

TURKSLEGAL Q&A

Involvement in criminal acts – moving the goal posts of public policy

Australian Executor Trustee Ltd v Suncorp Life & Superannuation Ltd [2016] SADC89

In our first “Life Matters” seminar series earlier this year we received a lot of questions from clients about the sad case of Mr and Mrs Humby and Mr Humby’s death in a house fire he caused as part of a conspiracy he and his wife had devised to fraudulently claim on their household insurance.

The plan went disastrously wrong and not only did the house and contents insurers refuse to pay, but so did the insurer of Mr Humby’s life cover.

The legal principle considered in the case was a very old one, often associated with the English jurist Lord Mansfield, who famously also framed the legal principle at the heart of the duty of disclosure.

In *Holman v Johnson*, decided in 1775, Lord Mansfield had to adjudicate a case between the plaintiff, who sold some tea in Dunkirk on the other side of the English Channel, to a Mr Johnson, the defendant, who refused to pay for it when the debt fell due.

The fact which raised the issue which still gets the case talked about was that both men knew Mr Johnson was a smuggler and that he intended to illegally import the tea to England and evade customs duty.

The case clearly wasn’t an easy one, as the judgment shows that in terms of doing justice between the two men, Lord Mansfield thought Johnson should pay up. But there was a larger issue at stake; Holman was seeking to use the judicial system to enforce a debt contracted between two people in the course of committing a crime.

Lord Mansfield concluded the law could not be used in that way and Mr Holman’s case failed.

There are wider applications of the principle that law will not support a cause of action which is based in a morally wrong or criminal act in the context of insurance and the recent decision concerning the Humbys is one of them.

The insurer rightly took note of the fact that the policy over Mr Humby’s life was owned by Mrs Humby, who was the other half of the arson conspiracy. Consequently any payment to Mrs Humby as a result of her husband’s death would be using the law of contract to enable her to profit from her crime. So, many clients asked after the brief presentation on the Humby case why was the insurer ordered to pay?

Legally, the fact that the claim was by that point being brought by Mrs Humby’s estate (she having also passed away some time after the fire from other causes) cannot be the answer. The cause of action her estate had could be no more or less than she had when she was alive. It arose from a criminal conspiracy gone wrong and was tainted in just the same way as if she had brought the claim herself.

The answer lies in the fact that this type of a defence to a claim made under a contract, generally known as “public policy” is, at least in the 21st century, flexible. In particular, the courts will take into account whether permitting enforcement of the contract would encourage the commission of a crime.

The beneficiaries of Mrs Humby’s estate were her children who were not part of the conspiracy and the Court thought no harm would be done if they were paid. This means the principle will operate differently when the crime is different or the parties seeking to enforce the policy have a different relationship to it, so the goalposts of public policy keep moving.

Subscribers to TurksLegals’ Life Guide can look at the background facts and read about the principles in detail at <http://turkspublicationhub.turkslegal.com.au/lifeguide/public>

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