

Insurable Interest as Insurance Regulation

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Remedial Asymmetry

- Limit on insurer capacity cf limit on recovery of insured.
- ‘An insurer is under no legal obligation to check the validity of the policies that he issues - on the contrary if he fails to do so he will receive the benefit of the premiums. Although the point has not been seriously argued in England it has been held in the United States that issuing a policy without interest in the absence of reasonable investigation is actionable negligence (*Liberty Nat. Life Insurance Co. v. Weldon*, 267 Ala 171 (1957))’.
- R Merkin, 'Gambling by Insurance - A Study of the Life Assurance Act 1774' (1980) 9 Anglo-Am L Rev 331, 359

Old Cases through Modern Eyes...

- T Alborn, *A License to Bet: Life Insurance and the Gambling Act in the British Courts*, 14 CONN ILJ 1 (2007): ‘For one thing, the primary reason working people bought life insurance—to pay for a relative’s funeral costs—did not formally qualify as an “insurable interest” under the Gambling Act; hence at least half of the tens of millions of such policies issued between 1850 and 1909 were technically illegal’.
- S. 36(1), Assurance Companies Act 1909 (since replaced): ‘Among the purposes for which collating societies and industrial assurance companies may issue policies of assurance there shall be included insuring money to be paid for funeral expenses of a parent, grandparent, grandchild, brother or sister’

A Variation on the ‘Unsuitable Policy Scenario’

- *Goldstein v Salvation Army* [1912] 2 KB 291, 296-97 per McCardie J (obiter): ‘His only complaint was that the defendants never explained to him that he should only insure for funeral expenses - an objection which has no force, inasmuch as it appears clearly upon the face of the proposal form that he was about to insure for the purpose of providing funeral expenses’.
- Technical decision that a tombstone was not a funeral expense. Context: multiple policies, ‘expensive’ funeral, immigrant family and ‘other’ status.
- Why is s. 36(1) a restriction on the contract and not a licensing restriction on the professional supplier? And today?

Should insurers have duties at placement? FAD, Ch 12

1. A duty NOT to insure unless interest present?
2. A duty to verify position?
3. An Australian style 'duty to alert of requirement' as per Aus UGF?

Section 22(1), Insurance Contracts Act 1984 (Aus)

'(1) The insurer must, before a contract of insurance is entered into, clearly inform the insured in writing:

(a) of the general nature and effect of the duty of disclosure; and...

(d) that the duty of disclosure applies until the proposed contract is entered into'.

Remedies?

1. Duty of care to insureds? To other third-parties (as *Weldon*)?
2. ICOBS rules (vs guidelines)
3. Contingent enforcement: denial of cover requires that underwriter met duty.
 - Consumers vs business?
 - ICOBS as a scaling framework (breach of statutory duty for private persons, 'soft law' and Ombudsman for SMEs, etc)