and prevent future attempts at suicide. Deterrence would only work if the person to be deterred is rational and calculating. Suicide is not such a situation, and it thus doubtful if any sanctions of this nature will have any effect on the rate of suicide. Moreover, it has been pointed out by Clarkson that:

> ... an examination of the statistics clearly reveals that the law and its sanctions have no effect on suicide rates. While it is unsatisfactory to compare statistical suicide rates between countries as suicide can be differently defined, it is nevertheless instructive to note that the suicide rate in Singapore where attempted suicide is a crime is *higher* than that of England and Wales where attempted suicide is no longer criminal. Perhaps, of even greater interest are comparisons within the same country using the same criteria of suicide rates before and after decriminalisation. In England and Wales, for instance, the suicide rate has actually gone down since the abolition of the crime of attempted suicide.... The law quite simply appears to be causally irrelevant here as the rise and fall of suicide rate depends on extra-legal factors.[93]

It may also be that suicide is not such a major problem that the courts need to concern itself with trying to deter it. The rate of suicide in Singapore only accounts for a small percentage of the deaths reported each year in Singapore. The statistics on the causes of deaths by broad groups in Singapore show that, from the ten year period from 1984 to 1994, the percentage that suicide accounts for in the total number of deaths each year has hovered in the region of only two to three percent.[94] The point may well be made that this number is statistically insignificant. This fact, coupled with the fact that a substantial proportion of society in Singapore is ambivalent about suicide and the fact that it is hardly clear that inclicting penalties will have any causative effect on the rate of suicide, make it questionable if suicides do indeed merit the concern of the courts.

[93] CMV Clarkson, "Medico-Legal Aspects of Suicide and Attempted Suicide in Singapore" in *Proceedings of the Interfaculty Seminar on Suicidal Behaviour in Singapore* (Tsoi Wing Foo ed, 1988), at 59.

[94] See *Singapore Yearbook of Statistics 1994*, Dept of Statistics, Table 2.9.

[95] See text accompanying note 7; see also text accompanying notes 5 and 6.

One other point which must be addressed is the second basis for criminalising suicide in England raised by Hales in that it is against king.[95] Of course, today it is fallacious to talk about the interests of the Crown. The argument against suicide would be cast more in terms of what has been called the 'social argument'. Here, the argument is that suicide is harmful not just to the immediate family of the suicide, but that it is also anti-social and it runs counter to society's interest in encouraging the will to live and to be a useful member of society. However, this again runs up against the two points made earlier – this may not be a conception which is universally shared by the local population, as well as that it is doubtful if having any form of sanctions will in any way alter the rate of incidence of suicides in any given society.[96]

Another problem which arises from this general principle of public policy is this – is it really open to the courts to expand the categories of public policy? The editors of *Halsbury's Laws of England* take the view that new heads of public policy will not be invented by the courts because, firstly, judges are more to be trusted as interpreters of the law than as expounders of public policy, and secondly, it is important for the doctrine should only be invoked in clear cases where the harm to the public is substantially incontestable.[97] This view was cited with approval by the Court of Appeal in *Sim Tony* v *Lim Ah Ghee*.[98] So, it would appear that the Singapore courts may be expressing a reluctance to expand the existing categories of public policy. This interpretation of the views of the Court of Appeal is by no means unequivocal, and there are arguments against this view of public policy.[99] Of course, the decision of the House of Lords in *Tinsley* v *Milligan*[100] may well show a reluctance on the part of the House to allow too much discretion at the hands of the courts when faced with issues of public policy.

VI. Conclusion

At the end of the day, it may well be apt to say that the state of law in Singapore with regards to claims under a life policy when the assured has committed suicide is in a state of conjecture. What is clear is that the

96 See Glanville Williams, *supra*, note 9, at 241-244.

97 *Supra*, note 82.

98 *Supra*, note 69, at 474.

99 See Andrew Phang, *supra*, note 64, at 532-533, 552-554, where the learned author argues against the implications of the approach taken by the Malaysian courts which appears to be that the categories of public policy are closed as embodied in the case of *Theresa Chong* v *Kin Khoon & Co* [1976] 2 MLJ 253 and followed in *Hopewell Construction Co Ltd* v *Eastern Oriental Hotel (1951) Sdn Bhd* [1988] 2 MLJ 621.

100 *Supra*, note 74.

101 *Supra*, note 2.

guidelines laid down and approach taken by Lord Atkin and the rest of the House of Lords in *Beresford* v *Royal Insurance Co*[101] is probably not applicable in the local context, in light of the different treatment of suicide under the Penal Code. The approach taken by Lord Atkin in *Beresford* v *Royal Insurance Co*[102] is premised upon the assumption that suicide is an offence, which it was in England at the time of the decision. The basic premise is not one which can be assumed under the statutory framework under the Penal Code. It had been pointed out that the Penal Code is not simply a codification of English criminal law. It is therefore not correct to try to twist the language or the provisions in the Penal Code in a valiant attempt to fit suicide into the Penal Code context. After all, Sornarajah has amply warned against the dangers of slavishly following English law instead of dealing with the local enactments.[103] Suicide is not an offence under the Penal Code. The abetment of and the attempt of suicide is an offence, but there is no mention of the criminalisation of suicide *per se*.

The other possibility is that of using the approach as laid down by the Court of Appeal in *Euro-Diam Ltd* v *Bathurst.*[104] Even if the litigants seeking relief before the court did not have to rely on his own criminal conduct, nor would he be benefitting from the criminal conduct, the court has the residual power to nonetheless refuse to grant relief if for the courts to appear to do so would be an affront to the public conscience – the 'public conscience test'. This ground on which the court could rely on to deny relief faces a fundamental barrier in its application in the context of suicide – the test itself seems premised on there being a criminal act involved to begin with, and if it is accepted that suicide is not an offence under the Penal Code, then the test itself should not be used to deny a claim under the life policy after the suicide of the assured. Moreover, the 'public conscience test' may well have seen its last days after the express disapproval of Lord Goff in *Tinsley* v *Milligan*.[105]

Thus, the only ground on which such a claim as contemplated may be barred would be if the local courts are willing to take the view that firstly, the categories of the public policy bar are not closed, and secondly, suicide would be injurious to the public as conceived by the mores and social values of Singaporean society. This is, for the moment, a matter of conjecture as there appears to be no real consensus on the morality of suicide in a heterogeneous society like Singapore.

If there is no public policy bar against a claim arising from an assured's

[102] *Supra*, note 2.
[103] Sornarajah, "The Interpretation of The Penal Codes" [1991] 3 MLJ cxxix.
[104] *Supra*, note 61.
[105] *Supra*, note 74.
[106] *Supra*, note 2.

even in the event that the assured should be the one who has deliberately caused the event, upon which the sums become payable, to come about. As Lord Atkin rightly pointed out, it is a fundamental principle in insurance law that the assured should not deliberately cause the operative event to occur, but this may be overcome or abrogated by the express terms of the contract of insurance. And if the insurance policy were to provide that the policy shall not pay if the assured were to commit suicide within a certain number of years from the commencement of the policy, then the insurer would be undertaking to pay if suicide were to occur after the stipulated time frame has lapsed.

The approach to claims in the event of suicide, as laid down by Lord Atkin in *Beresford* v *Royal Insurance Co,*[107] cannot be applied *in toto* in Singapore because of the different approach that the Penal Code takes to suicide. Unless the courts are willing to bar the claim on a broad interpretation of the extent and meaning of public policy, as long as the contract allows such a claim and the contractual terms are complied with, it would appear that there is no reason why such claims should not succeed in Singapore. Even if the local courts were willing to take a broad view of public policy, it is not entirely clear that there are compelling, or even cogent, reasons for suggesting that there is universal abhorrence of suicide amongst the local population to justify penalising it nor can it really be shown that having penalties imposed on the estate of the suicide will have any impact on the incidence of suicide. It is about time that we free ourselves from the spectre of the *Beresford* approach.[108]

LEE KIAT SENG*

---

[107] *Supra*, note 2.

[108] It is interesting to note that the Australians have long freed themselves from the *Beresford* approach by virtue of s 120 of the Life Insurance Act 1945 (Cth) which states:

> A policy shall not be avoided merely on the ground that the person whose life is insured died by his own hands or act, sane or insane, or suffered capital punishment, if, upon the true construction of the policy, the company has thereby agreed to pay the sum insured in the events that have happened.

According to *Halsbury's Laws of Australia* (1994) Vol 15, at para 235-1090, although at common law, the estate of a person whose life was insured could not benefit if he committed suicide while sane, irrespective of the terms of the policy under the *Beresford* approach,

> However, under the (CTH) Life Insurance Act 1945 the public policy rule that the insured party is prevented from recovering under a policy where the insured dies by his or her own hand or suffers capital punishment has been abrogated.

See also Sharpe, *Wickens – The Law of Life Insurance in Australia* (6th ed, 1990) at para 8.80.

* LLB (NUS); LLM (Lond); Advocate & Solicitor (Singapore); Lecturer, Faculty of Law, National University of Singapore.