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Article 10

Insurable Interest--Conditional Gift of Engagement Ring (Ludeau v. Phoenix Ins. Co. et al., 204 S.W.2d 1008 (Tex. 1947))

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INSURABLE INTEREST — CONDITIONAL GIFT OF ENGAGEMENT RING.—Appellant gave his own diamond to his fiancee as an engagement ring. The ring was later stolen and shortly after appellant refused to carry out the marriage agreement. Appellant had taken out an "all risk" policy when he was in possession of the diamond, which at that time was in a man's setting. He failed to notify respondent insurance company of the fact that the diamond had been given to his fiancee as an engagement ring until this claim was made under policy. *Held,* a man's conditional gift of a diamond engagement ring to his fiancee conferred title to the ring at time of its delivery to her and the man thereafter had no insurable interest in the ring and could not recover under an "all risk" policy, the value of ring which was later stolen from his fiancee. *Ludeau v. Phoenix Ins. Co. et al.,* — Tex. —, 204 S. W. 2d 1008 (1947).

It is a general rule of insurance law that the person taking out a policy must have an insurable interest in the subject matter of the insurance and if such interest is lacking, the policy is void.[1] In life insurance this insurable interest is required generally only at time policy is taken out.[2] Where personal property is insured, the contract, however, is one of indemnity and the insurable interest must exist at the time of the loss. A person usually has an insurable interest in the subject matter insured where he will derive pecuniary benefit or advantage from its preservation, or will suffer pecuniary loss or damage from its destruction by the happening of the event insured against.[3] Persons held to have an insurable interest in property include persons having the custody and responsibility for the property, such as bailees,[4] executors or administrators,[5] pledgors and pledgees,[6] an assignor for the benefit of creditors,[7] a lessor,[8] a lessee,[9] a mortgagor,[10] a remainderman[11] and a stockholder.[12] It has also been held that a woman has an insurable interest in the life of her fiance.[13]

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[1] N. Y. INS. LAW § 148.
[2] N. Y. INS. LAW § 146.
[3] *Ibid.*
[4] Polley v. Daniels, 238 App. Div. 181, 264 N. Y. Supp. 194 (3d Dep't 1933).
[5] Baird v. Fidelity-Phenix Fire Ins. Co., 178 Tenn. 653, 162 S. W. 2d 384 (1942).
[6] Dunsmore v. Franklin Fire Ins. Co. of Philadelphia, 299 Pa. 86, 149 Atl. 163 (1930).
[7] Liss v. United States Fidelity & Guaranty Co., 103 Misc. 253, 169 N. Y. Supp. 1027 (App. Term 1918).
[8] Alexander v. Security-First Nat. Bank of Los Angeles, 7 Cal. 2d 718, 62 P. 2d 735 (1936).
[9] Alexander v. Security-First Nat. Bank of Los Angeles, *supra* note 8.
[10] Alexander v. Security-First Nat. Bank of Los Angeles, *supra* note 8.
[11] Jones v. Harsha, 233 Mich. 499, 206 N. W. 979 (1926).
[12] Pacific Fire Ins. Co. v. John E. Morris Co., 12 S. W. 2d 971 (Tex. 1929).
[13] Green v. Southwestern Voluntary Ass'n, 179 Va. 779, 20 S. E. 2d 694 (1942).

In the instant case appellant contends that the title to the ring was either wholly in him or that he had an insurable interest therein as the ring had been presented to her as an "engagement ring," and that it was no ordinary gift but at most a mere pledge or conditional presentment, conditioned upon their consummating their engagement to be married. The court maintained, however, that it is an established principle that even a conditional gift confers a title to the object given at the time of its delivery into the possession of the donee [14] and denied recovery on the ground that appellant had no insurable interest at time of the loss.

It is felt that this decision, holding that a man does not have an insurable interest in the engagement ring which he gives to his fiancee, should not be followed. Such an implication must be based upon facts and circumstances of the particular case with particular emphasis upon whether the gift was given as a conditional gift expressly and which party, with or without fault, broke the engagement.

J. H. S.

INSURANCE—SUBROGATION—ANTI-ASSIGNMENT ACT—FEDERAL TORT CLAIMS ACT.—Plaintiffs sue Federal Government for personal injuries and property damage sustained when their auto was involved in a collision with a United States Army truck. It is alleged that the accident was caused by the negligence of the soldier operator of the Federal vehicle. Plaintiff insurance company paid the amount of the property damage sustained to the automobile in question under a policy of indemnity insurance, which policy included coverage for collision damage. The policy contained the standard subrogation clause in the event that payments under it should be made to the assured. *Held,* tort claims for damages resulting from collision between an auto and an Army truck are not within the statute prohibiting the assignment of any claim upon the United States. *Hill v. United States,* 74 F. Supp. 129 (N. D. Tex. 1947).

The precise point ruled on in the case was raised when the United States attorney filed a motion to dismiss the insurance company's subrogation claim on the ground that the Tort Claims Act does not authorize the maintenance of suits upon derivative claims, and that such a claim is prohibited under the Anti-Assignment Act.[1]

The court held that the purpose of the Anti-Assignment Act is to restrict voluntary assignments for the payment of claims against the United States Government, so as to better keep a steady status thereof, and thereby facilitate the undistracted consideration, deter-

[14] Urbanus v. Burns, 300 Ill. App. 207, 20 N. E. 2d 869 (1939).

[1] 35 STAT. 411 (1908), as amended, 31 U. S. C. § 203 (1940).