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the existence, amount, and provisions of a liability insurance policy covering the injury in question.

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LIFE INSURANCE PROCEEDS:

Exemptions from Creditor's Claims

Some one hundred twenty-seven million Americans—about seven-tenths of the nation's population—owned life insurance totaling six hundred billion dollars as of the end of 1959. California ranked second behind New York in both the number of people owning life insurance and the amount of life insurance outstanding.¹ One reason for this growth of life insurance is that most jurisdictions have enacted statutes which exempt life insurance proceeds from creditors' claims. For the most part these statutes vary with each jurisdiction, but their purpose is the same, *viz.*, to secure to the dependents of the assured some degree of maintenance and thus fulfill, to a degree, the moral duty of protection which the insured owes to his family. As stated by Professor Cooley:²

All statutes bearing on the exemption of life policies or their proceeds seem based on the theory that, in the absence of an expressed contrary intent, the object of an ordinary life insurance policy should be considered as the protection of the insured's family after his death, and this object and desire is laudable and in accord with public policy.

The majority of jurisdictions confine the exemption to policies in which a designated person is named beneficiary. However this view is not followed in California where the first paragraph of the controlling statute³ flatly exempts from the claims of creditors *all* moneys, benefits, privileges or immunities accruing or in any manner growing out of *any* life insurance policy to the extent that the annual premium does not exceed five hundred dollars.

¹ INSTITUTE OF LIFE INSURANCE, LIFE INSURANCE FACT BOOK (1960).

² COOLEY, BRIEFS ON INSURANCE 6508 (2d ed. 1928).

³ CAL. CODE CIV. PROC. § 690.19: "All moneys, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed \$500, or if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges and immunities so accruing or growing out of such insurance that said \$500 bears to the whole annual premiums paid.

"In addition to the foregoing, all moneys, benefits, or privileges belonging to or accruing to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding \$500, or if such annual premiums exceed that sum, a like exemption shall exist in favor of such persons which shall bear the same proportion to the moneys, benefits or privileges growing out of such insurance that \$500 bears to the whole annual premium paid."

This section must be read with § 690 which provides "[such] property . . . is exempt from execution or attachment, except as therein otherwise specially provided, when claim for exemption is made to the same by the judgment debtor or defendant . . ."

This article is to deal with whether, under the California statute, the exemption is applicable when the insurance policy is made payable to the insured's estate, executors or administrators.

During the insured's life there is usually no incentive for a creditor to attempt to reach the unmaturing policy unless there is a cash surrender value represented. However, in California when a cash surrender value is present, and the annual premiums do not exceed the statutory limit, such cash value is not accessible to the assured's creditors during his lifetime even where the policy on maturity would be payable to his "estate," "heirs" or the administrator or the executor of the insured.⁴ Such is also true in other jurisdictions having statutes exempting policies designating the estate or administrator or executor as beneficiary,⁵ but California, by giving broad interpretation to the statute, has reached this result entirely by judicial fiat. This seems sound policy since it offers financial protection to the insured and his family. If the insured's right were turned over to the creditors, he would have no further interest in keeping the policy alive by the payment of premiums, while the creditor would willingly let the policy lapse for nonpayment accepting the lapsed value in discharge of his claim. Hence the benevolent purpose of the exemption statute, *viz.*, saving debtors and their families from want by reason of misfortune or improvidence⁶ would be defeated.

But a question arises as to whether such a policy remains exempt from creditors claims upon the death of the insured. Here, unlike the case of unmaturing policies, there is definitely an incentive for creditors to attempt to reach it. Under most of the exemption statutes the proceeds of such a policy are not exempt but are liable for the debts of the assured.⁷ Again however, in California the proceeds of insurance payable to the estate, administrator or executor are exempt from the debts of the insured⁸ within the 500 dollar statutory limit, when the benefits therefrom inure to the surviving spouse, minor child or assimilated statutory beneficiary. The leading case in point is *In re Miller's Estate*,⁹ where, since the deceased's annual premiums did not exceed the statutory limit, the supreme court affirmed the order setting apart the property to the widow as exempt from execution although the proceeds were payable to deceased's administrators or executors. The court

⁴ *In re Driscoll*, 142 F. Supp. 300 (S.D. Cal. 1956). In this case a bankrupt had been ordered to pay the trustee amounts equal to loans he had negotiated on the security of his life insurance, which had been repaid two weeks prior to the filing of a petition of voluntary bankruptcy. The United States district court reversed this decision holding that since the Bankruptcy Act provides that statutes which create exemptions from execution in the state where the bankrupt resides determine the property which a bankrupt may retain as exempt. Since the California statute only limits the amount of exempt insurance by a limitation on the amount of the annual premium, and the premiums in question did not exceed the \$500 limit, such insurance should be exempt.

⁵ See *Klob v. Mall*, 187 Iowa 193, 174 N.W. 226 (1919); *Schuler v. Johnson*, 61 S.D. 141, 246 N.W. 632 (1933).

⁶ *In re Millington*, 63 Cal. App. 498, 218 Pac. 1022 (1923).

⁷ *E.g.*, *Elsom v. Gadd*, 93 Wash. 603, 161 Pac. 483 (1916).

⁸ It is interesting to note that the creditors could be those of deceased or of the beneficiary since the exemption in California applies not only to the debts of the insured but also to those of the beneficiary. *Holmes v. Marshall*, 145 Cal. 777, 79 Pac. 534 (1905).

⁹ 121 Cal. 353, 53 Pac. 906 (1898).

applied section 1465 of the Code of Civil Procedure¹⁰ by reasoning that the policy payable to the insured after death is the same, practically speaking, as that payable to the estate, administrators, executors, or assigns; and since his widow had been appointed administratrix and there had been no assignments she was entitled to the exemption. These insurance proceeds, since they were exempt property, were capable of being set aside for the widow at the discretion of the court. Again in *Holmes v. Marshall*¹¹ where an order had been granted the deceased's wife establishing the proceeds of three insurance policies as exempt property even though one of the policies was payable to deceased's estate, administrators or executors, the supreme court, in affirming the decision, stated:¹²

We can see no reason why the insurance money coming to her directly as beneficiary should be exempt and not that coming to her directly through the estate and the order setting it apart. In either case it is exempt from execution. In one case the instrument of life insurance gives her the title, in the other case the law gives it to her.¹³

The older cases have construed such policies payable to the estate, administrator or executor of insured as exempt from the claims of creditors only if the proceeds *actually* inured to the benefit of the surviving spouse or *minor* child. This result was achieved through the use of section 1465 of the Code of Civil Procedure which had been stated to be the underlying benevolent purpose of the exemption statute.¹⁴ Hence, when deceased left surviving as his only heirs children who had reached majority, they were not entitled to the benefit of the exemption when the insurance policy was payable to his executors, administrators and assigns.¹⁵ An example of the court's reluctance to extend this exemption any further than to the surviving spouse or minor child was *In re Pillsbury's Estate*¹⁶ where deceased who died simultaneously with his wife left insurance policies payable to his wife and if she predeceased him to his executors, administrators or assigns. Here the brother of the deceased adopted his children before letters of administration were issued to another. The court held that although the adoption did not affect the status of the children as heirs of deceased it did cause them to cease to be of the family of deceased; and consequently such minor children ceased to be of the class for which the property could be set aside as exempt from execution. However, section 690.19 of the Code of Civil Procedure was amended in 1947 by the addition of a new paragraph which provided for an *additional* exemption of five hundred dollars, or a proportional amount if the premiums are in excess of that sum, if the proceeds inure to the benefit

¹⁰ Now section 660 of the Probate Code which provides in substance that exempt property may be set aside to the surviving spouse or minor children at the discretion of the court.

¹¹ 145 Cal. 777, 79 Pac. 534 (1905), 69 L.R.A. 67.

¹² *Id.* at 781, 79 Pac. 536.

¹³ The law referred to was section 1465 of the Code of Civil Procedure which allows a court to set aside exempt property at its discretion for the benefit of the surviving spouse or minor children.

¹⁴ Prudential Ins Co. of America v. Beck, 39 Cal. App. 2d 355, 103 P.2d 241 (1940).

¹⁵ *In re Starr's Estate*, 183 Cal. 121, 190 Pac. 625 (1920).

¹⁶ 175 Cal. 454, 166 Pac. 11 (1917).

of the insured's spouse or minor child. In a recent decision¹⁷ where deceased had named a business associate as beneficiary, the court in concluding that the beneficiary was entitled to the exemption, as has been the law in California, proceeded further. They stated that since section 690 applied to any judgment debtor or defendant, and the first paragraph of section 690.19 applied to *all* moneys, benefits, or privileges, while the second paragraph provided "*in addition to the foregoing*" a like exemption for the insured's spouse or minor children, the section provides a general exemption in favor of any attachment defendant or judgment debtor with respect to the insurance purchased with the first five hundred dollars of premium, and an additional exemption in favor of the family with respect to the coverage purchased with the second five hundred dollars. By the amendment the legislature expressed its intention to allow the five hundred dollar exemption expressed in the first paragraph regardless of to whom the proceeds actually inure. Any other conclusion would completely nullify the effect of this second paragraph. In construing this amendment, the Attorney General stated that if the insured had no spouse or minor children but all the life insurance held by him inured to the benefit of other persons, they would be entitled to the exemption allowed by the first paragraph.¹⁸ When insurance proceeds are payable to the estate, administrator or executor their benefits ultimately inure to other persons. To the extent that these benefits accrued or grew out of life insurance purchased by five hundred dollars annual premium, this exemption should apply to all policies payable to estate, administrator or executor regardless of to whom they inured. Hence, although there is authority expressing a contrary view,¹⁹ it would appear that these earlier cases stating that the exemption is only applicable when the proceeds actually inure to the benefit of a surviving spouse or minor child are no longer law in California. When the proceeds of insurance policies payable to estate, administrator or executor do actually inure to the benefit of the surviving spouse or minor children they should be entitled to the total exemption—that is, the amount of insurance which is purchased by annual premiums of one thousand dollars.²⁰ But when the proceeds inure to any other he should be entitled to the five hundred dollar exemption allowed by the first paragraph of the statute.

It is a general rule that statutes providing for exemptions should be liberally construed so as to carry out the intention of the legislature and the humane purpose designed by the lawmakers. The California courts have followed this rule in their construction of the statute by allowing the exemption to apply when no specific beneficiary is named but rather the policy is payable to the estate, administrators or executors, and by allowing the exemption to apply for any beneficiary named regardless of his relationship with deceased. The courts should follow this rule and allow the exemption provided in the first paragraph of section 690.19 to be applied to all who

¹⁷ Jackson v. Fisher, 190 Cal. App. 2d 470, 11 Cal. Rptr. 801 (1961).

¹⁸ 14 OPS. ATT'Y GEN. 50 (1949).

¹⁹ E.g., Riesenfeld, *Life Insurance and Creditors' Remedies in the United States*, 4 U.C.L.A.L. REV. 583, 601 (1957); 21 CAL. JUR. 2d, *Exemptions* § 22 (1955).

²⁰ This full amount could be set aside by the court through the use of Probate Code section 660.

receive the benefits of insurance proceeds payable to the estate, executor or administrator whether they be the surviving spouse, minor child, or heirs or devisees of deceased's estate.

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