LIFE ASSURANCE POLICIES AND SUICIDE

With the average Singaporean becoming more aware of the need to provide financial security for his or her dependants, life assurance companies in Singapore have registered sustained growth in the last few years.[1] There is no doubt that many people now look to their life policies as a form of security making provision for their families in times of misfortune. Similarly, with the wider acceptance of life assurance among the population, the use of such policies as a form of collateral security would also become more common. Unlike most other tangible forms of security, the rights arising under a policy of life assurance will to a large extent depend on the terms of the contract. There are also many factors which may affect the rights arising under the policy. Thus, to take one instance, if there has been a misrepresentation or non-disclosure of material facts by the assured, the insurers would be entitled to avoid the policy. Similarly, if the assured commits suicide, his right of recovery will depend on the terms of the policy. This article examines one of such factors, namely, the suicide of the assured. To what extent are the rights of the assured as well as those of third parties affected by the suicide of the assured?

Position At Common Law

The starting point of any such examination must begin with the position at common law.[2] Where no reference is made in the policy to the question of suicide, then at common law, recovery by the estate of the assured is open to two possible defences by the insurance company. The first defence is based on contract and the second on public policy. The legal issues involved were succinctly put by Lord Atkin in *Beresford* v. *Royal Insurance Co.*:[3]

> In discussing the important subject of the effect of suicide on policies of life insurance it is necessary to distinguish between two different questions that are apt to be confused: (1) What was the contract made by the parties? (2) How is that contract affected by public policy?

[1] "The life insurance industry enjoyed a satisfactory growth rate in 1978. New annual premiums and sums insured increased by 19.6 per cent and 21.9 per cent respectively over 1977's and about doubled those of 1974...." Annual Report of the Insurance Commissioner, 1979, at p. 7.

[2] S. 5, Civil Law Act, Cap. 30, Singapore Statutes, Rev. Ed. 1970 reads as follows:

> 5.— (1) Subject to the provisions of this section, in all questions or issues which arise or which have to be decided in Singapore with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law with respect to those matters to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore.

[3] [1938] A.C. 586 at p. 594.

On the issue of what the parties have agreed to in the contract, His Lordship said:[4]

> On the first question, if there is no express reference to suicide in the policy, two results follow. In the first place intentional suicide by a man of sound mind, which I will call sane suicide, ignoring the important question of the test of sanity, will prevent the representatives of the assured from recovering. On ordinary principles of insurance law an assured cannot by his own deliberate act cause the event upon which the insurance money is payable. The insurers have not agreed to pay on that happening. The fire assured cannot recover if he intentionally burns down his house, nor the marine assured if he scuttles his ship, nor the life assured if he deliberately ends his own life. This is not the result of public policy, but of the correct construction of the contract. In the second place this doctrine obviously does not apply to insane suicide, if one premises that the insanity in question prevents the act from being in law the act of the assured.

The above passage brings home a fundamental principle of insurance law, namely, that 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.[5] It would follow as a matter of construction of the contract that where the policy is silent as to suicide, then sane suicide is not a risk contemplated by the parties. Similarly, where the assured is insane when he commits suicide his action in law is no longer regarded as deliberate or intentional and therefore is a risk within the contemplation of the policy.[6]

On the question of public policy, His Lordship said:[7]

> I think that the principle is that a man is not to be allowed to have recourse to a Court of Justice to claim a benefit from his crime whether under a contract or a gift. No doubt the rule pays regard to the fact that to hold otherwise would in some cases offer an inducement to crime or remove a restraint to crime, and that its effect is to act as a deterrent to crime. But apart from these considerations the absolute rule is that the Courts will not recognize a benefit accruing to a criminal from his crime.... Deliberate suicide, felo de se, is and always has been regarded in English law as a crime, though by the very nature of it the offender escapes personal punishment.

The basis of the above rule stems from fact that the court is reluctant to render its assistance to any person to obtain or enforce any rights arising from his own crime. Thus in *Crippen's*[8] case the court held that a husband who had murdered his wife could not claim any rights under her estate. Samuel Evan P., in his often cited passage said:[9]

> It is clear that the law is, that no person can obtain, or enforce, any rights resulting to him from his own crime; neither can his representative, claiming under him, obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence.

[4] *Ibid*., at p. 594.
[5] See for example *Gray & Anor.* v. *Barr* [1971] 2 All E.R. 949 especially the judgment of Lord Denning.
[6] See generally *In re Batten's Will Trusts* (1961) 105 S.J. 529; *Dufaur* v. *The Professional Life Assurance Co.* (1858) 25 Beav. 599.
[7] [1938] A.C. at p. 598.
[8] [1911] P. 108.
[9] *Ibid*., at p. 112.

Similarly, in *Cleaver* v. *Mutual Reserve Fund Life Association,*[10] Fry L.J. said:

> It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person.

The position, then at common law in relation to voluntary suicide is that in the absence of any reference to suicide in the policy, the estate of an assured who commits suicide (with the exception of insane suicide) would be barred from recovery on two grounds, namely on contract and also on public policy. Even if the policy had been assigned[11] to a third party, recovery would still be barred on the basis of the contract between the parties. It would therefore follow that an assured who voluntarily commits suicide would acquire no rights against the insurance company. Similarly, third parties who have taken the policy for valuable consideration would also acquire no rights under the policy.

Suicide Clauses

In view of the fact that the courts allowed recovery where the assured committed suicide while insane, insurance companies were swift to respond by introducing a clause into their policies to exclude this possibility. In *Clift* v. *Schwabe,*[12] the insurance company had a clause to the effect that "every policy effected by a person on his or her own life should be void, if such person should commit suicide, or die by duelling or the hands of justice." The assured killed himself by taking sulphuric acid in circumstances tending to shew that he was of unsound mind. The estate of the assured contended that the assured was of unsound mind when he took the sulphuric acid and therefore was outside the ambit of the suicide clause. The insurance company, however, argued that on its true construction, the expression "shall commit suicide" in the suicide clause meant that, if the assured by his own voluntary act put himself to death, intending, at the time of committing the act, to cause his own death, and being conscious that such would be the probable effect of the means employed by him for that purpose the condition attached, even though at the time of so killing himself, he might be of unsound mind and incapable by reason of such unsoundness of distinguishing between right and wrong. The trial judge directed the jury that in order to find for the insurance company it was necessary that they should be satisfied that the assured died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent. The jury found against the insurance company which then appealed against the decision. In allowing the appeal, the House of Lords, by a majority took the view that the words "commit suicide" were not used with any technical meaning in mind. Patterson J. said:[13]

> Now, the word "suicide", literally translated, means only "killing himself or herself:" the circumstances attending the act manifestly cannot affect

[10] [1892] 1 Q.B. 147 at p. 156.

[11] Assignment of Life Assurance Policies is permitted under the Policies of Assurance Act, 1867. This Act is applicable in Singapore by virtue of s. 5 of the Civil Law Act.

[12] (1846) 3 C.B. 437.

[13] *Ibid*., at pp. 465 & 466.

> the literal meaning of the word.... It seems, in truth, that the exception is not framed with reference to the commission of any felony or crime; but to guard against the time for payment of the sum insured being accelerated by the voluntary act of the party interested in the money. It is equally so accelerated by voluntary act, if the deceased knew the consequences of his act, and intended them to follow, whether he was sane or under some delusion as to the moral quality of the act done.

The House of Lords, in this case gave a wide meaning to the word "suicide" to include a case which would be within the M'Naghten Rules. It is also clear from the decision that if the assured was unable to appreciate the probable consequences of his act he would not be caught by the clause.

In *Borradaile* v. *Hunter,*[14] the policy in question provided that it shall be void if "the assured should die by his own hands, or by the hands of justice, or in consequence of a duel." The assured voluntarily threw himself into the Thames knowing that he should thereby destroy himself but at the time was not capable of judging between right and wrong. The Court regarded the words in the suicide clause as plain and explicit and held that it was intended to cover cases of self-destruction, in which but for the condition, the act might have been committed in order to accelerate the claim on the policy and the question of whether the assured was capable of judging between right and wrong need not be considered.

Suicide clauses couched in those terms had the effect of further cutting down the very limited right of recovery in the event of an insane suicide. Life assurance policies in the meanwhile had acquired a certain degree of currency as a form of security. In order to enhance the attractiveness of such policies, insurance companies found it necessary to offer some protection to third parties who acquire interests in life policies as security for loans. This led to the introduction of a modified suicide clause which protected the interests of third parties. Such a modified clause was considered in the case of *Moore* v. *Woolsey.*[15] This clause read as follows:

> Policies effected by persons on their own lives, who shall die by duelling or by their own hands, or by the hands of justice, will become void, so far as regards the executors or administrators of the person so dying, but will remain in force only to the extent of any bona fide interest which may have been acquired by any other person under an actual assignment by deed for a valuable consideration in money, or by way of security or indemnity, or by virtue of any legal or equitable lien as a security for money, upon proof of the extent of such interest being given to the directors to their satisfaction.

The policies in question in this case were taken out by the assured for the benefit of his wife pursuant to an arrangement with his father-in-law. The assured committed suicide and his executors sued on the policies alleging that the assured's father-in-law had acquired an interest in the policies as trustee for the benefit of the assured's wife. The insurers defended the action on two grounds. Firstly, they said that there was a failure to plead that the assignment was by deed. Secondly, they argued that the clause was illegal and contrary to public policy as it amounts to insuring the life of a party though he should die by suicide. The Court found for the insurers

[14] (1845) 5 M. & G. 639.
[15] (1854) 4 El. & Bl. 243.

on the first ground that there was a failure to show that the assignment had been by deed. The Court however disagreed that the clause was against public policy. Lord Campbell C.J. said:[16]

> But, where a man insures his own life, we can discover no illegality in a stipulation that, if the policy should afterwards be assigned bona fide for a valuable consideration, or a lien upon it should afterwards be acquired bona fide for valuable consideration, it might be enforced for the benefit of others, whatever may be the means by which death is occasioned.... When we are called upon to nullify a contract on the ground of public policy, we must take care that we do not lay down a rule which may interfere with the innocent and useful transactions of mankind. That the condition under discussion may promote evil by leading to suicide, is a very remote and improbable contingency: and it may frequently be very beneficial by rendering a life policy a safe security in the hands of an assignee.

This case is a clear indication of the attitude of the courts on the question of public policy as regards third parties who have acquired valuable interests in the policy. He is not to be treated in the same manner as the assured but should be accorded protection by the law. This stand has been explicitly affirmed in later decisions.[17] The courts have found no difficulty in enforcing such a policy if it has been assigned to a third party. This can be seen in the case of *Cook* v. *Black*.[18] The assured took out a life policy containing a suicide clause in the following terms:

> If the person assured commit suicide, and the policy shall have been assigned to any person or persons having a bona fide interest in his life to the extent of the sum assured, the full amount will be paid to the party or parties so interested.

The assured deposited the policy with his creditor, accompanied by a letter, promising to assign it to him, when requested, as security for his debt. The assured subsequently committed suicide. In an action brought by the assignee, the court held that he was entitled to succeed. His Lordship, James Wigram V.-C. said:[19]

> The meaning of the condition is that the assured shall have the power of assigning the policy so effectually that a person advancing money upon it shall retain his security unimpaired notwithstanding the assured might commit suicide; and, by this condition, the policy is rendered more valuable as a negotiable security. Any dealing between the assured and another party would constitute that party an assignee of the policy, would entitle him to the full benefit of it.

Where a life policy contains express provision protecting the interests of third parties in the event of the assured committing suicide, the insurance company would be unable to defeat such vested rights either on the basis of the contract or on the ground of public policy. Such a third party would be able to sue on the policy in his own name[20] and does not require the assistance of the assured or his representative.

Suicide clauses in life policies underwent further modification, this time with the intention of benefitting the assured should he commit

[16] *Ibid*., at p. 255.
[17] See especially *Beresford* v. *Royal Insurance Co.* [1938] A.C. 586 and *Hardy* v. *M.I.B.* [1964] 2 Q.B. 745.
[18] (1842) 1 Hare 390.
[19] *Ibid*., at pp. 393 & 394.
[20] See s. 1 of the Policies of Assurance Act, 1867.

suicide after a stipulated period. Such a modified clause was considered in *Beresford* v. *Royal Insurance Co.*[21] The new clause was as follows:

> If the life or any one of the life assured... shall die by his own hand, whether sane or insane within one year from the commencement of the assurance, the policy shall be void as against any person claiming the amount hereby assured or any part thereof, except that it shall remain in force to the extent to which a bona fide interest for pecuniary consideration, or as a security for money possessed or acquired by a third party before the date of such death.

In this case, a Major Rowlandson took out several policies totalling £50,000 in 1925, and in 1934 found himself unable to pay the premiums. Shortly before the time for payment expired he shot himself hoping thereby to benefit his creditors. In an action by the estate of the assured, the insurers raised the defence of public policy. They said that the law should not assist a person to recover the fruits of his crime, particularly where the obtaining of those fruits was the very motive of the crime. The plaintiff contended that the principle to be applied in this case is that of the freedom of contract, and as the insurance company agreed to pay the policy money if death by suicide occurred after one year they should be held to their obligation. The House of Lords held that on the true construction of the contract, the insurance company had agreed with the assured to pay to his executors or assigns on his death the sum assured if he dies by his own hand whether sane or insane after the expiration of one year from the commencement of the assurance. However, the House upheld the plea of the insurance company that it was against public policy to allow recovery.

The effect, then, of *Beresford's* case is that even though the insurance company may have agreed to pay upon the suicide of the assured, the courts will not enforce such an agreement on the ground that it would be against public policy to do so.

Policies under Section 73 of the Conveyancing and Law of Property Act[22]

Section 73 of the C.L.P.A. was enacted in an attempt to ensure that life policies taken out by a man or woman for the benefit of his or her family are kept out of the hands of creditors of the assured. Section 73(1) reads as follows:

> A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his or her debts.

Our section 73 is in fact *in pan materia* with section 11 of the Married Women's Property Act, 1882. The question which may arise in connection with section 73 is as to what would happen to such a

[21] [1938] A.C. 586.
[22] Cap. 268, Singapore Statutes, Rev. Ed. 1970 (hereinafter referred to as the C.L.P.A.).

policy if the assured committed suicide? It seems somewhat strange that on such an important question, there appears to be a dearth of judicial authority. One possible explanation could be that parties to the contract regard the position as settled. This could have come about from the fact that although section 73 creates a trust in favour of the beneficiaries, nonetheless the policy of assurance still constitutes part of the estate of the assured so that claims would have to be made in the name of the assured.[23] In this event, the position would be as if the assured or his estate were claiming under the policy and the law discussed above would be equally applicable. This position has to be distinguished from that of a third party who acquires an interest in the policy by way of assignment. In such a case, the third party would be suing under his own name.[24] Another explanation could be that the scope of suicide clauses is limited. They do not normally extend the exception to cover the beneficiaries of the assured in the event of the assured committing suicide.

The Suicide Act, 1961

With the passing of the Suicide Act 1961, suicide in England ceases to be a crime.[25] Criminal liability only attaches to a person who is involved in the suicide or attempted suicide of another.[26] Attempted suicide is no longer a crime. How then does the Act, affect the whole question of suicide in life policies? It may be recalled that when an assured commits suicide, the insurance company has two possible defences against any action by the estate of the assured. They are, firstly, the defence based on contract and secondly the plea of public policy. So far as the first defence is concerned, the position remains as it was before the Suicide Act. In other words, there must be an express agreement by the insurance company to pay in the event of suicide, to make recovery possible. As to the plea of public policy, the Suicide Act would have the effect of removing the basis of the plea.

The result therefore is that after the passing of the Suicide Act the estate of an assured would be able to claim benefits under the policy if the policy contains a suicide clause similar to that found in the case of *Beresford* v. *Royal Exchange.*

Position in Singapore

In Singapore, the law relating to suicide is set out in the Penal Code.[27] Suicide, like the position in England now, has not been made an offence. However, unlike England, attempted suicide is made an offence under section 309 of the Code. In the light of this, it may still be possible for insurance companies in Singapore to raise the issue of public policy on the ground that if attempted suicide has been made an offence, the act of suicide *a fortiori* must be illegal. There appears to be no reported local decision either on the question of suicide or the suicide clause in connection with life policies.

[23] See *Cleaver* v. *Mutual Reserve Fund Life Association* [1892] 1 Q.B. 147.
[24] *Supra.*
[25] S. 1 of the Suicide Act 1961.
[26] S. 2 of the Suicide Act 1961.
[27] Cap. 103, Singapore Statutes, Rev. Ed. 1970.

Conclusions

In the light of the authorities considered above it can be safely said that whether any particular policy will give the estate of the assured any right to the money assured will depend on whether the insurance company has expressly agreed to pay in the event of suicide. Even, if there is an express agreement, the possibility of raising the issue of public policy in Singapore is not totally precluded, although it is hoped that insurance companies would not do so in cases where they have expressly agreed to pay in the event of suicide.

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