

# HKUCA

## Underwriting and Claim Cases Study

**Presented by: Mrs Christine Koo**



**Christine M. Koo & Ip, Solicitors & Notaries LLP**

Address : Room 601, Tower 1, Admiralty Centre  
18 Harcourt Road, Hong Kong

Tel. No. : (852) 2524 8996

Fax No. : (852) 2523 6922

E-mail : [christinekoo@cmkoo.com.hk](mailto:christinekoo@cmkoo.com.hk)

## NOTE

The law and procedure on this subject are very specialised. This presentation is a general explanation for reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact a lawyer.



# Case Study

# **I. S13 MPSO (Cap 182)**

**What does S13 say?**

(see extract of the Ordinance,  
Attachment 1)



- **Recent Case**  
(see Legal Briefing,  
Attachment 2)
- **What does it mean to Underwriting Department?**
- **What does it mean to Claims Department?**

## II. Meaning of Public Policy

- **Hong Kong case:**
  - Father held kids as hostage
  - Shot by Police
  - Died, son claim death benefit
- **English case:**  
Gray v Barr, Prudential  
(see Attachment 3)
- **Canadian case:**  
Oldfield v Transamerica  
(see Attachment 4)



# **III. How to Reconcile Application Form and Clause 14**

## **Ma Kim Ying v Manulife**

HCA 2008



- **Clause 14 of the Policy:**  
(see Attachment 5)





- **Held:**  
The Decision (see Attachment 6)

# Q & A

## 問題討論



### **CHRISTINE M. KOO & IP, SOLICITORS & NOTARIES LLP**

***Address :*** Room 601, 6/F, Tower 1, Admiralty Centre,  
18 Harcourt Road, Hong Kong

***Tel No.:*** (852) 2524 8996

***Fax No.:*** (852) 2523 6922

***E-mail:*** [christinekoo@cmkoo.com.hk](mailto:christinekoo@cmkoo.com.hk)

***Web-site:*** <http://www.cmkoo.com>

Section: 13	Insurance for benefit of spouse or children	30/06/1997
-------------	---	------------

- (1) This section applies to a policy of assurance or endowment expressed to be for the benefit of, or by its express terms purporting to confer a benefit upon, the wife, husband or child of the insured.
- (2) The policy shall create a trust in favour of the objects therein named.
- (3) The moneys payable under the policy shall not, so long as any part of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.
- (4) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid.
- (5) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy.
- (6) In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid.
- (7) The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurer, the receipt of the legal personal representative of the insured, shall be a discharge to the insurer for the sum secured by the policy, or for the value thereof, in whole or in part.

[cf. 1882 c. 75 s. 11 U.K.]



## LEGAL BRIEFING

### Effect of

### Section 13 of the Married Persons Status Ordinance

### on

### Life Insurance Policy

#### Background

Yip Wai Fan (Minor) v. Yip Tsz Bun [2016] 2 HKC 458 is the first case ever decided in Hong Kong on the interpretation of section 13 of the Married Persons Status Ordinance (Cap.182) (“MPSO”). The Judge held that the money to be paid out to the spouse or child under a life insurance policy is considered to be held on statutory trust by the administrators of the deceased’s estate pursuant to section 13 of the MPSO.

#### Facts

The deceased was the ‘Insured Member’ of a Group Life Insurance Policy and the policyholder was Cheung Kong (Holdings) Limited and other subsidiaries. The deceased nominated his daughter as a beneficiary of 20% of the pay-out of the Policy in the event of his death. The deceased died in 2009 and letters of administration were granted to the defendants.

The defendants sought to deduct a certain sum from the insurance money payable to the plaintiff as her contribution towards various payments made by the defendants on behalf of the deceased’s estate. The money sought to be deducted was the subject of the plaintiff’s claim.

#### Decisions

First, the Judge rejected the defendant’s various arguments and held that a policy is a policy assurance on the insured life as long as it provides for payment of a sum of money upon the death of the insured.



On a proper construction of section 13 of the MPSO, it imposes no such restriction that the Policy has to be effected by the Deceased. Even though the Policy was effected by Cheung Kong (the Deceased's employer), the Deceased was the insured and that it was clearly expressed to be for the benefit of the child of the insured.

Similarly, on a proper construction of section 13 of the MPSO, it is not necessary for the Policy to specifically refer to the provisions of the MPSO before it can fall within section 13 of the MPSO.

Accordingly, the Policy creates a trust for the benefit of the plaintiff, specifically, for the purpose of paying 20% of the Insurance Money to the plaintiff.

I hold that the Policy in question falls within the terms of section 13 of the MPSO and that a statutory trust in favour of the plaintiff has been created.

### **Conclusion**

If the Insurance Money was held on trust, it would not form part of the Deceased's estate. Instead, the defendants would be obliged to pay the entire sum of the plaintiff's entitlement to the plaintiff.

**Public Policy**

**Gray & Another v Barr, Prudential Assurance Co. Ltd.** [1971] 2 QB 554

- a. It concerns an accident policy where a jealous husband accidentally killed the lover of his wife.
  
- b. The jealous husband was acquitted of murder and manslaughter and when he was sued by the deceased family claiming compensation, he brought in Prudential Assurance Co Ltd., the insurance company to claim indemnity under a "hearth and home" policy covering, inter alia, the jealous husband, against all sums which the insured became legally liable to pay as damages in respect of bodily injury to any person caused by accidents. The insurance company in that case argued that:-
  - i. The "accident" was no accident; and
  - ii. The principle of public policy that a criminal cannot benefit from his own crime applies.

20. A Canadian case, *Oldfield v Transamerica Life Insurance Co of Canada* [2002] 5 LRC 477 (See Appendix 15) exactly says the same thing that the public policy extended to those who claimed through the criminal's estate but not to innocent beneficiaries who were neither criminals nor claiming through the criminal's estate.

21. In that case, the claimant was the named beneficiary under a life insurance policy of her husband. The husband died whilst committing an indictable offence. When the claimant claimed the proceeds of the insurance policy the defendant insurance company refused to pay. The Supreme Court of Canada held that the rule of public policy does not apply to bar a claim by an innocent beneficiary named in an insurance policy merely because the insured dies while committing a crime.

**Ma Kim Ying v Manulife (International) Ltd**

18 June 2012

Court of First Instance

CFI

High Court Action No 1989 of 2008

HCA 1989/2008

[2012] HKEC 885 English Judgment

2. The plaintiff then commenced the present action, claiming for payment of HK\$2 million under the Policy. The defendant counterclaimed for rescission of the Policy. In reply, the plaintiff relied on a number of matters, including clause 14 of the Policy, which reads : "The Owner's or the life insured's failure to disclose any fact or their misrepresentation of any fact within their knowledge that is material to the insurance (and it is not disclosed by the other party) will not, in the absence of fraud, render this policy voidable by the Company after it has been in force during the life insured's lifetime for 2 years from its date of issue or date of reinstatement, whichever is later. Such failure to disclose or misrepresentation could be in the application for this policy, any medical evidence form, or any written statements and answers furnished as evidence of insurability. This provision will not apply to a misstatement of age or to any supplementary benefits."



**Issue 6 - Applicability of Clause 14**

32. Clause 14 applies only if the material non-disclosure and misrepresentation made by Mr Wong involved no fraud. Mr Lau accepted that to determine if fraud existed for the purpose of Clause 14, the test is the same as that enunciated by Lord Herschell in *Derry v Peek* (1889) 14 App Cas 337 at p 374 : "... fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief.'