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the court merely split the settlement without considering that contribution could be given without destroying the limitation placed by the wrongful death act on Zontelli's liability. The principal case has allowed the railway to recover more through contribution than the administratrix could have recovered had she sued Zontelli directly.

JOHN R. ALFORD

INSURER LIABLE FOR BENEFICIARY'S MURDER OF LIFE INSURED

When Mrs. Earle Dennison became the first white woman to be electrocuted by the State of Alabama, the factual background for an unusual tort decision was complete. Mrs. Dennison was convicted of the murder of her two and one-half year old niece, Shirley Weldon, on whose life she had taken out three insurance policies, naming herself as beneficiary.[1] Shirley's father sued the insurance companies for wrongful death, claiming they had been negligent in issuing policies to a beneficiary who had no insurable interest in the life of the insured child and that this negligent act was the proximate cause of Shirley's death at the hands of the beneficiary aunt.[2] The father obtained a judgment for punitive damages in the amount of $75,000 which was upheld by the Supreme Court of Alabama in *Liberty Nat'l Life Ins. Co. v. Weldon*.[3]

Actually, Mrs. Dennison was Shirley's aunt-in-law, for her deceased husband was the brother of Shirley's mother. Living in a different town than the Weldons, she rarely saw Shirley and did not contribute to her support. The evidence indicated that the insurance agents made an inadequate investigation of this relationship for the purpose of ascertaining the existence of an insurable interest.[4]

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[1]Dennison v. State, 259 Ala. 424, 66 So. 2d 552 (1953).

[2]Ala. Code tit. 7, § 119 (1940).

[3]100 So. 2d 696 (Ala. 1958).

[4]Mrs. Dennison took out policies on Shirley's life with three insurance companies. Liberty National issued a $500 policy on December 1, 1951. The agent knew the relationship between Mrs. Dennison and Shirley, and company policy does not make an aunt an acceptable beneficiary. Company policy also requires the consent of the parents for a policy on a child under ten; neither parent knew of the policy. Southern Life and Health issued a $5,000 policy in March of 1952. Mrs. Dennison submitted a false medical statement signed by a doctor in another town. The agent told the parents that Mrs. Dennison was taking out an educational policy on Shirley, but they did not consent or know that the policy had actually been issued. National Life and Accident issued a $1,000 policy in April of 1952. The plaintiff testified that he told the agent not to issue any policy on Shirley's life.

This factual situation presents two basic issues: First, were the insurers negligent in issuing life policies providing for the payment of the proceeds to a beneficiary who had no insurable interest in the life insured? Secondly, if the issuance of the policies was negligent, was this act the proximate cause of the insured's death?

The defendant's negligence in the *Liberty National* case was necessarily based on the premise that Mrs. Dennison did not have an insurable interest in Shirley's life. Blood relationship alone does not give an aunt an insurable interest in the life of her niece.[5] The evidence in the case showed that the aunt had no insurable interest since she had no reasonable expectation of receiving profit or advantage from the continued life of Shirley.[6] Insurance policies taken out by one person on the life of another, without an insurable interest, are illegal and void, as repugnant to public policy.[7] This public policy nullifies such a contract of life insurance because the holder of the insurance has a monetary interest in the death of the insured which creates a temptation to crime.[8]

The opinion in the *Liberty National* case fails to clarify the court's purpose in discussing the danger to human life which is present when a life insurance policy is sold to a beneficiary who has no insurable interest in the life of the insured. However, it would seem that the court was trying to establish the scope of risk created by defendants' failure to use reasonable care in issuing these life policies.[9] Upon concluding that the defendants' acts were negligent, the court goes on to state

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[5]Commonwealth Life Ins. Co. v. George, 248 Ala. 649, 28 So. 2d 910, 913 (1947); Wilton v. New York Life Ins. Co., 34 Tex. Civ. App. 156, 78 S.W. 403 (1904).

[6]Warnock v. Davis, 104 U.S. 775, 779 (1881); Continental Life Ins. Co. v. Volger, 89 Ind. 572 (1883); Guardian Mut. Life Ins. Co. v. Hogan, 80 Ill. 35 (1875); Rombach v. Piedmont & Arlington Life Ins. Co., 35 La. Ann. 233 (1883); Vance, Insurance 154, 155 (2d ed. 1930).

[7]Warnock v. Davis, supra note 6, at 779; Brockway v. Mutual Benefit Life Ins. Co., 9 Fed. 249, 254 (W.D. Pa. 1881); Helmetag's Adm'x v. Miller, 76 Ala. 183, 186 (1884).

[8]Helmetag's Adm'x v. Miller, supra note 7, at 187; Hinton v. Mutual Reserve Fund Life Ass'n, 135 N.C. 314, 47 S.E. 474, 477 (1904); Vance, Insurance 154 (2d ed. 1930).

A life insurance policy issued to a beneficiary who does not have an insurable interest in the life of the insured is also called a wager policy. Connecticut Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457, 460 (1876); Commonwealth Life Ins. Co. v. George, 28 So. 2d 910, 912 (Ala. 1947). Such a wager on the life expectancy of a human being is declared void because of the tendency to induce the violent death of the subject of the wager. Warnock v. Davis, 104 U.S. 775, 779 (1881); Guardian Mut. Life Ins. Co. v. Hogan, 80 Ill. 35, 45 (1875); Goddard v. Garrett, 2 Vern 269, 23 Eng. Rep. 774 (Ch. 1692); Gilbert v. Sykes, 16 East 149, 159, 104 Eng. Rep. 1045, 1049 (K.B. 1812).

[9]100 So. 2d at 707.

that these acts would not be actionable unless they breached duties to the plaintiff and were also the proximate cause of the injury.[10] According to the *Restatement,* conduct is negligent if it subjects an interest of another to a certain hazard, and, in order to protect the other from the risk of an invasion of his interest by the hazard, the law creates a duty to refrain from the negligent conduct.[11]

Insurance companies often require proof of insurable interest.[12] Such inquiry can hardly be called burdensome where human life is involved.[13] The statements of the beneficiary-purchaser alone ought not to be sufficient, especially when the policy is to be issued on the life of a child of two or three.[14] It appears from the testimony recited in the opinion of the principal case that the defendant insurers relied on Mrs. Dennison's statements that she was interested in Shirley's welfare. There was also evidence indicating that the defendants merely informed Shirley's parents of Mrs. Dennison's intention to purchase but did not obtain their consent to the issuance of the policies.[15] Therefore, it seems that the defendants, by exercising more diligence, should have known that Mrs. Dennison had no insurable interest in Shirley's life, and thus were negligent. Where knowledge necessary for

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[10]Ibid.

[11]Restatement (1948 Supp.), Torts § 281, comment e (1949).

[12]An aunt is not an acceptable beneficiary according to the Liberty National Life Ins. Co. instruction book given to its agents. 100 So. 2d at 706. The writer's personal inquiries and conversations with a certified life underwriter revealed that policies such as were written on Shirley Weldon's life by the defendants are not generally acceptable, and that a reputable firm would issue such a policy only as a result of a gross oversight.

[13]The greater the known or reasonably to be anticipated danger, the greater the degree of care that must be exercised. Barret v. Caddo Transfer & Warehouse Co., 165 La. 1075, 116 So. 563, 564 (1928); Shobert v. May, 40 Ore. 68, 66 Pac. 466 (1901); Van Dyke v. Grand Trunk Ry., 84 Vt. 212, 78 Atl. 958, 964 (1911); Spokane Truck & Dray Co. v. Hoefer, 2 Wash. 45, 25 Pac. 1072 (1891). If human life is involved, highest care is required. Bessemer Land & Improv. Co. v. Campbell, 121 Ala. 50, 25 So. 793, 798 (1899); Gayzer v. Taylor, 76 Mass. 274 (1857); Ashby v. Philadelphia Elec. Co., 328 Pa. 474, 195 Atl. 887, 889 (1938). Risk should be balanced against the social value of the interest of the actor and disadvantages of pursuing another course. United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947); Williams v. East Bay Motor Coach Lines, 16 Cal. App. 2d 169, 60 P.2d 320 (1936); Chicago B. & Q.R.R. v. Krayenbuhl, 65 Neb. 889, 91 N.W. 880, 883 (1902); Prosser, Torts 122 (2d ed. 1955).

[14]A person known to be young and inexperienced is entitled to care proportionate to his ability to protect himself, and the duty to avoid injury increases with the inability of a child to protect himself. Lehman v. Hoover, 100 F.2d 127 (6th Cir. 1938); Taylor v. Patterson's Adm'r, 272 Ky. 415, 114 S.W.2d 488, 490 (1938); Short v. Nehi Bottling Co., 145 S.W.2d 684, 688 (Tex. Ct. Civ. App. 1940); Crosswhite v. Shelby Operating Corp., 182 Va. 713, 30 S.E.2d 673, 674 (1944).

[15]100 So. 2d at 707.

due care can be acquired by the exercise of reasonable diligence, voluntary ignorance is negligence.[16]

Even though the defendants were negligent, there would be no liability unless that negligence were the proximate cause of the plaintiff's injury.[17] The Alabama court follows the doctrine that "when some agency has intervened and has been the immediate cause of the injury . . . the party guilty of negligence in the first instance is not responsible, unless at the time of the original negligence the act of the agency could have been reasonably foreseen."[18] Although this is undoubtedly the prevailing view at the present time,[19] some courts have been reluctant to impose liability when the intervening act is criminal.[20] This reluctance is understandable, for at one time any intervening cause relieved a negligent party of liability for harm resulting from his act; the last human wrongdoer alone being held responsible.[21] The results under the last human wrongdoer rule were not desirable, and the cases developed the principle that intervening negligent conduct did not relieve a defendant of liability if the intervening act should have been foreseen.[22] In accordance with this concept, most courts have gone further, holding that a foreseeable intervening *criminal* act will not sever the chain of causation, and, accordingly, will not relieve the defendant of liability.[23] Nevertheless, some cases have held

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[16]Mattson v. Cent. Elec. & Gas. Co., 174 F.2d 215, 220 (8th Cir. 1949); Gobrecht v. Beckwith, 82 N.H. 415, 135 Atl. 20, 22 (1926). Risk involves recognized danger, based on knowledge of existing facts and a reasonable belief that harm may follow. Restatement, Torts § 289 (1934); Prosser, Torts 121, 131 (2d ed. 1955); Seavey, Negligence—Subjective or Objective, 41 Harv. L. Rev. 1, 5 (1928).

[17]Clare v. Farrell, 70 F. Supp. 276, 279 (D. Minn. 1947); Black v. Love & Amos Coal Co., 30 Tenn. App. 377, 206 S.W.2d 432, 434 (1947); Comstock v. Wilson, 257 N.Y. 231, 177 N.E. 431, 432 (1931).

[18]100 So. 2d at 709.

[19]Prosser, Torts 266 (2d ed. 1955); Eldridge, Culpable Intervention as Superseding Cause, 86 U. Pa. L. Rev. 121, 125 (1937).

[20]The Lusitania, 251 Fed. 715 (S.D.N.Y. 1918); Andrews v. Kinsel, 114 Ga. 390, 40 S.E. 300 (1901); Milostan v. Chicago, 148 Ill. App. 540 (1901).

[21]Eldridge, supra note 19, at 124, citing Vicars v. Wilcock, 8 East 1, 103 Eng. Rep. 244 (K.B. 1806).

[22]Bole v. Pittsburgh Athletic Co., 205 Fed. 468 (3d Cir. 1913); Louisville & N. R.R. v. Maddox, 236 Ala. 594, 183 So. 849 (1938); Rowell v. City of Wichita, 162 Kan. 294, 176 P.2d 590 (1947); Lane v. Atlantic Works, 111 Mass. 136 (1872); Gilman v. Noyes, 57 N.H. 627, 630 (1876); Bennet v. Robertson, 107 Vt. 202, 177 Atl. 625, 628 (1935); Eldridge, supra note 19, at 124.

[23]Nichols v. City of Phoenix, 68 Ariz. 124, 202 P.2d 201, 210 (1949); Southwestern Bell Tel. Co. v. Adams, 199 Ark. 254, 133 S.W.2d 867, 872 (1939); Neering v. Illinois Cent. R.R., 383 Ill. 366, 50 N.E.2d 497 (1943); Bellows v. Worcester Storage Co., 297 Mass. 188, 7 N.E.2d 588 (1937); Brauer v. New York Cent. & H.R.R., 91 N.J.L. 190, 103 Atl. 166 (1918); Green v. Atlanta & C. Air Line Ry., 131 S.C. 124, 126 S.E. 441 (1925); Hines v. Garrett, 131 Va. 125, 108 S.E. 690 (1921); Whitehead v. Stringer, 106 Wash. 501, 180 Pac. 486 (1919).

that there is no reason to anticipate an intervening criminal act, and thus such an act automatically breaks the chain of causation.[24] These cases amount to a refusal by the courts to extend the liability of a negligent party to include harm resulting from the intervention of the intentional wrongful acts of a third person. This attempt to limit liability has resulted in some rather harsh decisions where negligent defendants exposed plaintiffs to almost certain harm at the hands of a third person and yet were relieved of liability because there was no reason to anticipate a criminal act.[25] For example, in the Georgia case of *Henderson v. Dade Coal Co.*,[26] the defendant had leased a convict from the state and was charged with the custody of the prisoner until his term had been served. Although the prisoner was known to be vicious and immoral, the defendant negligently allowed him to roam freely about. The convict raped the plaintiff who was denied recovery because the defendant could not be expected to foresee any crime at all.

The fact that some human beings do commit crimes cannot be ignored.[27] Therefore, it seems erroneous to hold that a foreseeable negligent act will not relieve a defendant from liability while all intervening criminal acts will insulate the defendant on the premise that no one can be expected to foresee a criminal act. Under the principle applied in cases such as *Henderson*, it appears that a party can go quite far in exposing someone to danger from another's malice although one cannot expose his fellows to the likelihood that another's negligence may cause harm. It is submitted that the better view is that, while there is less reason to anticipate a criminal act than a negligent one,[28] there are situations which create such temptations and opportunity for crime that the reasonable man should recognize them and take proper precautions.[29]

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[24] Andrews v. Kinsel, 114 Ga. 390, 40 S.E. 300 (1901); Chancey v. Norfolk & W. Ry., 174 N.C. 351, 93 S.E. 834 (1917); Phillips v. Citizens' Nat. Bank, 15 S.W.2d 550, 552 (Tex. Comm'n App. 1929).

[25] Andrews v. Kinsel, supra note 24.

[26] 100 Ga. 568, 28 S.E. 251 (1897).

[27] Restatement, Torts § 302, comment j (1934).

[28] Crandall v. Consolidated Tel., Tel. & Elec. Co., 14 Ariz, 322, 127 Pac. 994, 997 (1912); Watson v. Kentucky & Ind. Bridge & R.R., 137 Ky. 619, 126 S.W. 146 (1910); Prosser, Torts 141 (2d ed. 1955); Eldridge, supra note 19, at 125.

[29] Jensen v. United States War Shipping Administration, 88 F. Supp. 542 (E.D. Pa.), aff'd, 184 F.2d 72 (3d Cir. 1950); De la Bere v. Pearson, [1907] 1 K.B. 483; Restatement, Torts § 302, comment n (1934); Prosser, Torts 142 (2d ed. 1955); Eldridge, supra note 19, at 125; Feezer, Intervening Crime and Liability for Negligence, 24 Minn. L. Rev. 635, 648 (1940).