CAN A CHILD INSURE THE PROPERTY OF HIS PARENTS AND VICE VERSA?

One of the still unsettled problems in property insurance is the question of whether a child can insure the property of his parents, and vice versa. In the case of life insurance, it is already settled by statutory provisions that the child can insure the life of his parents,[1] and that the parents can insure that of their child.[2] The basis of these provisions is the mutual obligation of the child and his parents to support each other.[3] It is further established that an insurance policy taken upon the life of either party by the other is a means toward the realization of that end, or a means of saving the party entitled to support from being the subject of public charity,[4] should the party legally bound to give support be unable to give it because of his premature demise.

In the case of property insurance, however, there are no express legal provisions on the point. Neither are there judicial decisions in this jurisdiction which can shed light on the question. Under these circumstances, an inquiry into the nature and basis of an insurable interest in property is in order.

I.—*Insurable interest in property.*

Our Insurance Law, Act No. 2427, defines insurable interest in property, as "every interest in property whether real or personal, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured." [5] It also provides that an insurable interest in property may consist in the following, namely:

---

[1] See Art. 291 of the Civil Code in relation to Sec. 11, Act No. 2427.

[2] Sec. 3, Act No. 2427, provides: ". . . The consent of the husband is not necessary for the validity of an insurance policy taken out *by a married woman on* her life or *that of her children.*" (Italics supplied).

[3] Sec. 11, *do,* provides:

"Every person has an insurable interest in the life and health:

(b) Of any person on whom he depends wholly or in part for education and support."

Art. 291 of the Civil Code provides:

"The following are obliged to support each other to the whole extent set forth in the preceding article:

(1) The spouses;

(2) Legitimate ascendants and descendants;

(3) Parents and acknowledged natural children and the legitimate or illegitimate descendants of the latter;

(4) Parents and natural children by legal fiction and the legitimate or illegitimate descendants of the latter;

(5) Parents and illegitimate children who are not natural . . ."

[4] Lord vs. Dall, 12 Mass. 115, 7 Am. Dec. 38.

[5] Sec. 12, Act No. 2427.

"(a) An existing interest;

(b) An inchoate interest founded on an existing interest; or

(c) An expectancy, coupled with an existing interest in that out of which the expectancy arises."[6]

Section 14 of the same law provides that a carrier or depositary of any kind has an insurable interest in a thing held by him as such, but that such interest is only limited to the extent of his liability, and never to exceed the value thereof.

With the above provisions in our law, it would seem that any person who has an existing interest in any property could take out an insurance policy upon it in order that he may be indemnified against any loss occasioned by the happening of the event or peril insured against. And this existing interest may take any form. It may be simple ownership of the property insured,[7] or it may consist of mere possession thereof.[8] It may also be contractual rights or liens, like those of mortgagee,[9] or mortgagor.[10]

In the same manner, mere relation to the property may support an insurance contract provided that such relation be of such a nature that, should the peril insured against occur, it would result in an immediate and direct pecuniary loss to the person insuring, and not merely producing a remote or consequential effect upon him.[11] Thus, even if a person has neither possession of the property, nor any other legal interest in it, if he stands in such relation with respect to it that he may suffer, from its destruction, loss of a legal right dependent upon its continued existence, he may be said to have an insurable interest sufficient to support the issuance of an insurance policy.[12]

In the case, however, of a mere expectancy or an enchoate interest, a different rule must be observed. A naked expectancy or a bare inchoate interest, is not enough. The law provides for something more. It is necessary that such inchoate interest or expectancy be respectively "founded on," or "coupled with," an existing interest in order that they may form a valid consideration to support an insurance contract.[13] An omission of this requirement is fatal, for in such case, there would be no insurable interest in the property, and its absence will bring about the nullification or avoidance of the contract. Thus, our Insurance Law provides that "a mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable."[14]

---

[6] Sec. 13, *Idem.*

[7] See Harding vs. Commercial Union Assurance Co., 38 Phil. 69.

[8] Vance, *Law of Insurance* (1930), p. 124.

[9] San Miguel Brewery vs. Law Union and Rock Insurance Co., 40 Phil. 674.

[10] Templeman, *Marine Insurance* (1934), pp. 49-53.

[11] Re Reynolds, 109 Atl. 60.

[12] Vance, *op. cit.*, at p. 124.

[13] Sec. 13 (pars. [b] and [c]), Act No. 2427.

[14] Sec. 15, *idem.*

It would be seen, therefore, that there are several bases of an insurable interest in property. However, they have one thing in common: the interest must be of such a nature that the occurrence of the contemplated peril would directly damnify the insured.[15]

In brief, the test of an insurable interest in property is whether the insured will be directly affected by the loss of the property.[16] "The shattering of expectations however bright, or the disappointing of hopes however strong, does not constitute such a loss as may be indemnified by insurance." [17]

II.—*Indemnity requirement.*

Because of the necessity of an insurable interest as a condition precedent in an insurance contract, another indispensable element must necessarily follow to make the insurance contract valid. This is the legal requirement that an insurance policy should be issued with but only one purpose or object, namely: the indemnification of the insured.[18] Any insurance contract which is entered into between the parties for any purpose other than that of indemnity will be branded as a wagering agreement and will not be enforced.[19] The reason for the avoidance of a policy which is in the nature of a wager is that it would be against public policy to enforce it.[20]

A necessary corollary to the principle of indemnity is the provision in our law to the effect that the interest insured must not only exist at the time the insurance takes effect, but also at the time when the loss occurs, although it need not exist in the meantime.[21]

Considering, therefore, the nature and bases of an insurable interest in property, and considering also the indispensable requirements of property insurance, could it possibly be advanced as a view that the child has an existing interest in his parent's property? Has he an existing interest, or an inchoate interest founded upon an existing interest, therein, so that the happening of the contemplated peril would directly damnify him?

As our Insurance Law and our courts have not supplied the direct answer, the search for the possible solution may be made somewhere else.

---

[15] See Sec. 12, *idem.*

[16] Couch, *Cyclopedia on Insurance*, p. 757.

[17] Vance, *op. cit.*, at p. 136.

[18] See Sec. 17, Act No. 2427.

In the case of Young vs. Midland Textile Insurance Co., 30 Phil. 617, the Supreme Court said: "Contracts of insurance are contracts of indemnity upon the terms and conditions specified in the policy."

[19] See Sec. 24 in conjunction with Sec. 17, Act No. 2427.

[20] See Gercio vs. Sun Life Assurance Co. of Canada, 48 Phil. 53, citing Connecticut Mutual Life Insurance Co. vs. Schaefer, 94 U.S. 457.

[21] Sec. 18, Act No. 2427.

III.—*Observations on the Civil Code provisions*

In the case of *Enriquez vs. Sun Life Assurance Co.*,[22] the Supreme Court, in passing, said that our law on insurance may be found in the Insurance Law and in the Civil Code. Then in the case of *Musngi vs. West Coast Life Insurance Co.*,[23] the Court consulted the provisions of the Civil Code on matters not expressly provided in the Insurance Act. Later, the new Civil Code took effect. The Code Commission, probably with a view to give affect to the above pronouncements of our Supreme Court, inserted therein a new provision which provides:

> "The contract of insurance is governed by special laws. *Matters not expressly provided for in such special laws shall be regulated by this Code.*" [24]

Thus we have an express statutory provision to the effect that the provisions of the Civil Code will be given suppletory effect in matters not provided for in the Insurance Law.

Turning first to the provisions on legitime, the Civil Code defines legitime as "that portion of the property of the testator which he cannot dispose of by will because the law has reserved it for the compulsory heirs." [25] And among the compulsory heirs enumerated by the law are the children of the testator.[26] The limitations on the parent's power to dispose of that portion of his property which has been reserved by law for his children are so exacting that he cannot even impose conditions, burdens, encumbrances, or any liens thereon.[27] Neither can he charge his children with legacies or devices which would be satisfied from their legitime.[28] Similarly, the law nullifies any renunciation or compromise as regards future legitime between the parent and his children.[29] With these provisions, we may have a situation where the parent cannot dispose of his property the way he wants to because the law imposes upon him some restrictions which he cannot disregard—restrictions which protects the rights of his children in his property. And such restrictions begin from the moment of, or immediately before, the execution of his will;[30] or from the time that he makes a partition of his estate

---

[22] 41 Phil. 269.

[23] 61 Phil. 864.

[24] Art. 2011, Civil Code.

[25] Art. 886, Civil Code.

[26] See Art. 887, Civil Code.

[27] See Arts. 904 (par. 2), 872 and 221 (par. 4), Civil Code.

[28] See Art. 925 (par. 2), Civil Code.

[29] See Art. 905, Civil Code.

[30] Art. 783 of the Civil Code provides: "A will is an act whereby a person is permitted, with the formalities prescribed by law, *to control to a certain degree* the disposition of his estate, to take effect after his death." (Italics supplied).

Art. 907, Civil Code: "Testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive."

Art. 905, Civil Code: "Every renunciation or compromise as regards a future

by any act *inter vivos*[31]—which acts may take place some time, or years, before his death. From that time the rights of the children to that portion of their parent's property become vested by operation of law that any act on the part of the parent to alienate it in favor of the donees, legatees or devisees may be annulled or avoided at the instance of the children.[32] More than this, the children may demand the value of the property given, from the donee or legatee in case the latter has sold the same.[33] A persual of the provisions of the Civil Code, therefore, will reveal that their object is the safeguarding of the vested rights and interests of the children in their parent's property.

But the question is—Is this interest or right of the children to the legitime insurable?

An affirmative answer may be hazarded. If the law itself grants the children that right of which the parent cannot even deprive them, it is submitted that there can be no other actual and better interest than that which the law grants.

Article 908 of the Civil Code provides, however, that "to determine the legitime, the value of the property left at the death of the testator shall be considered." Notwithstanding this, the view presented is not thereby weakened. While it is true that with Article 908 a doubt may be injected into the foregoing observation, it is submitted that what has been said is still fortified from attack.

The Insurance Law mentions, among others, "an inchoate interest" as an insurable interest in property.[34] It further provides that an interest in order to be insurable must exist at the time the insurance takes effect and also at the time the loss occurs.[35] Testing the interest of the child in the legitime with the above requirements it would appear that while article 908 makes the amount of that interest inchoate,—the amount thereof being determined at some future date—that inchoate interest is still founded upon an actual right, namely, the right granted by law.[36] Moreover, that interest would be existing at the time of the taking effect of the insurance contract (which may be at any time after the execution of the will or after the partition of the estate by any act *inter vivos*), and also at the time of the loss. And if the loss occurs after the death of the parent, the case would become stronger for by that time the child will already be the owner of the property insured.[37] Similarly the principle of indemnity would be in operation here. The destruction or loss of the legitime occasioned by the happening of the event stipulated in the

---

legitime between the person owing it and his compulsory heirs is void. . . ."
See also Art. 840, Civil Code.

[31] See Art. 1080, Civil Code.

[32] See Arts. 772 (par. 1), 907, and 911 (par. 1), Civil Code.

[33] Art. 762 (par. 1), Civil Code.

[34] Sec. 13, Act No. 2427.

[35] Sec. 18, *idem*.

[36] See Sec. 15, *idem*.

[37] In the case of Harding vs. Commercial Union Assurance Co., 38 Phil. 69, it was ruled that the owner of the property has an insurable interest therein.

insurance contract would subject him to a direct pecuniary loss. This is because he would be deprived of those benefits which he would otherwise receive from the legitime had that event not taken place.

It may be remarked, however, that the possible basis of the child's claim to an insurable interest in his parent's property is not limited only to his right to the legitime. There are still other provisions of the Civil Code which may support his claim thereto. Among these provisions are those found under the Chapters on Conjugal Partnership Property and Paraphernal Property, and those under the Title on Legal Separation. There are provisions to the effect that the conjugal partnership property is liable for the maintenance, care, and education of the children;[38] and that the husband's capital,—or if it is insufficient, the paraphernal property of the wife,—shall be liable for the children's support if the conjugal partnership property would be exhausted thereby.[39] Under these chapters, it would clearly appear that the children are entitled to claim from such properties the satisfaction of that natural obligation of the parent, should the latter neglect to provide them with it. This right of the children to claim for a provision for their support from the above-mentioned properties is legally recognized.[40] Thus, under the Title on Legal Separation, we have Article 105 which provides:

> "During the pendency of legal separation proceedings, the court shall make provision for the care of the minor children in accordance with the circumstances, and may order the conjugal partnership property * * * to be set aside for their support."

Under the foregoing article, the court may segregate a part of the conjugal asset in order that the children may be better provided with the needs of life undisturbed by the judicial proceedings between their parents.

If the court, therefore, in pursuance of the provisions of Article 105, sets aside the conjugal partnership property, or a specific portion thereof, for the support of the children, it would necessarily follow that such children would have to look up to that property for their support and maintenance. If such be the case, a consequence might be that the children would be so situated with respect to that property that they must of necessity depend upon it. They would be maintaining with it a relation of such a nature that its loss or destruction would bring about not only a direct financial loss to them, but would even endanger their very existence. And the case would still be stronger if that which was set aside for the children is the only asset of the conjugal partnership or the only property of the parents. In such event, their relation to the property would not be very different from that which they formerly had with respect to their parents upon whom they were dependent for support.[41]

---

[38] See Arts. 161 (par. 5), and 188, Civil Code.

[39] Art. 138, Civil Code.

[40] See also Art. 188 Civil Code in connection with Art. 105 of the same Code.

[41] A child who is dependent upon his parent for support has an insurable interest in the life of the latter under Sec. 11, Act No. 2427.

Then there are other relations which the child may take with respect to his parent's property which may create an insurable interest therein in his favor. Thus, if the child is the mortgagee of his parent's property which is given as a security for the latter's debt, the child is said to have an insurable interest therein sufficient to support the issuance of an insurance policy.[42] Similarly, if the child happens to be builder of his parent's house, and has a lien thereon for the unpaid cost of construction, he may insure it in order to safeguard his interest.[43] Then the child may assume the position of an administrator,[44] a carrier, or a depositary, but in such cases, his interest is limited to the extent of his liability.[45] Also, the Civil Code provides that the unworthy heir who is excluded from the succession has a right to demand indemnity for any expenses incurred by him in the preservation of the hereditary property, and that he may enforce such credits as he may have against the estate.[46] Having a lien in such property, he may, therefore, obtain an insurance policy to the extent of his credit in order to protect himself from any possible loss occasioned by any peril.

In the light of the foregoing observations, it is submitted that the view which may be maintained under the new Civil Code favors the issuance to the child of an insurance policy upon the property of his parent. He has an insurable interest therein to protect, and he must be allowed to insure it.

IV.—*American view*

The contrary view is, however, maintained by the American courts. And their decisions, despite their being relegated to the category of a mere secondary authority, cannot be considered as entitled to a very light weight if the history and source of our Insurance Law is taken into consideration. Our Insurance Law, Act No. 2427, is taken bodily, if not copied verbatim, from the American law, more particularly the law of California.[47] And if the settled cannons of statutory construction are to be given effect, our courts should follow, in fundamental points at least, the construction placed by the American courts on the law from which ours has originated.[48] Thus, in the case of *Gercio vs. Sun Life Assurance Co.*,[49] the Supreme Court, speaking through Mr. Justice Malcolm, said:

> "* * * the deficiencies in the law (Insurance Law) will have to be supplemented by the general principles prevailing on the subject. To that end, we have gathered the rules which fol-

[42] In the case of San Miguel Brewery vs. Law Union and Rock Insurance Co., 40 Phil. 674, it was held that a mortgagee can insure the property mortgaged to him.

[43] See Lampano vs. Jose, 30 Phil. 537, where it was held that a builder of a house can insure it if he has a lien upon it for the unpaid construction price.

[44] Couch, *op. cit.*, at p. 1160.

[45] Sec. 14, Act No. 2427.

[46] Art. 1037, Civil Code.

[47] Gercio vs. Sun Life Assurance Company of Canada, *supra*.

[48] Ang Giok Chip vs. Springfield Fire and Marine Insurance Co., 56 Phil. 375.

[49] *Supra*.

low from the best considered American authorities. In adapting these rules, we do so with the purpose of having the Philippine Law of Insurance conform as nearly as possible to the modern Law of Insurance as found in the United States proper."

It is worthy to note that in the above cited case, our Supreme Court has freely consulted the rulings laid down not only by the California Supreme Court but also by the courts of Iowa,[50] Louisiana,[51] Kentucky,[52] Ohio,[53] and Illinois,[54] as authorities in support of its decision. In view of this, therefore, a reference to the decisions of said courts as to what they say on the question might be useful.

In the case of *Baldwin vs. State Insurance Company*,[55] one W.E. Baldwin, the son of E.J. Baldwin, insured a building belonging to his father. He took the policy in his own name and paid all the premiums thereon. The building was subsequently burned, and an action for recovery on the policy was instituted. The Supreme Court of Iowa, after carefully analyzing the facts of the case, said:

> "We then come to enquire whether W. E. Baldwin can recover. He certainly cannot recover for his own benefit. It is conceded that he did not suffer by the loss and has no beneficial interest in the policy." [56]

From the court's decision, it clearly appears that the son could not recover on the policy because "he did not suffer by the loss." The court did not, however, elaborate on this point. No authorities were cited in support thereof.

In view of all the above observations, it can be said that we have two conflicting views—one of which is that maintained under the Civil Code; and the other, that which prevails in American jurisdiction. One view gives suppletory effect to the provisions of the Civil Code in pursuance of the provisions of Article 2011 thereof; the other may be adopted in this jurisdiction pursuant to the ruling of our Supreme Court in *Gercio vs. Sun Life Assurance Company*.[57]

V.—*Parents insurable interest in child's property.*

The second part of the problem may also be answered in the light of the provisions of our Civil Code. Under it, the father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parential authority.[58] And when the

---

[50] Condon vs. New York Life Insurance Co., 183 Iowa 658.

[51] Lambert vs. Penn Mutual Life Insurance Co., 50 La. Ann. 1027.

[52] Green vs. Green, 147 Ky. 608.

[53] Union Central Life Assurance Co. vs. Buxer, 62 Ohio St. 385.

[54] Begley vs. Miller, 137 Ill. App. 278.

[55] 15 N.W. 300.

[56] The English courts seem to agree with this view. See Justice Lawrence's example in the case of Lucena vs. Crawford, 127 K.B. 630, 643.

[57] *Supra.*

[58] Art. 320, Civil Code.

property is worth more than two thousand pesos, the father or mother shall be considered guardian of said child's property, subject to the duties and obligations of guardians under the Rules of Court.[59] It is also provided that the property or income donated, bequeathed, or devised to the emancipated child for the expenses of his education and instruction shall pertain to him in ownership and usufruct; but that the father or mother shall administer the same, if in the donation or testamentary provision the contrary has not been stated.[60]

Under these provisions, the father, or the mother, as the case may be, can rightfully take an insurance policy on the property subject to his or her administration.[61] His or her possession and control[62] of the child's property may form the legal basis of his or her insurable interest therein. It may also be said that the parent's insurable interest may be based on his subsequent liability to render an accounting to the court as to the result of his guardianship or administration.[63]

So also, Article 321 provides that the property which the unemancipated child has acquired, or may acquire with his work or industry, or by any lucrative title shall pertain *in usufruct* to the father or mother under whom he is under parental authority and in whose company he lives. It is likewise provided that the fruits and interest of the child's property may be applied to the debts of the conjugal partnership which have redounded to the benefit of the family.[64]

Under these codal provisions, it would seem that the parent's interest in the property of his child is not limited merely to the fruits [65] of said property, but also upon that property itself.[66] Consequently, the parent can apply for the issuance of an insurance policy in order that he may be indemnified should he be deprived of its use, or of the fruits that it may yield.

It is to be remembered, however, that the usufruct or administration of the property of the unemancipated child is not always given to his parents.[67] It is equally true that the emancipated child is no longer under their parental authority.[68] These circumstances present another question. Can the parent insure the property of his child who is not subject to his parental authority?

The answer may be found in the same provisions of the Civil Code which give the child an insurable interest in his parent's pro-

---

[59] Art. 326, *idem*.

[60] Art. 325, *idem*.

[61] Couch, *op cit.*, at p. 1160.

[62] Fox vs. Queen Insurance Co. of America, 53 S.W. 271.

[63] See Rule 95, Sec. 1, and Rule 97, Sec. 7, of the Rules of Court in relation to Sec. 14, Act No. 2427.

[64] Art. 323, Civil Code.

[65] "Fruits" may fall under Sec. 13 (par. [c]), Act No. 2427.

[66] It may fall under Sec. 13 (par. [a]), *idem*.

[67] See Arts. 321 and 328 (par. 2), Civil Code.

[68] See Art. 327, *idem*.

perty by virtue of his right to the legitime. The parent is one of those enumerated by the code as compulsory heirs,[49] and like the child, his right to legitime on the latter's property is recognized by the Code. Because of such right it would, therefore, follow that he may secure an insurance policy upon said property.

GABRIEL A. MAGNO

[49] See Art. 887 (par. [2]), *idem*.