

## NOTES

INSURANCE—INSURABLE INTEREST IN LIFE—NECESSITY FOR IN NEW JERSEY.—Authorities on insurance law are unanimous in their conclusion that the lack of an insurable interest in life insurance renders such a policy void.<sup>1</sup> They seem equally unanimous in their conclusion that New Jersey is the exception to this rule.<sup>2</sup> It is the purpose of this note to examine the nature of insurable interests and ascertain New Jersey's position with respect thereto.

The *laissez-faire* attitude of the common law is well illustrated by freedom of contract.<sup>3</sup> This liberty extended to freedom to wager, and such contracts were therefore upheld by the English courts.<sup>4</sup> Statutes<sup>5</sup> were later passed prohibiting the playing of certain games, the purpose of this legislation being to encourage the practise of archery as an aid to the national defense. These laws served indirectly to outlaw wagering on such games. With the decline of archery, laws<sup>6</sup> were passed aimed primarily at gambling. It is significant that with the rise of mercantilism it was found necessary to strike at wagering in the guise of insurance contracts. Statute 19 Geo. II, c. 37 (1746), reciting the rise of fraudulent practises, the increase of smuggling, and the introduction of "a mischievous kind of gambling," prohibited the issuance of marine insurance policies where no interest of the insured was present. Statute 14 Geo. III, c. 48 (1774), recounting the same mischievous gaming, enacted that no insurance policy upon the life of a

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1. 37 C. J. 385, VANCE, INSURANCE (2d ed. 1930) 148; 1 COOLEY, BRIEFS ON INSURANCE (2d ed. 1927) 330.

2. 37 C. J. 385, note 1a; Vance, *op. cit.*, pp. 81, 148; 1 Cooley, *op. cit.*, 331; PATTERSON, CASES ON INSURANCE, p. 25n.; MAY, INSURANCE (1873), p. 75n. 3; RESTATEMENT OF THE LAW OF CONTRACTS, N. J. ANNOTATIONS (1936), sec. 520.

3. 12 AM. JUR., CONTRACTS, sec. 149; see Patterson, *Insurable Interests in Life*, 18 COL. L. REV. 381, 383 (1918).

4. Dalby v. India, etc., Life-Assurance Co., 15 C.B. 365, 80 E.C.L. 365, 139 Reprint 465 (1854); Flagg v. Baldwin, 38 N.J.Eq. 219, 48 Am. Rep. 308 (E. & A. 1884); 6 WILLISTON, CONTRACTS (Rev. ed. 1938) 4710.

5. Proclamation of Edw. III (1363); Stat. 12 Rich. II, c. 6 (1388); 11 Henry IV, c. 4 (1409), as cited in Patterson, *op. cit.*, 103 n.

6. Stat. 16 Car. II, c. 7 (1664), as cited in Patterson, *op. cit.*, 103 n.

person should be issued to another who had no interest in that life. Although some courts<sup>7</sup> have assumed that these statutes are but declaratory of the common law, the weight of authority is that they are derogatory thereof.<sup>8</sup> Despite the fact that these laws have never been accepted as a part of American law, the state courts have condemned wager policies on the broad ground of public policy.<sup>9</sup> New Jersey has refused to follow the lead of these states and has declared it must follow the common law in the absence of statutes to the contrary.<sup>10</sup>

In analyzing cases on insurance, it is well to keep in mind that insurance is a contract of indemnity.<sup>11</sup> It differs from a wager contract in that in gambling the risk of loss arises solely from the contract, whereas in insurance the risk of loss exists independently of the contract.<sup>12</sup> Thus insurance is a means of shifting the risk of loss. Since insurance is a contract of indemnity, an insurable interest is necessary as a measure of the loss. Hence it is apparent the interest must exist at the time of the loss.<sup>13</sup> Life insurance differs greatly from property insurance, however, in that it is not a contract of indemnity.<sup>14</sup> Aside

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7. *Ruse v. Mutual Benefit Life Ins. Co.*, 23 N.Y. 516 (1861).

8. *Trenton Mutual Life and Fire Ins. Co. v. Johnson*, 24 N.J.L. 576 (S. Ct. 1854).

9. *Warnock v. Davis*, 104 U.S. 775, 26 L. Ed. 924 (1882); *Helmetag's Adm. v. Miller*, 76 Ala. 183, 52 Am. Rep. 316 (1884); *Guardian Mut. Life Ins. Co. v. Hogan*, 80 Ill. 35, 22 Am. Rep. 180 (1875); *Rupp v. Western Life Indemnity Co.*, 138 Ky. 18, 127 S.W. 490, 29 L.R.A.N.S. 675 (1910).

10. *Trenton Mutual Life and Fire Ins. Co. v. Johnson*, *supra*, note 8.

11. *Carpenter v. Providence Washington Ins. Co.*, 16 Pet. (U.S.) 495, 10 L. Ed. 1044 (1842); 1 Cooley, *op. cit.*, 333; RICHARDS, *INSURANCE* (1932), p. 32.

12. *People ex rel. Daily Credit Service Corp. v. May*, 162 App. Div. 215, 147 N.Y.S. 487; *Nye v. Grand Lodge*, 9 Ind. App. 139, 36 N.E. 429 (1894); *Rittler v. Smith*, 70 Md. 261, 16 Atl. 890, 2 L.R.A. 844 (1889).

13. *Sun Ins. Office of London v. Merz*, 64 N.J.L. 301, 47 Atl. 785 (E. & A. 1900), *reversing* 63 N.J.L. 365, 43 Atl. 693 (S. C. 1899).

14. *Central National Bank v. Hume*, 128 U.S. 195, 9 S. Ct. 41, 32 L. Ed. 370 (1888); *Vance, op. cit.*, 80. If strict rules of indemnity were to be applied, there could be no recovery when the insurable interest has ceased before the maturity of the policy. Yet recovery is permissible. "We do not hesitate to say, however, that a policy taken out in good faith and valid at its inception, is not avoided by the cessation of the insurable interest unless such be the necessary effect of the provisions of the policy itself." *Justice Bradley in Aetna Life Ins. Co. v. France*, 94 U.S. 561, 24 L. Ed. 251 (1877).

from the difficulty of estimating the value of one's life, the person who would ordinarily be indemnified is dead when his loss occurs. In property insurance the loss is possible but not certain. In life insurance the loss is certain but the time of its occurrence uncertain. Since the insurance companies require rigid physical examinations of the persons whose lives they insure, they ascertain with high accuracy the soundness of their risk. Through mortality tables they are able to determine the average life expectancy of the insured, and adjust accordingly the premiums to be paid over that period so that they will receive from the insured the amount they will have to pay on his death, plus expenses and profits. If, therefore, one could point out a person whose life expectancy coincides with the mortality tables, it would be profitless for that person to insure his life.<sup>15</sup> In view of the fact that such tables can accurately predict mass results only and that medical examinations cannot foresee future ailments, life insurance is a speculative contract.<sup>16</sup> If the *cestui que vie*, i.e., the person whose life is insured, should be "fortunate" enough to die before the time expected, the amount paid on the policy would exceed the amount paid to the company in the form of premiums. Those policy holders whose lives extend beyond the company's expectations make up the deficiency. These aspects of life insurance have prompted authorities to consider such policies as much contracts of investment as contracts of insurance.<sup>17</sup>

Inasmuch as an insurable interest is necessary to measure the loss in contracts of indemnity, is it a nonessential in a contract the purpose of which is not indemnification? Since under the common law the value of a human life is beyond measure, the necessity and use of a yardstick is nullified. A consideration of property insurance, however, will reveal that there are two reasons why an insurable interest must exist in such insurance, the two merging their identity so that only one is visible.

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15. Insurance salesmen would deny the truth of this statement by contending the insured would receive protection against occurrences outside the natural course of events. The assumption here is that the insured is *certain* to live until the expected time.

16. *Phoenix Mut. Life Ins. Co. v. Bailey*, 80 U.S. 616, 20 L. Ed. 501 (1871); *Crosswell v. Comm. Indemnity Assn.*, 51 S.C. 103, 28 S.E. 200 (1897).

17. *Grigsby v. Russell*, 222 U.S. 149, 32 S. Ct. 58, 56 L. Ed. 133, 36 LRANS 642 (1911); *Vance, op. cit.*, pp. 123, 154; 18 *Col. L. Rev.* 383 (1918).

Since an insured will receive only what he lost, there can be no incentive for him to cause the loss prematurely, aside from the advantage of obtaining ready cash. Having seen that insurance is a contract of indemnity, it is now observed that the second necessity for the existence of an insurable interest—discouragement of causing the premature loss—is vitiated by the definition and purpose of property insurance. When life insurance is considered, the two requirements change position: the “measure of loss” definition becomes enervated and the “discouragement of causing a premature loss” definition brought to life.<sup>18</sup> Keeping in mind which view of insurable interest is dominant in life insurance, we perceive that constraint may be secured best by issuing policies only to those persons who are more interested in the continuance of the life insured than they are in its termination. A study of which people constitute such a class necessarily leads to a division of policy procurants into two divisions:<sup>19</sup> that wherein the *cestui que vie* takes out the policy himself, and that wherein one other than the *cestui que vie* procures the policy.

The necessity for an insurable interest in the first category is explained under the common law by declaring every person has an insurable interest in his own life.<sup>20</sup> If then the *cestui que vie* names as beneficiary one having no insurable interest in his life, or accomplishes that same result by assignment to that person, the law will presume that the *cestui que vie* will not indirectly place his life in that other's

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18. This dual nature may also be explained on the ground that insurable interest has two independent definitions, depending on whether property or life insurance is being defined. However, does not property insurance contain some “discouragement” interest? Cf. statutes modifying the common law definition of arson to include the legal occupant of the house. Also, does not life insurance contain some “indemnity” interest? Cf. creditor insurance and the tendency to require pecuniary dependence in “relative” insurance.

19. See PATTERSON, 18 COL. L. REV. 406.

20. *Haberfield v. Mayer*, 256 Pa. 151, 100 Atl. 587 (1917); *Brogi v. Brogi*, 211 Mass. 512, 98 N.E. 573 (1912). Vance, *op. cit.*, 152, contends it is more accurate to say the question is immaterial for the presence of insurable interest is merely required as evidence of the good faith of the parties. Prof. Patterson denies the value of the term “good faith” and says the question is who is the motivating party in procuring the insurance—the *cestui que vie* or the beneficiary. See 18 COL. L. REV. 404.

hands unless he had implicit faith and confidence in him.<sup>21</sup> Since few beside the *cestui* are in a position to determine how trustworthy the assignee is, the law will accept the former's evaluation. The requirement of an insurable interest in the second class is stronger than in the first, for here the beneficiary is the one who obtains the policy and is the active force in the transaction. His desire to keep the *cestui que vie* alive is best insured by contracting with him only if his pocket or heart will suffer by the other's death. These precautions will not preclude all risk, for creditors have been known to murder their debtors and people their kin. The hazard, however, is reduced to a negligible minimum. An insurable interest is best evidenced here by blood or marriage relationship<sup>22</sup> or contract relationship. Thus the following have an insurable interest in the other: parent and child,<sup>23</sup> grandparent and grandchild,<sup>24</sup> brother and brother,<sup>25</sup> sister and brother,<sup>26</sup> husband and wife,<sup>27</sup> creditor in debtor,<sup>28</sup> employer in employee,<sup>29</sup> partnership in

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21. *Grigsby v. Russell*, *supra*, note 17; *Vivar v. Knights of Pythias*, 52 N.J.L. 455, 20 Atl. 36 (S. C. 1890); *Steinbach v. Diepenbrock*, 158 N.Y. 24, 52 N.E. 662 (1899). If, however, the assignment is made in bad faith and merely in order to circumvent the law against wagering, the assignment is invalid and the policy void. *Cammack v. Lewis*, 82 U.S. 643, 21 L. Ed. 244 (1873); *Bromley v. Washington Life Ins. Co.*, 122 Ky. 402, 92 S.W. 17 (1906). For a good discussion of the reasons why an assignee need not have an insurable interest, see *Mut. Life Ins. Co. of N. Y. v. Allen*, 138 Mass. 24, 52 Am. Rep. 245 (1884).

22. Many cases declaring blood relationship sufficient *per se* to give an insurable interest are merely enunciating *dicta*. This view seems in the minority. See *Vance*, *op. cit.*, 155, and *Rombach v. Piedmont and Arlington Life Ins. Co.*, 35 La. Ann. 233 (1883). But *Cf. Consol. Laws N.Y.* (1939) ch. 27, sec. 146, cited *infra*, note 59.

23. *In re Cohen*, 230 Fed. 733 (S.D. Ga. 1916).

24. *Corbett v. Metro. Life Ins. Co.*, 55 N.Y.S. 775 (1899).

25. *Century Life Ins. Co. v. Custer*, 178 Ark. 304, 10 S.W.2 882 (1928).

26. *Aetna Life Ins. Co. v. France*, *supra*, note 14.

27. *Life Ins. Clearing Co. v. O'Neill*, 54 L.R.A. 225, 106 F. 800 (C.C.A. 3d 1901). N. J. Rev. St. 17:34-26 declares a married woman may insure her husband, and N. J. Rev. St. 17:34-27 permits her to assign the policy with her husband's assent.

28. *Cammack v. Lewis*, 82 U.S. 643, 21 L. Ed. 244 (1873); *Trenton Mutual Life and Fire Ins. Co. v. Johnson*, *supra*, note 8.

29. *Employers' Liability Assurance Corp. v. Merrill*, 155 Mass. 404, 29 N.E. 529 (1892).

partner,<sup>30</sup> corporation in officer,<sup>31</sup> fiancée in fiancé,<sup>32</sup> foster parent in foster child.<sup>33</sup>

An application of these principles to New Jersey cases will prove instructive. The first and leading case to state that the person taking out the policy need have no insurable interest in the life of the *cestui* is *Trenton Mutual Life and Fire Ins. Co. v. Johnson* (Sup. Ct. 1854).<sup>34</sup> Here the insured, i.e., the person contracting with the insurer, obtained a policy upon the life of another. The court decided the common law prevailed in the absence of a state statute and that no insurable interest need exist. It expressly found, however, that an interest did exist since the *cestui que vie* was both the employee and debtor of the insured. The statement as to the immateriality of insurable interest is therefore *dictum*. The entire remainder of relevant New Jersey cases are situations wherein the *cestui que vie* procured the policy of his own volition and either named the litigant as his beneficiary or assigned to him. These cases rest on an entirely different basis from the above case, yet cite it as authority for this state's notorious doctrine. In *Vivar v. Knights of Pythias* (S. C. 1890),<sup>35</sup> the rule was correctly stated that the beneficiary need have no interest in the life of the policy to recover thereon. Although the Trenton Mutual case was cited, the court deemed the existence of interest immaterial where the *cestui que vie* procures the policy. No reasons are given nor an analysis attempted. *Meyers v. Schuman* (E. & A. 1896),<sup>36</sup> evaded deciding whether an assignee must have an insurable interest in the life of the person insured and contented itself with declaring that any illegality of such contract was purged by the insurance company's paying the

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30. *Quinn v. Leidinger*, 107 N.J.Eq. 188, 152 Atl. 249 (Ch. 1930), *aff'd*, 110 N.J.Eq. 663, 160 Atl. 537 (E. & A. 1932); *Ruth v. Flynn*, 26 Col. App. 171, 142 P. 194 (1914).

31. *Wurzburg v. N. Y. Life Ins. Co.*, 140 Tenn. 59, 203 S.W. 332, 59 L.R.A. 1918 E 566 (1918).

32. *Chisholm v. National Capital Life Ins. Co.*, 52 Mo. 213, 14 Am. Rep. 414 (1873).

33. *Thomas v. National Benefit Assn.*, 81 N.J.L. 349, 79 Atl. 1042 (S. Ct. 1911), *aff'd*, 84 N.J.L. 281, 86 Atl. 375, 46 LRANS 779 (E. & A. 1913).

34. 24 N.J.L. 576.

35. 52 N.J.L. 455, 20 Atl. 36.

36. 54 N.J.Eq. 414, 34 Atl. 1066.

money into court.<sup>37</sup> In *Marzulli v. Metro. Life Ins. Co.* (S. C. 1911),<sup>38</sup> the court decided purely on the authority of the Trenton Mutual case that the beneficiary could recover. There was an express finding that an insurable interest existed. The Supreme Court followed the leading case in *Thomas v. National Benefit Assn.* (1911),<sup>39</sup> but the Court of Errors and Appeals affirmed on the sole ground that the beneficiary had a reasonable expectation that she would benefit by the continuance of her foster-daughter's life. In *Howard v. Commonwealth Beneficial Assn.* (E. & A. 1922),<sup>40</sup> the court again decided on the basis of *stare decisis*. Since the *cestui que vie* contracted with the insured himself and then assigned to his landlady, the Trenton Mutual case is no authority. *Travelers Ins. Co. v. Morris* (E. & A. 1933),<sup>41</sup> an assignment case, decided an insurable interest was present yet followed the foregoing line of cases. The court for the first time conceded a wager might be effected in the form of a life insurance contract and placed special attention on the good faith of the parties at the inception of the contract. The climax in New Jersey cases is reached in *Katona v. Colonial Life Ins. Co.* (Middlesex Cty. Common Pleas 1934).<sup>42</sup> The court specifically denied that the Trenton Mutual case and the Vivar case enunciated *dicta* and followed their "holdings" implicitly. The fact that the beneficiary had an insurable interest in the *cestui's* life was overlooked.

A perusal of these cases shows satisfactory results were reached in all instances, yet the reasoning is far from adequate. New Jersey's position is still uncertain as to the necessity of an insurable interest in the life of the *cestui que vie*. The statements that none need exist are so strongly made, however, that one hesitates to question them. What is the worth of these *dicta*? The adherence to the doctrine has

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37. Can illegality be purged? Cf. N. J. Rev. St. 2:57-1 cited *infra*.

38. 81 N.J.L. 166, 78 Atl. 1051.

39. *Supra*, note 33.

40. 98 N.J.L. 267, 118 Atl. 449. This case is the subject of a meager comment in 32 YALE L. J. 296 (1923), wherein it is stated that this is the first time an insurable interest has been "held" unnecessary by the highest court of New Jersey. (Quotation marks added.)

41. 115 N.J.Eq. 142, 169 Atl. 835.

42. 12 N.J.Misc. 526, 173 Atl. 99.

been so consistent, one might be tempted to concede the courts' attitude as having the worth of settled law. It is doubtful, however, whether these statements have attained this exalted position.

Ever since 1844 the state constitution<sup>43</sup> has contained a prohibition of some form of gambling. While at first only lotteries were forbidden, the scope was broadened in 1897 so that now the provision reads:

"No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this state, and no ticket in any lottery shall be bought or sold within this state, or offered for sale; *nor shall pool-selling, book-making, or gambling of any kind be authorized or allowed within this state.* . . ."<sup>44</sup>

While "gambling" is a word of very general application,<sup>45</sup> it has been defined as meaning gaming<sup>46</sup> or anything which induces men to risk their money without any hope of return other than to get for nothing any given amount from another.<sup>47</sup> Wager contracts would seem to be included within the purview of this section, but sole dependence on it would be an unsafe position. The word "gambling" has never been defined by the New Jersey courts, and it may very well be the judiciary will attribute to it the popular conception of wagering on races or on games played with devices. This view is bolstered by the remainder of the paragraph cited, wherein betting devices are mentioned and physical competition implied. It is to be noticed also that when the gambling prohibition first made its appearance in the Constitution, it was directed at lotteries, while the latest amendment thereof legalized pari-mutuel betting on horse races. Law enforcement agencies rely much more on specific statutes<sup>48</sup> than on the gambling provision in the Constitution.

43. Art. IV, sec. 7, par. 2.

44. Italics added. The 1939 amendment (Proclamation of July 11, 1939) relating to betting on horse races is omitted.

45. *Appleton v. Maxwell*, 10 N.M. 748, 65 P. 158, 55 L.R.A. 93 (1901).

46. *Fleming v. State*, 125 Ga. 17, 53 S.E. 579 (1906); *State v. Mint Vending Machine No. 195084*, 85 N.H. 22, 154 Atl. 224 (1931); 27 C. J. 977; 2 WORDS AND PHRASES (5th Series 1939) 1199.

47. *Creash v. State*, 131 Fla. 111, 179 S. 149 (1938).

48. N. J. Rev. St. 2:135-1 to 9 (gaming and horseracing declared misdemeanors) and 2:147-1 to 4 (the conducting or advertising of lotteries declared a misdemeanor).

The strongest condemnation of lack of insurable interest is found in N. J. Rev. St. (1937) 2:57-1:

"All wagers, bets, or stakes made to depend upon any race or game, or upon any gaming by lot or chance or upon any lot, chance, casualty, or unknown, or contingent event shall be unlawful."

While this statute has been applied mainly to horseracing,<sup>49</sup> foot-racing,<sup>50</sup> stock prices,<sup>51</sup> and "numbers,"<sup>52</sup> the terms are inclusive of all wager contracts. It is submitted that betting upon the outcome of a horse race is identical in principle to betting upon the duration of a person's life. It may be that the social circles in which insurance moves deceives people into according it an air of respectability. More likely the value and worth of true insurance mislead everyone into attributing these same qualities to wager insurance. A realization of how insurance and wagers differ should do much to clear the mists.

There seems yet a third stumbling block to the acceptance of the *dicta* as law. If the courts mean what they say, then the refusal to hold wager insurance policies unlawful in the absence of a statute to the contrary can mean only that New Jersey does not consider such agreements against public policy. The two chief arguments commonly advanced by other jurisdictions in holding such contracts bad in the absence of legislation, are the encouragement of gambling with its attendant evils,<sup>53</sup> and the encouragement of crime. As indicated above, New Jersey has expressly manifested its distaste for gambling, and has circumvented any evasion thereof by declaring that any person who issues a policy of insurance for or against the drawing of any lottery ticket shall be guilty of a misdemeanor.<sup>53</sup> It surely cannot be

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49. *Huncke v. Francis*, 27 N.J.L. 53 (S. Ct. 1858); *McClellan v. State*, 49 N.J.L. 471, 9 Atl. 681 (E. & A. 1887); *Haring v. State*, 51 N.J.L. 386, 17 Atl. 1080 (S. Ct. 1889), *aff'd*, 53 N.J.L. 664, 23 Atl. 582 (E. & A. 1891); *Henster v. Jennings*, 62 N.J.L. 209, 41 Atl. 918 (E. & A. 1898); *Collins v. Whiteside*, 75 N.J.L. 865, 69 Atl. 174 (E. & A. 1907).

50. *Fitzgerald v. Schloss*, 62 N.J.L. 472, 41 Atl. 677 (S. Ct. 1898).

51. *Van Pelt v. Schauble*, 68 N.J.L. 638, 54 Atl. 437 (E. & A. 1902); *Schack v. Dickenhorst*, 99 N.J.L. 120, 122 Atl. 436 (E. & A. 1923); *Flagg v. Baldwin*, *supra*, note 4; *Tanturn v. Arnold*, 42 N.J.Eq. 60, 6 Atl. 316 (Ch. 1886).

52. *Benjamin v. Blake*, 121 N.J.L. 10, 1 Atl. (2d) 263 (S. Ct. 1938).

53. N. J. Rev. St. 2:147-1b.

said that this state maintains an indifferent attitude toward crime. Specific provision has been made in the insurance law to discourage such acts by the passage of the "graveyard insurance" section.<sup>54</sup> Thus the pernicious practise of parents or guardians insuring their infant children and murdering them for the policy amount has been terminated. The argument might be made that the issuance of non-interest life insurance policies offers no greater encouragement to murder than do the creation of remainders after life tenancies, the award of gifts, or the descent of property by intestacy. As Prof. Patterson points out,<sup>55</sup> there are two differences between the former windfalls and the latter: first, the donee in the latter class has little initiative in procuring the unearned gain; and second, the impoverishment of the loser in a wager has no counterpart in the latter class. Thus it will be seen that while the unearned gain in the case of remainders, gifts, and descent of property, seem similar to the unearned gain in wager insurance policies, the latter are much more conducive to crime. Discussion is needless to point out that New Jersey's standard of morality is no lower than that of her forty-seven neighbors. If this issue were to come to a true test, it would almost certainly show that wager contracts are against public policy.<sup>56</sup>

The question remains whether the status quo should prevail or whether the legislature should act. It must be conceded that the courts have arrived at satisfactory results in all cases, and there seems little likelihood that the situation will change for the worse. This will be

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54. N. J. Rev. St. 17:34-30. A person liable for the support of a child is prohibited herein from insuring the life of his child beyond a certain sum dependent on the age of the child. The sums run from a maximum of \$100 for a child under the age of 1, to a maximum of \$1500 for a child between the ages of 14 and 14½. The New Jersey provisions are identical with New York's former statute. Consol. Laws N. Y., ch. 27, sec. 55. Consol. Laws N. Y. (1939), ch. 27, sec. 147. While retaining the same sums, has increased the last age spread from 13½ to 14½.

55. 18 Col. L. Rev. 381, 383, 386-8.

56. See *Flagg v. Baldwin*, *supra*, note 4. "A contract, the tendency of which is to endanger the public interest or injuriously affect the public good, or which is subversive of sound morality ought never to receive the sanction of a court of justice or be made the foundation of its judgment." Justice Harlan in *Ritter v. Mutual Life Ins. Co.*, 169 U.S. 139, 18 S. Ct. 300, 42 L. E. 693 (1898).

fostered, no doubt, by the growing care of insurance companies to refrain from issuing policies without the assent of the *cestui que vie* or at least from issuing policies to persons with no obvious interest in his life. Still, it is foolhardy to flirt with the future. Other states<sup>57</sup> have seen the necessity of passing statutes requiring the presence of an insurable interest. It should be noted that Pennsylvania found it necessary to define insurable interest in 1928<sup>58</sup> and that New York, after having been content to mention insurable interest loosely since 1892, defined the term in detail as late as 1939.<sup>59</sup> New Jersey's sole mention of insurable interest is contained in N. J. Rev. St. 17:34-28:

"When a policy of insurance is effected by a person on his own life or on another life in favor of a person other than himself having an insurable interest therein, the lawful beneficiary other than himself or his legal representatives, shall be entitled to its proceeds against the creditors and representatives of the person expecting it. . ."

It is submitted that we can do much possible future good by passing two statutes: one requiring the existence of an insurable interest in all insurance policies, and another defining insurable interest in life insurance, patterned upon New York's commendable law.

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57. California, Georgia, Indiana, North Dakota, as cited in 1 Cooley, *op. cit.*, 331.

58. Pa. St. Supp. 1928, sec. 12490b-412, as cited in Vance, *op. cit.*, 156 n.

59. Consol. Laws N. Y., ch. 27, sec. 146 (L. 1939, c. 882, effective Jan. 1, 1940). "The term 'insurable interest' as used in this section shall mean (a) in the case of persons related closely by blood or by law, a substantial interest engendered by love and affection; and (b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the person insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by the death, disablement, or injury, as the case may be, of the person insured."