

INSURABLE INTEREST IN THE LIVES OF MINOR CHILDREN IN UGANDA

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ISSN 2957-8647

Vol. 2

pp. 1-20, March 2023

www.cavendish.ac.ug

email: secretaryculj@cavendish.ac.ug

How to cite this article:

Okurut, E & Okeny A. (2023). *Insurable Interest in the Lives of Minor Children in Uganda*. CULJ Vol 2.

Abstract

Insurable interest is an essential requirement that distinguishes legitimate life assurance policies from wagers. This paper analyses the statutory insurable interest of parents and guardians of minors, in the lives of those children under Section 133(2)(a) of the Insurance Act of Uganda. This provision implies that parents and guardians of minor children in Uganda are conferred with a statutory insurable interest in the lives of their minor children. Therefore, they may insure the lives of their minor children and become the beneficiaries of such policies. The major problem is that the prospective benefits of such policies taken on the lives of minors may become an incentive for harming or even killing the child. To interpret and determine the appropriateness of Section 133(2)(a) of the Insurance Act, this paper compares the Ugandan legal position with the Common Law. This comparison is essential because Insurance Law in Uganda was heavily influenced by the principles of the Common Law. Insurance regulation was initially written in Uganda by subsidiaries of foreign corporations, mostly those with British, American, and Indian roots, until the late 19th century. The first insurance decree was enacted in 1978, and since then Ugandan insurance legislation has steadily expanded to include all relevant parts of the sector, including life assurance. This paper finds that parents' and guardians' presumed insurable interest in the lives of their minor children is not supported under the Common Law. This is because natural affection relationships are not capable of conferring a presumed insurable interest in life assurance. As a result, Section 133(2)(a) of the Insurance Act is largely inappropriate and it is no wonder that life insurers in Uganda do not offer this kind of product. This paper recommends that the provision should be urgently amended to do away with the statutory insurable interest conferred upon parents and guardians in the lives of their minor children.

Keywords: Insurance, Insurance Act of Uganda, Insurable interest, Life Assurance, Parents and Guardians, Minors

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Introduction

The demand for insurance products is steadily increasing due to risks such as death, injury, fire and accidents. The purpose of insurance is to shield an individual from potentially detrimental and unforeseen occurrences. It gives the policyholder an assurance that they will be cushioned from monetary loss as a result of risks that may affect their life or property.¹ It is a requirement that the occurrence of the insured event must be fortuitous, and even if it must happen eventually such as death, there must be some uncertainty over when it will happen.² By shifting the risk of loss from the insured to the insurer in exchange for a premium, insurance offers a solution under which the insured will be indemnified for any loss suffered.³ A premium serves as a consideration for the transfer of the risk from the insured to the insurer.⁴ Failure to pay the premium results in a breach of the insurance contract for which the insurer will not be under an obligation to indemnify the insured for any losses suffered. Insurable interest is described as the desire of a person to get insurance cover for property or life, against any kind of unanticipated risks or losses such as damage, injury, or death. Insurable interest in life assurance is a legal requirement used to describe the relationship between the policyholder and the person whose life is being insured. Insurable interest does not have to be proved in circumstances where an individual takes out a life policy on his/her own life. According to *Griffiths v Fleming*,⁵ every individual has an unlimited insurable interest in their life, preferring to remain alive and be in perfect health rather than be sick, harmed, or dead. Therefore, a person may insure his/her life and nominate any beneficiary they so choose. Beneficiaries of life policies do not have to be related to the assured.⁶ A beneficiary may be an individual, organization, company, or trust. If the beneficiary is a person, they may be a child, friend, spouse, relative, or just about any other person.⁷ A policyholder may even designate a secret lover as a beneficiary of his/her life

¹Christopher Culp, *The Risk Management Process: Business Strategy and Tactics*, vol 103 (John Wiley & Sons) 60.

²See: *Noten BV v Paul Charles Harding* (1990) 2 Lloyd's Rep 283.

³Insurance Act 2017, s 2. Definition of an 'insurance contract'.

⁴*ibid.* Definition of a 'premium'.

⁵*Griffins v Fleming* (1909) 1 KB 805.

⁶Albert Feuer, 'Life Insurance and Retirement Plan Benefits: Are Your Clients Achieving Their Intended Goals?' (2016) 28 NYSBA J.

⁷'How to Choose a Life Insurance Beneficiary & How Claims Work' (*ValuePenguin*) <<https://www.valuepenguin.com/life-insurance/life-insurance-beneficiary>> accessed 13 September 2022.



policy. Given that a person’s insurable interest in life is limitless, they are permitted to purchase multiple policies on themselves as long as they can afford the payments.⁸

Insurable interest must be strictly proved in circumstances where an individual seeks to purchase a life assurance policy for another person’s life.⁹ To establish an insurable interest in the life of another, the policyholder must prove that he/she is financially interested in the welfare and continued existence of the assured. If a prospective policyholder will suffer some financial loss or difficulty if the assured passes away, they will have a demonstrable insurable interest in that other person’s life.¹⁰ Financial difficulty may take the form of loss of support, loss of earning capacity, or even loss of monies owed to the policyholder.¹¹ Therefore, the strict condition for establishing an insurable interest in the life of another is the foreseen financial hardship that would result from the assured’s death. This article examines the categories of persons who are conferred with a statutory insurable interest in life assurance under Section 133 of the Insurance Act of Uganda (2017) with a particular focus on parents and guardians over the lives of their minor children.

Definition of Insurable Interest

Insurable interest is a fundamental requirement for the validity of every insurance policy regardless of whether it is for life or non-life insurance. It is the crucial distinction between legitimate contracts of insurance as opposed to ordinary wagers (betting/gambling) that are not insurable.¹² In the case of *Lucena v Craufurd*, Lawrence J discussed the principle of an insurable interest when he noted as follows:¹³

...That a man must somehow or other be interested in the preservation of the subject matter exposed to perils, follows from the nature of this contract, when not used as a

⁸Peter Nash Swisher, ‘The Insurable Interest Requirement for Life Insurance: A Critical Reassessment’ (2004) 53 Drake Law Review 477, 485.

⁹ibid 487.

¹⁰William T Vukowich, ‘Insurable Interest: When It Must Exist in Property and Life Insurance’ (1971) 7 Willamette Law Journal 1.

¹¹‘What Is an Insurable Interest in Life Insurance?’ (*Fidelity Life*, 13 September 2021) <<https://fidelitylife.com/learn-and-plan/insights/what-is-an-insurable-interest-in-life-insurance/>> accessed 13 September 2022.

¹²Edwin W Patterson, ‘Insurable Interest in Life’ (1918) 18 Columbia Law Review 381, 385.

¹³*Lucena v Craufurd* (1806) 2 Bos & PNR 269 (House of Lords) 300–302, (Judgment of Lawrence J).



mode of wager, but as applicable to the purposes for which it was originally introduced; but to confine it to the protection of the interest which arises out of property, is adding a restriction to the contract which does not arise out of its nature... A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it...

It is clear from Justice Lawrence's judgment above that for insurable interest to exist in any policy of insurance, there must be a financial connection between the policyholder and the property or life for which insurance cover is sought. Although insurable interest has been acknowledged as a fundamental component of insurance law since at least the middle of the eighteenth century, there is still disagreement on its exact definition.¹⁴ While there is no single recognized definition of insurable interest, it is widely agreed that it refers to a person's interest in minimizing the likelihood that a risk involving a certain subject matter or life which if negatively impacted would result in a loss. It is important to note that the Insurance Act of Uganda (2017) does not provide a working definition for insurable interest. The only Act that attempts to define insurable interest albeit unsatisfactorily is the Marine Insurance Act of Uganda (2002). Section 5 states as follows:¹⁵

- (1) Subject to this Act, every person has an insurable interest who is interested in a marine adventure.
- (2) In particular, a person is interested in a marine adventure where he or she stands in any legal or equitable relation to the adventure or to any insurable property at risk in it, in consequence of which he or she may benefit by the safety or due arrival of the insurable property, or may be prejudiced by its loss, or by damage to it, or by the detention of it, or may incur liability in respect of it.

Under non-life insurance, legal ownership, whether in property, a company, a person's possessions, or goods for sale, is sufficient to create an insurable interest in that thing.¹⁶ It must

¹⁴Julian Long, 'The Concept of Insurable Interest and the Insurance Law Reform Act 1985' (1992) 7 Auckland University Law Review 80, 80.

¹⁵Marine Insurance Act 2002, s 5 (Definition of insurable interest).

¹⁶*Macaura v Northern Assurance Company Ltd* [1925] AC 619.



be emphasized, nonetheless, that having legal ownership of the subject matter is not the sole essential requirement for establishing an insurable interest. Insurable interest may also be shown to exist in certain legal situations.¹⁷ In the case of *Macaura v Northern Assurance Company Ltd*,¹⁸ it was held that for an individual to have an insurable interest in non-life insurance, they either needed to have a claim of legal ownership on the property or risk to incur legal liability if it were destroyed. In an effort to explain the concept of insurable interest, MacGillivray proposes a working definition which states as follows:¹⁹

Where the assured is so situated that the happening of the event on which the insurance money is to become payable would, as a proximate cause, involve the assured in the loss or diminution of any right recognized by law or in any legal liability, there is an insurable interest in the happening of that event to the extent of the possible loss or liability.

Therefore, the circumstances that will provide satisfactory proof of the existence of insurable interest include the following:

- i) The presence of a legal right, such as ownership, a lease, or a mortgage.
- ii) Situations where the insured may be held legally accountable for losses or damage to other people's property due to an equitable connection, that is, an interest in one's own property for responsibilities to third parties.²⁰

As a result, speculative returns such as bets will not qualify as insurable interest in a thing. Therefore, a person must be at risk of financial loss if the insured subject matter is destroyed, or in the case of life assurance, significantly affect him/her financially if the assured passes away.²¹ In this case, the insurance policy becomes a solution that the policyholder uses to minimize the likelihood of suffering a loss. The potential policyholder must, however, show that he or she has an insurable interest in the asset or person on whose life the insurance is purchased.

¹⁷*Lucena v Craufurd* (n 13).

¹⁸*Macaura v Northern Assurance Company Ltd* (n 16).

¹⁹Evan James Macgillivray and others, *Macgillivray on Insurance Law: Insurance Practitioner's Library* (1997).

²⁰*ibid.*

²¹Robert Stuart Pinzur, 'Insurable Interest: A Search for Consistency' (1979) 46 *Insurance Counsel Journal* 109.



The Nature of Insurable Interest in Life Assurance

In life assurance, the principle of insurable interest describes a specific type of hedge that protects against financial hardships brought about by the death of the assured. A person or entity will have an insurable interest in another's life when the death of that person will cause that individual or organization to suffer some sort of financial loss. It is, therefore, acceptable for a person or organization having an insurable interest in the life of another, to purchase a life assurance policy to protect against financial loss that would occur as a result of the death of the assured.²²In these cases, the beneficiaries specified in the life policy should also have an insurable interest in the life of the assured if the policyholder is not the sole beneficiary.²³ The insurance cover would lessen such losses if the assured experiences risks, such as death, accident, disability, or loss of earning capability. Insurable interest is a strict requirement for offering a life assurance policy since it makes the entity or insured event genuine, lawful, and safeguarded from harmful behaviour that would otherwise be considered a wager or gamble. A prospective policyholder cannot be said to have an insurable interest if they are not at risk of suffering any financial loss as a result of the occurrence of the insured event. Therefore, if a person is not actually at risk of financial loss, they cannot purchase a life assurance policy on the life of another. In such situations, speculative future benefits such as earning interest on a savings account or a fixed-income investment cannot evidence the existence of a valid insurable interest.

When Should Insurable Interest be Proved in Life Assurance?

There are different periods during the subsistence of the insurance contract in which insurable interest must be shown to exist depending on the category of insurance, this being either life or non-life insurance. The question to be addressed is whether an insurable interest should exist at the time of the policy is purchased or at the time the insured event (loss) occurs. In the case of

²²*Harse v Pearl Life Insurance* [1903] 2 KB 92.

²³Sterling Price, 'What Is Insurable Interest in Life Insurance?' (*ValuePenguin*, 7 September 2022) <<https://www.valuepenguin.com/insurable-interest-life-insurance>> accessed 24 September 2022.



Dalby v India and London Life Assurance Co,²⁴ the court unequivocally established the rule that for life to be insurable, an insurable interest must only have been present at the time the life policy was purchased. The court additionally held that the premium to be paid by the assured has to be determined at the time the contract is concluded. According to Parke J, it would be unethical, unfair, and dishonest if a circumstance leading to the loss of insurable interest denied the policyholder the benefits that he/she would be entitled to under the life policy.²⁵ It was also emphasized that life policies are fundamentally different from non-life insurance in that the former aims to compensate the insured for specific losses while the latter is essentially an agreement that provides that a certain sum would be paid to designated beneficiaries upon the death of the assured.

In the case of *Hebdon v West*,²⁶ the court also emphasized that an insurable interest in life assurance is established at the time when the policy is concluded rather than when the death of the assured occurs. Wightman J observed as follows:²⁷

We assume, then, that the plaintiff had a pecuniary interest in the life of Pedder to the extent of £2,500 at the time he effected the policy with the defendant's office... Looking to the declared object of the legislature, we are of opinion that though, *upon a life policy, the insurable interest at the time of the making the policy, and not the interest at the time of the death*, is to be considered, it was intended by the third section of the Act that the insured should in no case recover or receive from the insurers (whether upon one policy or many) more than the insurable interest which the person making the insurance had at the time he insured the life.

Therefore, insurable interest should be explicitly mentioned in life assurance policies purchased in respect of other individuals' lives at the time they are concluded. Insurable interest doesn't need to be proved at the time of the death of the assured or even when the insurance claim is made. This is so because life assurance policies do not fall under contracts of indemnity.

²⁴*Dalby v India and London Life Assurance Co* (1854) 15 CB 365 (Exchequer Chamber).

²⁵*ibid* 391.

²⁶*Hebdon v West* (1863) 3 B & S 579.

²⁷*ibid* (emphasis added).



According to Park J in *Dalby v The India and London Life Assurance Co*, life assurance is a ‘species of insurance in no way resembles a contract of indemnity...’²⁸

Effect of Lack of Insurable Interest in Life Assurance

A policy of insurance, whether it be for life or non-life insurance, that lacks a clear insurable interest has the consequence of being null and void and is thus unenforceable.²⁹ In the case of *British Workman’s and General Assurance Co v Cunliffe*,³⁰ the Court of Appeal ruled that a life assurance policy is null and void if it is established that the policyholder does not have an insurable interest. For the avoidance of doubt, the court made it clear that a life assurance policy taken on the life of another person who does not have a demonstrable insurable interest is *void ab initio* rather than voidable. Furthermore, Section 133 of the Insurance Act of Uganda (2017) also reflects this position which requires insurable interest to be demonstrated before the issuance of a life policy on the life of another person.³¹ The necessity for an insurable interest may be waived in non-life insurance contracts, just like in any other ordinary contracts, as long as both parties agree to it and if it is not strictly required by law. The basis for waiver is that parties may agree or consent to renounce insurable interest, which is typically required in indemnity contracts. In the case of *Prudential Staff Union v Hall*,³² an employee organization obtained insurance to cover any possible losses incurred by its members concerning funds it was holding as agents or collectors. The King’s Bench Court determined that the association lacked an insurable interest in the members’ liability in respect of those monies. However, because the insurer agreed to indemnify the association regardless of the lack of insurable interest, the policy was still enforceable between the parties. Regardless of the aforementioned, it must be noted that for a life assurance policy to be enforceable, an insurable interest must be established in accordance with Section 133 of the Insurance Act of Uganda (2017).³³ It follows that insurable interest may only be waived in non-life insurance policies and not in life assurance policies

²⁸*Dalby v India and London Life Assurance Co*. (n 24).

²⁹Swisher (n 8).

³⁰*British Workman’s and General Assurance Co v Cunliffe* (1874) 9 Ch App 525.

³¹Insurance Act 2017, s 133(1); *Kettlewell v Refuge* [1908] 1 KB 545.

³²*Prudential Staff Union v Hall* (1947) 80 Ll. L. Rep. 410 (King’s Bench).

³³Insurance Act 2017, s 133(1).

because doing so would contravene the provisions of the Insurance Act and this would result in an illegality.

Who has Insurable Interest in Life Assurance?

Insurable interest may be categorized into contractual and statutory insurable interest. Statutory insurable interests are those that are established by certain laws for example the Insurance Act.³⁴ On the other hand, contractual insurable interests are those interests that are created under a contractual agreement (consensus) for example, in the case of a debtor-creditor relationship.³⁵ In the case of *Halford v Kymer*,³⁶ the court stressed that even in the case of close family relatives, mere love and affection does not automatically establish an insurable interest in another person's life. It is important to note that the establishment of insurable interest in life assurance in Uganda is governed by statute. Insurable interest in life assurance can only exist when it is provided for by law or in presence of a relationship demonstrating a financial interest within the contemplation of Section 133 of the Insurance Act.³⁷ Insurable interest in life assurance is often viewed as giving rise to one of two categories depending on whether a person purchases a life assurance policy for their own life or the life of another.

Concerning a life assurance policy purchased by an individual over the life of another, insurable interest is typically required except in circumstances where it is expressly provided for by the law.³⁸ When someone buys life assurance on the life of another person, the policyholder is in charge of paying the premiums while the assured is the person whose life the policy covers.³⁹ For example, if X purchases a life assurance policy on himself, he is regarded as the policyholder as well as the assured. However, if X purchases a life assurance policy on the life of another individual such as a spouse, he remains the designated policyholder under the policy while the other individual becomes the assured. In these situations, the policyholder must prove that they would suffer loss as a result of the death of the assured to establish that they have an insurable

³⁴ibid, s 133.

³⁵*Courtenay v Wright* (1860) 2 Giff 337.

³⁶*Halford v Kymer* (1830) 10 B & C 724.

³⁷Insurance Act 2017, s 133(2).

³⁸Swisher (n 8) 485.

³⁹Vukowich (n 10).



interest in their life.⁴⁰ Based on legislation, the common law, and those contractual relationships or recognised natural ties, an insurable interest in the life of another person may be established.⁴¹ According to Section 133 of the Insurance Act (2017), no prospective policyholder may be issued with life assurance coverage over the life of another person in the absence of a demonstrable insurable interest. Section 133(2) provides that where certain categories of legal and natural relationships exist, an insurable interest exist between such individuals. The provision states as follows:⁴²

- (a) a parent of a minor or the guardian of a minor on the life of a minor;
- (b) a husband, on the life of his wife;
- (c) a wife, on the life of her husband;
- (d) any person on the life of another upon whom he or she is wholly or in part dependent for support or education;
- (e) a company or other person, on the life of an officer or employee of the company or that other person;
- (f) a person who has a pecuniary interest in, the duration of the life of another person, in the life of that person to the extent only of that pecuniary interest at the outset.

Insurable interest is, therefore, a statutory requirement for purchasing a life policy in Uganda, particularly for policies insuring the life of another. The lack of insurable interest in life assurance renders the contract illegal and unenforceable.⁴³

Insurable Interest in the Life of a Minor in Uganda

While most groups of persons who are granted a statutory insurable interest under Section 133 of the Insurance Act are largely appropriate, Section 133(2)(a) in particular presents interpretational challenges. Under Section 133(2)(a) of the Insurance Act (2017), a parent or guardian of a minor

⁴⁰Gary I Salzman, 'Insurable Interest in Life Insurance' (1965) Insurance Law Journal 517.

⁴¹Patterson (n 12).

⁴²Insurance Act 2017, s 133(2).

⁴³See: *ibid*, s 133(1).



child is vested with an insurable interest in the life of that minor.⁴⁴ In analyzing the literal meaning of the said provision, it implies that within our legal framework, a parent or legal guardian of a minor child may purchase a life assurance policy to cover the life of the minor against certain risks and designate themselves as the beneficiary in the unfortunate event of the minor's death. This undesirable position of the law in Uganda is a substantial shift from what the common law traditionally recognizes as a legitimate demonstration of insurable interest under life assurance. One may argue that the proper interpretation and purpose of Section 133(2)(a) is to grant the minor child an insurable interest in the life of his/her parents or guardians in light of the dependency relationship that subsists between them. In this latter case, the parent or guardian of the minor child would be the policyholder as well as the assured party in the life assurance policy while the minor would be the rightful beneficiary. However, this reasoning is defeated by subsequent sub-sections in Section 133 that provide for this particular situation. Section 133(2)(d) vests an insurable interest in any person in the life of another individual upon whom he or she is totally or partially dependent for maintenance or education.⁴⁵ Therefore, a minor's insurable interest in the life of his or her provider is clearly provided for under Section 133(2)(d) of the Insurance Act. This latter provision is largely appropriate because most minors rely primarily on their parents or guardians for support and education. It is further submitted that it could never have been the intention of Parliament to include two separate sub-sections within Section 133 of the Insurance Act regulating the same situation or transaction. It is, therefore, important to ascertain the appropriate interpretation of Section 133(2)(a) concerning insurable interest.

The established position is that if someone stands to lose financially as a result of the assured's death, then that person has an insurable interest in the life of the assured. To determine the proper meaning, applicability, and consequently the appropriateness of Section 133(2)(a) of the Insurance Act (2017), reference can be made to the provisions of other laws of Uganda as a basis of analysis. Under Section 5 of the Children's Act (1997)⁴⁶ read together with Article 34(1) of

⁴⁴Insurance Act 2017, s 133(2)(a).

⁴⁵Insurance Act 2017, s 133(2)(d).

⁴⁶Children's Act 1997, s 5.

the Constitution,⁴⁷ a child has a right to support and sustenance from his or her parents or guardians in the form of education and guidance, immunisation, medical treatment, food, clothing, and shelter among others.⁴⁸ These two provisions of the law justify the appropriateness of Section 133(2)(d) of the Insurance Act which establishes an insurable interest in cases where there is a demonstrable dependency relationship between the concerned parties. This is because most minors are inevitably dependent on their parents or guardians for support and sustenance, and would stand to lose that support in the event of the provider's death. This would not be the same case if a minor child passed away. In addition, Ugandan Law does not impose a reciprocal obligation on a child (minors or adult children) to support his or her parents. In actuality, parents or guardians will hardly sustain any direct financial loss as a consequence of a minor child's untimely death. In any event, the majority of children in Uganda under the age of eighteen are typically dependent on their parents and guardians for support, rather than the other way around. As such, cases of parents or guardians who are supported by their minor children if any, are very rare for obvious reasons.

It is slightly comforting that a review of the insurance products offered by the leading life assurance providers in Uganda such as Insurance Company of East Africa (ICEA) Uganda,⁴⁹ Prudential Uganda,⁵⁰ Sanlam Life Insurance (Uganda),⁵¹ Jubilee Insurance Company,⁵² Liberty Life Assurance,⁵³ do not include policies that may be purchased by parents or guardians on the

⁴⁷Constitution of Uganda 1995, a 34(1-2). Article 34 Rights of children (1) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up. (2) A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.

⁴⁸Children's Act Cap 59, s 5 (1) It shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular, that duty gives a child the right to — (a) education and guidance; (b) immunisation; (c) adequate diet; (d) clothing; (e) shelter; and (f) medical attention. (2) Any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.

⁴⁹'ICEA LION LIFE ASSURANCE COMPANY LIMITED – United Nations Environment – Finance Initiative' <<https://www.unepfi.org/member/icea-lion-life-assurance-company-limited/>> accessed 16 September 2022.

⁵⁰'Individual Life Plans' (*Prudential*) <<https://www.prudential.ug/products/life-insurance/individual-life-plans/>> accessed 10 September 2022.

⁵¹'Life Insurance | About | Sanlam Uganda' <<http://www.sanlam.co.za:80/uganda/personal/Pages/life-insurance.aspx>> accessed 10 September 2022.

⁵²'Jubilee Insurance Company of Uganda Limited | Live Free' <<https://jubileeinsurance.com/ug/protect-future/>> accessed 10 September 2022.

⁵³'Liberty Life Assurance Uganda' <<https://www.liberty.co.ug/IndividualOffering.aspx>> accessed 10 September 2022.



lives of their minor children. It appears that Section 133(2)(a) has been interpreted as establishing an insurable interest in the life of a parent or guardian for the benefit of the minor. If this is the case, it would imply that Sections 133(2)(a) and 133(2)(d) have been inevitably accorded the same meaning. Regardless of this interpretation, it does not change the fact that Section 133(2)(a) is generally inappropriate and may be construed negatively at the expense of a minor child. In summary, the most unfavourable interpretation of Section 133(2)(a) is that it vests an insurable interest in a parent or guardian of a minor in the life of that child. This means that a parent or guardian of a minor child may insure the minor child's life and designate particular people or even themselves as beneficiaries of such a policy in the event of the minor's death. The position of the law in Uganda and the common law should be compared and contrasted to clarify this complexity, explain how this provision should be interpreted, and establish the appropriate position of the law.

Insurable Interest in Minors under the Common Law

Right from the onset, it is important to keep in mind that insurance law in Uganda was adopted from the laws of the United Kingdom and is heavily influenced by the principles of common law. To answer the question of whether parents and guardians have an insurable interest in the lives of their minor children, it is important to examine the approach of common law in this regard to determine the appropriate position. Under the common law, an individual is deemed to have an insurable interest in his or her own life preferring to be alive and well than being unwell, hurt, or dead.⁵⁴ There is no general statutory entitlement under English law for children to claim maintenance from their parents, notwithstanding the possibility that a young child might experience financial difficulty as a result of the death of a parent. Therefore, a particular duty imposed on the parent, such as a maintenance order, would be required for a minor to effectively obtain life assurance on his/her parents' lives.⁵⁵ In the case of parties in a spousal relationship, the common law recognises an unlimited insurable interest in the other's life even if there is no

⁵⁴*Griffins v Fleming* (n 5).

⁵⁵'Why Do Life Assurance Policies Require Insurable Interest?' <[https://www.mandg.com/pru/adviser/en-gb/insights-events/insights-library/why-do-life-assurance-policies-require-insurable-interest->](https://www.mandg.com/pru/adviser/en-gb/insights-events/insights-library/why-do-life-assurance-policies-require-insurable-interest-) accessed 24 September 2022.

dependency relationship between them.⁵⁶ This is because the common law recognises the reciprocal duty of support between spouses as an invariable consequence of the marriage, and this duty was extended to partners in a civil union in 2004.⁵⁷ However, other categories of relationships that fall under the classification of ‘natural affection’ are not recognized by the common law as establishing an insurable interest in the life of the other party.⁵⁸ In such cases, the policyholder must strictly demonstrate a financial interest in the life of the prospective assured for life assurance to be legitimately purchased.⁵⁹ It is on this basis that a father of an impoverished adult son does not, therefore, have a substantial insurable interest to warrant the purchase of life assurance on his son’s life on the sole basis of love and affection. This position also unequivocally demonstrates that siblings do not have a presumed insurable interest in the lives of their brothers or sisters, parents have no automatic insurable interest in the lives of their adult children, and neither do distant relatives have a guaranteed insurable interest in each other’s lives.⁶⁰ In addition, no presumed insurable interest is recognized for cohabiting partners for the same reason. Although several life assurance providers in Europe have started providing life assurance for parties in a cohabitation relationship,⁶¹ such policies have not yet been challenged in the courts.⁶² If they are challenged in courts of law, they could end up being ruled unlawful for the lack of insurable interest. It must be noted that in recent years, there have been noteworthy attempts to adopt specific legislative measures that will reform the law to grant a

⁵⁶‘Insurance Contract Law: Insurable Interest | Law Commission’ <<https://www.lawcom.gov.uk/project/insurance-contract-law-insurable-interest/>> accessed 13 July 2021.

⁵⁷Dalwin John Niles, ‘Reciprocal Obligations of Husband and Wife - Liabilities of Each for Necessaries’ (1936) 6 Albany Law Review 13; Julia Twigg and Alain Grand, ‘Contrasting Legal Conceptions of Family Obligation and Financial Reciprocity in the Support of Older People: France and England’ (1998) 18 Ageing & Society 131.

⁵⁸Franziska Arnold-Dwyer, ‘Insurance Law Reform by Degrees: Late Payment and Insurable Interest’ (2017) 80 The Modern Law Review 489; ‘Insurable Interest – the Doctrine That Would Not Die - Meggitt - 2015 - Legal Studies - Wiley Online Library’ <https://onlinelibrary.wiley.com/doi/full/10.1111/lest.12059?casa_token=vNm2iKefTs4AAAAA%3AEI028S8dn17SsUM9QWB2evBijv93aRmUCQBvtceXz1X8-Gz2iDkvD-dRiDvbnluts2nTc_Z0kBx1uloO> accessed 9 September 2022.

⁵⁹Templeman QC Mark, ‘Insurable Interest: A Suitable Case for Treatment?’, *Reforming Marine and Commercial Insurance Law* (Informa Law from Routledge 2008).

⁶⁰*Halford v Kymer* (n 36).

⁶¹‘Life Insurance for Cohabiting Couples’ (*Shepherds Friendly*, 7 August 2018) <<https://www.shepherdsfriendly.co.uk/resources/life-insurance-cohabiting-couples/>> accessed 16 September 2022.

⁶²Robert Surridge, ‘Life Assurance’, *Insurance Disputes* (3rd edn, Informa Law from Routledge 1999).



presumed insurable interest to cohabiting partners.⁶³ However, these reforms have not yet been successful and until they are approved, this position of English law still stands.

Reference can be made to the case of *Halford v Kymer*⁶⁴ to emphasise the position of the common law that parents and guardians have no presumed insurable interest in the lives of their children, whether they are adults or minors. In this case, a father bought a life assurance policy over the life of his son in anticipation that he would eventually receive repayments from his child for the monies he would have spent on his support and education. The judge disagreed with his reasoning and held that the life policy could not be enforced since he lacked an insurable interest in his son's life. The court emphasized that the love and affection that subsisted between the father and son could not be construed as creating a presumed insurable interest in the absence of a demonstrable contractual connection or a dependency relationship.

Similarly, in the case of *Worthington v Curtis*,⁶⁵ a parent purchased a life assurance policy on the life of his child who was above the age of eighteen years. When his son passed away, the insurance provider honoured the terms of the policy and subsequently awarded the father the death benefits. Upon learning about the payout of death benefits to the father, the son's creditors disputed the payment on the grounds that the son's estate should have been the appropriate beneficiary so they could recover the monies owed to them. The father's argument was dismissed by the court because according to English Law, parents do not have a presumed insurable interest in the lives of their children. This effectively rendered the life assurance policy unenforceable and the insurer was not liable to pay the death benefits. The court further held that the insurers had a legitimate defence against the claim but since they chose to pay the death benefits under the life policy, the settlement amounted to a gratuitous payout that only the father was permitted to retain.

In an attempt to ease the stringent rules on statutory insurable interest under the common law, the Scottish Law Commission and the Law Commissions of England and Wales made some

⁶³'Report on Family Law' (Scottish Law Commission 1992) Scot Law Com No 135.

⁶⁴*Halford v Kymer* (n 36).

⁶⁵*Worthington v Curtis* (1875) 1 Ch D 419.



important reform proposals in 2008.⁶⁶ The first proposals included expanding the definition of insurable interest to encompass certain natural affection relationships including cohabiting partners as well as parents and dependent children. Despite these initial efforts, the proposals are still being reviewed and as such, the legal position on insurable interest under the common law remains unchanged.⁶⁷ However, Section 99 of the Friendly Societies Act 1992 provides the exception to the general rule that parents do not have insurable interests in their children's lives. The law is to the effect that a parent can take out insurance with a friendly society on a child's life without insurable interest, however, if the child is under the age of 10, the maximum amount recoverable is limited to £800.⁶⁸ In conclusion, the common law, which served as the foundation for Ugandan insurance law, demonstrates unequivocally that there is no justification for guardians and parents to have an insurable interest in the lives of their minor children. It is, therefore, appropriate to conclude that Section 133(2)(a) of the Insurance Act of Uganda (2017) which vests an insurable interest in parents and guardians of minor children on the life of the minor, is grossly inappropriate and permissive of an undesirable interpretation. This calls for urgent reform of the provision to ensure the protection of life and conformity with the common law.

Insurable Interest as a Measure for the Protection of Life

While reflecting on the issue at hand, it is also important to keep in mind that the protection of life is the primary justification for the requirement of insurable interest in life assurance policies, particularly those purchased in respect of the life of another person. In fact, numerous regrettable incidents have demonstrated how the death benefits paid out on life assurance policies have turned out to be an incentive for intentionally harming or killing the assured. In the case of

⁶⁶HM Revenue & Customs, 'GIM1050 - Legal Basis of Insurance: Insurable Interest - HMRC Internal Manual' (*Government of the UK*, 14 February 2022) <<https://www.gov.uk/hmrc-internal-manuals/general-insurance-manual/gim1050>> accessed 9 September 2022.

⁶⁷*ibid.*

⁶⁸Friendly Societies Act 1992, s 99. Section 99 Insurance of lives of children under 10. Subject to the following provisions of this section, if—(a) after this section comes into force a friendly society or registered branch [or an industrial assurance company] enters into a contract of insurance under which benefit in excess of £800 is payable on the death of any person; and (b) that person dies under the age of 10, the obligation of the society, branch or company as to payment of benefit is only to pay £800 (without prejudice to any person's right to recover part of the premiums paid). (2) Subsection (1) above does not apply where the benefit is payable to a person who has an interest in the life of the person on whose death it is payable.



Liberty National Life Insurance Company v Weldon,⁶⁹ the Alabama Supreme Court ruled that the primary objective of the condition for strictly demonstrating an insurable interest in life assurance policies was to preserve and protect human life. Without proving the existence of an insurable interest, a life assurance policy becomes risky, inherently dangerous, and therefore illegal. As a result, the Alabama Supreme Court established a strict standard under which a life assurance would be held accountable for contributing to the assured's wrongful death if they failed to exercise reasonable care in establishing insurable interests.⁷⁰ Therefore, insurance providers must exercise caution when underwriting life assurance policies to avoid issuing policies to individuals who may have ulterior motives or intentions for injuring the assured to commit insurance fraud.

An illustration can be drawn from the unsettling South African case in which life assurance benefits became a motive for a former policewoman's murderous plots to commit insurance fraud. In a dramatic trial that captured the attention of the nation in 2021, a South African policewoman was convicted and sentenced to six consecutive life sentences for murdering her lover and five members of her family to claim death benefits on their life assurance policies. Rosemary Ndlovu aged 46, was found guilty of shooting, battering, and strangling six people including her lover, cousin, sister, niece, nephew, and also another relative between 2012 and 2017.⁷¹ Ndlovu was also found guilty of attempting and/or soliciting hitmen to murder her biological mother, sister, and the sister's five children. The judge imposed an additional ninety-five (95) years for insurance fraud, attempted murder, and solicitation to murder on top of the six life sentences for murder. Judge Ramarumo ordered that the six life sentences plus the additional ninety-five years' imprisonment should be commuted to a life sentence. The prosecution adduced evidence which proved that the accused purchased funeral and life assurance policies in her victims' names and designated herself as the beneficiary, then filed claims for payment immediately after intentionally causing their deaths. The prosecution also led

⁶⁹*Liberty National Life Insurance Company v Weldon* 100 So 2d 696 (Ala 1957).

⁷⁰*ibid.*

⁷¹AfricaNews, 'South African Cop Gets Life Sentence for Insurance Murders' (*Africanews*, 6 November 2021) <<https://www.africanews.com/2021/11/06/south-african-cop-gets-life-sentence-for-insurance-murders/>> accessed 8 September 2022.



evidence that revealed that had she been successful, her insurance fraud activities in total would have profited her about USD 84,000. By the time she was eventually arrested in 2018, she was setting in motion a plan to set fire to the home where her sister lived together with her five children, one of whom was a newborn baby.⁷² If the rules of insurable interest had been observed to the last detail, such a person would have never qualified to take out all those fraudulent life policies and those lives would never have been put in danger. Insurable interest is, therefore, a very important safeguard that prevents the purchase of potentially dangerous life policies.

It is submitted that a minor child is undeniably vulnerable in the hands of a parent or guardian in whom they have total trust and dependence. More worryingly, a legal guardian may not even have any biological connections to the minor beyond the legal guardianship order, which further illustrates the point that the life of the minor may be dispensable to them. In such a scenario, it is disconcerting yet clearly possible that some guardians may consider the life of such a minor as inconsequential, especially when there is a substantial financial incentive in the form of death benefits. Our law, therefore, needs to play a critical role in the protection of life by requiring individuals who seek to insure the life of another person to strictly prove insurable interest in light of the relationship that subsists between them. Vesting a presumed statutory insurable interest in parents and guardians of a minor child on the life of the minor may be unwittingly endangering the life of such a minor. With such likely occurrences, insurable interest acts as a sieve that separates legitimate life policies that have demonstrable financial interests from those that may be purchased with ill motives such as the killing of the assured to fraudulently claim death benefits from the life assurance policy. Without careful consideration, our law may inadvertently be encouraging illegal insurance policies by conferring an insurable interest on parents and guardians over the lives of minor children. Therefore, it is submitted that this provision needs to be urgently amended to safeguard the lives of minor children.

Conclusion

The principle of insurable interest in insurance law is a strict requirement concerning life policies taken out on the life of another person. The relatively straightforward condition is that for a life

⁷²ibid.



assurance contract to be legal, the policyholder would suffer some financial hardship as a result of the death of the assured. This can be evidenced in relationships where one person is dependent on another for support, or in cases where the continued existence of the other affords the policyholder some pecuniary benefits. Insurable interest in life assurance may arise out of a contractual relationship or may be provided for under the law (statutory). Under our law, insurable interest is provided for under Section 133 of the Insurance Act of 2017 and these relations include parents and guardians on the life of a minor, spouses, persons in dependency relations, key man employees, and persons in a creditor-debtor relationship.

Whereas most categories of persons conferred upon a statutory insurable interest under the Insurance Act are appropriate, the most challenging aspect of Section 133(2)(a) is that it confers an insurable interest on a parent or the of a minor, on the life of a minor. This gives rise to a rather undesirable interpretation that a parent or guardian may insure the life of the minor child and nominate certain individuals or even themselves as beneficiaries of such a policy in the event of the death of a minor. Clearly, in such a situation, there can never be a demonstrable insurable interest. The reason for the mandatory requirement of insurable interest in policies taken on the life of another person is the protection of life in the first place. Several occurrences have illustrated that life policies purchased in respect of the life of another person, have in some cases become a motive for the injury or killing of the assured to fraudulently access death benefits. In addition, English law, upon which our law is founded, does not recognise insurable interests based on natural affection. As such, relations such as parent and child, cohabitees, siblings, and distant relatives do not confer an automatic insurable interest. In the absence of a demonstrable financial connection, such persons are not presumed to have an insurable interest in each other's lives. It follows, therefore, that the inclusion of Section 133(2)(a) is erroneous and undesirable. A policy of insurance that doesn't have a clear insurable interest is rendered void and unenforceable.⁷³ In *British Workman's and General Assurance Co v Cunliffe*,⁷⁴ the Court of Appeal ruled that the policy is null and void if it can be proven that the policyholder does not have an insurable interest. The court made it clear that a life insurance contract is void ab initio

⁷³Swisher (n 8).

⁷⁴*British Workman's and General Assurance Co v Cunliffe* (n 30).



rather than voidable if there is no insurable interest in it. This is also reflected in Section 133 of the Insurance Act (2017) which makes it mandatory for a policyholder's insurable interest to be proved before a life assurance policy can be issued on the life of another.⁷⁵ To prevent people from fraudulently making money from the loss of something to which they have no relationship, insurers must require the prospective policyholder to demonstrate an insurable interest before issuing a policy. The policyholder must have an insurable interest in the life of the assured in addition to the other requirements for a valid insurance contract, which include the parties' capacity to enter into a contract, their voluntary assent, and the transaction's legality. The insurance contract will be regarded as a wager if there is no insurable interest. Insurable interest, whether it be for life insurance or property insurance, simply means that the insured or policyholder must have a particular connection to the insurance's subject matter.

Recommendations

In general, a parent or guardian of a minor child does not stand to suffer any financial hardship as a result of the death of their minor child. Rather, the contract is more likely to become a motive for harming the minor child to benefit from the payout. In addition, insurable interest in the life of a minor child is not founded in the common law from which our laws are derived. It is for these reasons that there is an urgent need to amend the Insurance Act of Uganda (2017) to strike out Section 133(2)(a).

⁷⁵Insurance Act, s 133(1); *Kettlewell v Refuge* (n 31).