

# Louisiana Law Review

---

Volume 40 | Number 1  
Fall 1979

---

## Insanity, Intent, and Homeowner's Liability

James F. Shuey

---

### Repository Citation

James F. Shuey, *Insanity, Intent, and Homeowner's Liability*, 40 La. L. Rev. (1979)  
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol40/iss1/14>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

issues. For example, it may be seen that the royalty issue (issue A) in each case does not fully correspond. Although the parties and the causes—the legal theories asserted in the case—are identical, the wells (elements necessary to the object of each suit) from which the royalties are demanded are not the same since they were drilled pursuant to different leases. Therefore, article 2286 cannot apply to preclude relitigation of issue A. Similarly, in issues B and D, the parties and causes are identical; however, since each case deals with different wells, the objects of the demands are not the same. In *California Co. I*, the two litigants are demanding that the court recognize as valid leases executed by them before 1951; in *California Co. II*, the parties are demanding that the court recognize as valid leases executed by them after that date.

However, it is evident that issue C is the same in both cases. The three identities match perfectly because the land involved is the same. If the court finds that this issue was necessarily decided in the first case (as it was, since one cannot grant a lease on property one does not own), it should be considered an object of the judgment; and, as such, further consideration of the issue is precluded. The purpose of the triple identity of article 2286, to ensure that the issues are indeed the same, is satisfied. The conclusion is that after the original decision, the Price-Beckwith group had every reason to believe it had the authority necessary to execute leases on the disputed property.

Since the *Welch* opinion is, for the most part, carefully couched in terms such as “common law” collateral estoppel, it need not be wholly repudiated in order to adopt the civilian method of issue preclusion. A broadened understanding and application of the terms “authority of the thing adjudged” and “object of the judgment” is all that is necessary. Such an approach would save valuable court time, maintain the integrity of the prior judgment, and promote certainty for the parties.

*Dennis K. Dolbear*

#### INSANITY, INTENT, AND HOMEOWNER'S LIABILITY

The husband, defendant's insured, fatally shot his wife and committed suicide. The wife's parents brought a direct action against

the defendant-insurer for their daughter's wrongful death,<sup>1</sup> basing their claim on a homeowner's insurance policy issued to the husband. The policy excluded coverage for bodily injury "expected or intended from the standpoint of the insured."<sup>2</sup> The trial court found that the wife had survived her husband for a short interval<sup>3</sup> and that the husband was insane at the time of the incident. However, the trial court held that the exclusionary clause in the insurance policy precluded the insurer's liability.<sup>4</sup> Although observing no manifest error in the trial court's findings of fact, the First Circuit Court of Appeal reversed and *held* that the insanity of the insured prevented him from having the requisite intent to inflict injury necessary to exclude coverage under the provisions of the homeowner's policy. Thus, the defendant-insurer was cast in liability for the wife's wrongful death. *von Dameck v. St. Paul Fire & Marine Insurance*, 361 So. 2d 283 (La. App. 1st Cir. 1978).

Article 2315 of the Louisiana Civil Code imposes civil liability on persons who, by their conduct and through their own fault, cause

---

1. The wife's siblings, who had joined with her parents as plaintiffs, were dismissed from the suit on defendant's exception of no cause or right of action. The provisions of article 2315 of the Civil Code appear to create a cause of action as well as a right of action by the same language. Johnson, *Death on the Callais Coach: The Mystery of Wrongful Death and Survival Actions in Louisiana*, 37 LA. L. REV. 1, 7-8 (1975). The siblings were excluded from pursuing a wrongful death action by the presence of the parents in the second class of stipulated beneficiaries. LA. CIV. CODE art. 2315. Thus, they lacked a cause of action as well as a right of action.

2. *von Dameck v. St. Paul Fire & Marine Ins.*, 361 So. 2d 283, 288 (La. App. 1st Cir.), *cert. denied*, 362 So. 2d 794, 802 (La. 1978).

3. The chronology of the murder-suicide was determinative of the parents' cause and right of action: had the wife predeceased her husband, the wrongful death action would have inured to the benefit of the husband in the first class of stipulated beneficiaries, thereby excluding the parents of the wife. The question of the wife's survival was resolved on the evidence alone—no presumptions of survivorship were applied. *See* LA. CIV. CODE arts. 936-39.

In this context, it is interesting to note that the cause of action for the wrongful death arose after the death of the tortfeasor, since the husband predeceased his wife. There is some question whether an insurer can be held liable on a cause of action that arises after the death of its insured. Article 734 of the Code of Civil Procedure provides that a succession representative may be made a defendant in an action to enforce an obligation of the deceased. This provision might be analogized to the facts of the instant case. It might also be argued that the cause of action for a wrongful death may arise before the death itself—for example, when an event occurs which makes death inevitable.

4. The trial court reasoned that if the insured was sane, his act was intentional; if he was insane, he could not be held liable "ipso facto making his insurer immune." 361 So. 2d at 286. As an additional reason for his judgment, the trial judge stated that the insured "intended to shoot and kill his wife" despite his psychotic condition. *Id.*

damage to another.<sup>5</sup> Because the term fault encompasses acts of intentional wrongdoing as well as acts of negligence, civil liability for intentional torts flows from article 2315. The development and application of the concept of intent, however, appears to be a creature of jurisprudence and common sense.<sup>6</sup> The concept of intent, in the context of a civil suit for damages, provokes two questions: (1) What is meant by "intent" for purposes of delictual liability; and (2) Does "intent" take on a different meaning when one is construing the terms of an insurance contract?

The conscious volition to perform an act does not necessarily constitute intent in the law of torts. The traditional view of intent requires that the actor have some comprehension of the nature and consequences of his act. The notion of intent requires more than the mere desire to perform a given act; it also encompasses the actor's state of mind with regard to the consequences.<sup>7</sup> For the act to be considered intentional, however, the actor need not actually contemplate the specific consequences which follow his action; it is sufficient if the particular result which does occur was "substantially certain" to follow from the act.<sup>8</sup> Obviously, a judge cannot be certain of an actor's mental state at the time an act was performed. Even less certainty exists when the actor is dead or otherwise unavailable to the court. For this reason, the finding of intent is often supplied by means of a presumption of law<sup>9</sup> or through an inference drawn from the particular facts of a case.<sup>10</sup> In practical application, the

---

5. LA. CIV. CODE art. 2315 states in part: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

6. See W. PROSSER, *THE LAW OF TORTS* 31 (4th ed. 1971); *RESTATEMENT (SECOND) OF TORTS* § 8A (1965).

7. *Bourque v. Duplechin*, 331 So. 2d 40 (La. App. 3d Cir. 1976); *Soileau v. Travelers Ins. Co.*, 198 So. 2d 543 (La. App. 3d Cir. 1967).

8. W. PROSSER, *supra* note 6, at 32; *RESTATEMENT (SECOND) OF TORTS* § 8A (1965). See *Spivey v. Battaglia*, 258 So. 2d 815 (Fla. 1972) (plaintiff suffered facial paralysis after defendant hugged her); *Terito v. McAndrew*, 246 So. 2d 235 (La. App. 1st Cir. 1971) (defendant, who claimed intoxication, hit plaintiff solely to "shut his mouth," but plaintiff's knee was fractured).

9. In *von Dameck*, the court said: "The trial judge's conclusion was based, in part, also upon the presumption that all persons intend the natural and probable consequences of their acts. Presumptions are consequences which the law or the judge draws from a known fact to a fact unknown." 361 So. 2d at 288-89. See also *Home Ins. Co. v. Neilsen*, 165 Ind. App. 445, 332 N.E.2d 240 (1975).

10. In *Wildblood v. Continental Casualty Co.*, 182 La. 202, 161 So. 584 (1935), an essential claim of plaintiff's case was that the decedent had been killed by mistake. Since the killer was unknown, the court declared that "from the nature of the case, the fact [of intent to murder another] can be found only by a search for circumstances, and a consideration of inferences drawn from them; for guilt has sealed the lips of the

standard used is whether a reasonable man, in the same circumstances as the actor, would have been substantially certain that a given consequence would follow from the act.<sup>11</sup> By using this standard, the court is able to infer intent on the basis of probabilities rather than conjectures; however, the standard is appropriate only if the actor can be presumed to be a reasonable man.

The finding of intent by means of a presumption or inference permits a conclusion to be reached as to an actor's probable state of mind, and appears to have application to both delictual and contractual liability. However, the clause in insurance contracts excluding coverage for intended acts has been said to owe its origin to insurance underwriters' "deference to public policy."<sup>12</sup> The clause prevents civil liability for intentional acts from being shifted to the insurance enterprise; instead, it remains with the individual actor. Even if such a provision was not expressed in an insurance policy, its exclusionary effect would be produced by operation of law.<sup>13</sup> Public policy opposes indemnifying a tortfeasor against damages which he intentionally inflicts since to do so would insulate the deliberate wrongdoer from financial responsibility for his acts, thus permitting him to act with relative impunity.<sup>14</sup> At the least, an insurance policy which provides liability coverage for damages resulting from the intentional acts of the insured would do little to discourage wrongful conduct; at the worst, it would allow a person planning mischief to purchase financial protection in advance.<sup>15</sup> The clause excluding coverage for intended acts is also designed to protect the insurance company from being defrauded by its customers.<sup>16</sup> Thus, the intent referred to in terms of insurance liability may be said to involve more elements than the probable state of mind of an

---

assassin and death the lips of his victim." 182 La. at 205, 161 So. at 585. *See also* Douglas Public Serv. Corp. v. Leon, 196 La. 735, 200 So. 21 (1941); State Farm Mut. Auto Ins. Co. v. Treas, 254 Md. 615, 255 A.2d 296 (1969).

11. W. PROSSER, *supra* note 6, at 32.

12. Jernigan v. Allstate Ins. Co., 272 F.2d 857, 858 (5th Cir. 1959); Western Cas. & Sur. Co. v. Aponaug Mfg. Co., 197 F.2d 673, 674 (5th Cir. 1952).

13. Burt v. Union Cent. Life Ins. Co., 187 U.S. 362 (1902); R. KEETON, BASIC TEXT ON INSURANCE LAW 292 (1971).

14. John Hancock Mut. Life. Ins. Co. v. Tarrance, 244 F.2d 86 (6th Cir. 1962); Morgan v. Greater N.Y. Taxpayers Mut. Ins. Ass'n, 104 N.Y.S.2d 876, 112 N.E.2d 273 (1953); Haser v. Maryland Cas. Co., 78 N.D. 893, 53 N.W.2d 508 (1952); Isenhardt v. General Cas. Co. of America, 233 Or. 49, 377 P.2d 26 (1962).

15. Jernigan v. Allstate Ins. Co., 272 F.2d 857 (5th Cir. 1959); Home Ins. Co. v. Neilson, 165 Ind. App. 445, 333 N.E.2d 240 (1975); Brasseaux v. Girouard, 269 So. 2d 590 (La. App. 3d Cir. 1972).

16. Fidelity-Phenix Fire. Ins. Co. v. Murphy, 226 Ala. 226, 146 So. 387 (1933); Riggs v. Palmer, 115 N.Y. 506, 22 N.E.188 (1889).

actor alone; it also comprises the policy question of whether an act is one against which society is willing to allow the actor to purchase protection. While public policy permits individuals to insure against financial liability resulting from negligence, it forbids such financial protection for the individual who deliberately commits acts of reprisal, vengeance, and brutality. The clause in insurance policies excluding coverage for intentional acts thus involves issues of wrongfulness and social censure that are not necessarily determinative of the meaning of intent for purposes of tort liability.<sup>17</sup>

The judicial inquiry into an actor's intent is further complicated when the issue of insanity is raised. Although the Civil Code defines insanity,<sup>18</sup> mental incompetency is most often perceived by the courts as a question of fact to be determined in accordance with the purposes for which it is applied.<sup>19</sup> Since insanity is a characterization of an individual's state of mind, it bears a direct relationship to the question of intent. However, no legal standard of insanity exists for the purpose of civil liability, and there are no clear standards for determining what mental conditions are sufficient to negate intent.<sup>20</sup> Moreover, insanity must be proved affirmatively, since the law presumes that all persons are sane.<sup>21</sup> Although there is some authority for the view that an insane person is immune from tort

---

17. *Davidson v. Welch*, 270 Cal. App. 2d 220, 75 Cal. Rptr. 676 (1969); *Walters v. American Ins. Co.*, 185 Cal. App. 2d 776, 8 Cal. Rptr. 665 (1960); *Morrill v. Gallagher*, 370 Mich. 578, 122 N.W.2d 687 (1963); *Vermont Mut. Ins. v. Dalzell*, 52 Mich. App. 686, 218 N.W.2d 52 (1974). In *Dalzell*, the insured's son threw a thirty-pound pumpkin over the side of a highway overpass, shattering the windshield of an oncoming car and injuring the driver. The court found that the boy only intended to frighten the plaintiff, not injure him.

18. LA. CIV. CODE art. 31 states in part: "Persons of insane mind are those who do not enjoy the exercise and use of reason, after they have arrived at the age at which they ought, according to nature, to possess it, whether the defect results from nature or accident."

19. "The law defines mental incompetence differently for different purposes." *State v. Williams*, 346 So. 2d 181, 186 (La. 1977). Mental incompetence is a "conclusion of fact based upon evidence." *Neff v. Ford Motor Credit Co.*, 347 So. 2d 1228, 1230 (La. App. 1st Cir. 1977).

20. In *Brasseaux v. Girouard*, 269 So. 2d 590 (La. App. 3d Cir. 1972), the defendant shot the plaintiff, allegedly in self-defense. The court first ruled that plaintiff's action was negligent, not intentional, because he had unreasonably evaluated the need for action. On rehearing the court reversed itself. In *Areaux v. Maenza*, 188 So. 2d 633, 635 (La. App. 4th Cir. 1966), the defendant claimed that his intoxication prevented him from having intent. The court disagreed, stating that the defendant was not too drunk to "know what he was doing."

21. *Kalpakis v. Kalpakis*, 221 La. 739, 60 So. 2d 217 (1952); *Succession of Jones*, 120 La. 986, 45 So. 965 (1907); *Succession of Vicknair*, 126 So. 2d 680 (La. App. 4th Cir. 1961).

liability in Louisiana,<sup>22</sup> the use of insanity as a defense to civil liability is personal to the tortfeasor.<sup>23</sup> Personal defenses may not be urged by an insurer;<sup>24</sup> this rule of law is founded upon provisions of the Civil Code dealing with suretyship.<sup>25</sup>

In the instant case, the court characterized the mental condition of the insured as insanity.<sup>26</sup> Expert witnesses classified the insured as a "paranoid psychotic," capable of functioning normally under most circumstances, yet incapable of acting rationally when subjected to certain stresses.<sup>27</sup> Although the acts of the insured were performed in a voluntary, purposeful way, the court determined that the insured did not have the capacity to think in a rational manner nor to understand the nature of his actions at the time he killed his wife.<sup>28</sup> Thus, the court ruled that, although the insured "may have

22. Louisiana is the only state to have held that uninterdicted insane persons are not liable for their torts. *Yancey v. Maestri*, 155 So. 509 (La. App. Or. Cir. 1934). This case has been declared to be "of doubtful continuing validity" by one dissenting judge. *Guidry v. Toups*, 351 So. 2d 1280, 1284 (La. App. 1st Cir. 1977) (Ponder, J., dissenting). However, it has been upheld once. *Alexander v. Washington*, 274 F.2d 349 (5th Cir. 1960). See also *Jernigan v. Allstate Ins. Co.*, 272 F.2d 857 (5th Cir. 1959) (Rives, C.J., dissenting).

23. "Personal defenses are such as infancy, interdiction, coverture, lunacy, bankruptcy, and the like." *Simmons v. Clark*, 64 So. 2d 520, 523 (La. App. 1st Cir. 1953).

24. "[T]he insurance company has only such defenses in a direct action brought by the injured party as it would have in an action brought by its insured." *Musmeci v. American Auto Ins. Co.*, 146 So. 2d 496, 500 (La. App. 4th Cir. 1962). *Accord*, *Edwards v. Royal Indem. Co.*, 182 La. 171, 161 So. 191 (1935); *Simmons v. Clark*, 64 So. 2d 520 (La. App. 1st Cir. 1953); *Addison v. Employers Mut. Liab. Ins. Co. of Wis.*, 64 So. 2d 484 (La. App. 1st Cir. 1953).

25. LA. CIV. CODE art. 3060 states: "The surety may oppose to the creditor all the exceptions belonging to the principal debtor, and which are inherent to the debt; but he cannot oppose exceptions which are personal to the debtor." The relationship of insurer and insured, however, is not perfectly analogous to a surety and a debtor. "Insurance is not like suretyship, in that an insurer who pays the loss has no recourse against the insured, as a surety who pays the debt has against the principal debtor." *Ruiz v. Clancy*, 182 La. 935, 941, 162 So. 734, 738 (1935). See *Stamos v. Standard Acc. Ins. Co.*, 119 F. Supp. 245 (W.D. La. 1954); *Burke v. Massachusetts Bonding & Ins. Co.*, 19 So. 2d 647 (La. App. 1st Cir. 1944); *Slovenko, Suretyship*, 39 TUL. L. REV. 427 (1965). This distinction is not considered critical, for "while an insurance contract is not, in the strict sense, a contract of suretyship as defined by article 3035 of the Civil Code, . . . it nevertheless partakes of the nature of suretyship or guaranty . . ." *Dumas v. United States Fid. & Guar. Co.*, 241 La. 1096, 1110, 134 So. 2d 45, 50 (1961).

26. 361 So. 2d at 288.

27. *Id.*

28. *Id.*

had the intent to shoot his wife, his insanity prevented him from having the requisite intent to inflict injury."<sup>29</sup> The court also noted that the insurer, by relying solely upon the presumption that "all persons intend the natural and probable consequences of their acts,"<sup>30</sup> failed to discharge the burden of urging its exclusion, for the presumption has no application when the actor is insane.<sup>31</sup> The court skirted the question of whether an insane person can be held liable for his torts by observing that, even if such a defense existed, it would not be available to the insurer of an insane tortfeasor.<sup>32</sup>

The fact that the insured was insane at the time of the slaying should not resolve the question of whether he had the capacity to form intent. In determining the issue of intent, the court referred to *Turner v. Bucher*,<sup>33</sup> which recognized the difficulty in applying legal standards designed for normal reasoning persons to those who are of a tender age or an unsound mind.<sup>34</sup> Because the insured was a nondiscerning person, the presumption that his act was intentional could not be supplied. Despite his insanity, however, the insured may have known to a substantial certainty that his act would result in injury to his wife. The circumstances of the case were sufficient to raise the inference of intent but for one factor: the inference of intent is determined by standards designed for reasonable men. Thus, it is misleading to suggest that an insane person cannot entertain intent;<sup>35</sup> it is more precise to state that intent cannot be presumed or inferred when the actor is insane, since the law provides a method for finding intent by means of standards designed only for reasonable persons.<sup>36</sup> By so holding, the court could then have followed the approach taken in *Nettles v. Evans*,<sup>37</sup> in which the insured, after ingesting large quantities of drugs and alcohol, struck the plaintiff. The defendant-insurer alleged that the injury was caused intentionally, thus excluding coverage. The court ruled that the insurer had the burden of proving the applicability of its exclu-

---

29. *Id.*

30. *Id.* at 288-89.

31. *Id.* at 289.

32. *Id.*

33. 308 So. 2d 270 (La. 1975).

34. "[N]ondiscerning persons do not possess the capability of knowing the consequences of their conduct; they lack the moral guilt usually associated with delictual responsibility and, therefore, they should not be legally liable for acts under an objective standard designed for normal reasoning persons." *Id.* at 274.

35. W. PROSSER, *supra* note 6, at 1001.

36. *But see* *Wagner v. Colonial Life and Acc. Ins. Co.*, 380 S.W.2d 224, *aff'd* 408 S.W.2d 612 (Ky. 1966); *Deloache v. Carolina Life Ins. Co.*, 233 S.C. 341, 104 S.E.2d 875 (1958); *Aetna Life Ins. Co. v. McLaughlin*, 380 S.W.2d 101 (Tex. 1964).

37. 303 So. 2d 306 (La. App. 1st Cir. 1974).

sionary clause by a preponderance of the evidence.<sup>38</sup> Since the evidence regarding the mental state of the insured was inconclusive, the insurer was cast in liability. In the instant case, the insurer relied upon the presumptions that all persons are sane and that they intend the natural and probable consequences of their acts. Once these presumptions were rebutted, the insurer could not prove the applicability of its exclusion by a preponderance of the evidence.

The typical liability insurance policy offers coverage only in cases in which the insured could be held legally liable.<sup>39</sup> It is axiomatic that tort liability can be imposed only on one of three theories of recovery: intent, negligence, or liability without reference to unreasonable conduct.<sup>40</sup> In the instant case, it is unclear which theory was used to determine whether the insured could have been held legally liable. It was not possible to ground the action in negligence, since negligence standards are designed for normal reasoning persons.<sup>41</sup> If the action was based on the theory that the insured committed an intentional tort, the insurer's exclusion might become operative. And, if liability without fault was to be imposed, the court would have had to functionally overrule prior jurisprudence granting tort immunity to the insane.<sup>42</sup> Without expressly analyzing any of the three theories of recovery, the court apparently proceeded on the notion that the conduct of the insured belonged in the classification of intentional wrongdoing. However, the court avoided the insurer's exclusionary clause by holding that insanity, as a defense to an intentional tort, is personal to the insured.<sup>43</sup> Thus, the abstract theory of recovery which formed the basis for the insurer's liability was that its insured committed a tort which would have been considered intentional except for the defense of insanity, a defense unavailable to the insurer. The court's analysis of the concept of intent is confusing in that it appears to equate the presence of insanity with the absence of "requisite intent," while at the same time distinguishing the intent to perform an act from the intent to bring about the substantially certain consequences of an act.<sup>44</sup> The court apparently predicated the insurer's liability on the

---

38. *Id.* at 309. See also *Briley v. Union Nat'l Life Ins. Co.*, 246 So. 2d 265 (La. App. 1st Cir. 1971).

39. See generally *R. KEETON, supra* note 13; *R. LONG, THE LAW OF LIABILITY INSURANCE* (1978).

40. The latter phrase is used in place of the term "liability without fault" which, in common law jurisdictions, goes under the rubric of "strict liability."

41. See *Turner v. Bucher*, 308 So. 2d 270 (La. 1975).

42. *Yancey v. Maestri*, 155 So. 509 (La. App. Or. Cir. 1934).

43. 361 So. 2d at 289.

44. *Id.* at 288.

basis of intentional wrongdoing by its insured, but simultaneously ruled that the damages were not intentional in order to avoid the insurer's exclusionary clause.

Civil liability for the damages resulting from intended acts is provided for by article 2315 of the Civil Code, which refers to the actor's "fault." In a civilian system, the judgment of "fault" carries with it the implication that the person so adjudged is capable of discernment and normal reasoning; nondiscerning persons lack the moral guilt associated with delictual liability.<sup>45</sup> In this case, had it been necessary to rule that the insured could have been held liable, the theory of recovery might well have been that of liability without reference to unreasonable conduct, imposed so that the innocent victim need not bear his loss without compensation.<sup>46</sup> The insanity of the insured prevented him from being at fault as that term has been explained in *Turner v. Bucher*;<sup>47</sup> thus, any liability that could be imposed upon the insured would be liability without fault, rather than liability for intentional or negligent wrongdoing. This approach, while necessitating a shift from prior jurisprudence, would have allowed the court to avoid the paradoxical result it achieved in finding that the insured committed an intentional tort while determining that his intent was insufficient to trigger the exclusionary clause of the insurance policy. The court could have then analyzed intent solely in terms of the insurance contract, rather than as a theory of delictual liability.

Since the clause excluding coverage for intended acts was created for reasons of policy, its application should be governed by that underlying policy. In all likelihood, society would be benefited by an insurance provision which expressly provides coverage for any damages an insured might cause should he become insane. An insane person is not likely to be discouraged from wrongdoing by the threat of financial liability, nor to be encouraged to cause harm by the prospect of liability coverage. The policy forbidding insurance protection for intentional harms is designed to restrict the loss to the individual wrongdoer, thereby creating a disincentive for

---

45. See *Turner v. Bucher*, 308 So. 2d 270 (La. 1975).

46. See, e.g., *Loescher v. Parr*, 324 So. 2d 441 (La. 1975); *Holland v. Buckley*, 305 So. 2d 113 (La. 1974); *Hier v. Farmers Mut. Fire Ins. Co.*, 104 Mont. 471, 67 P.2d 831 (1937). In *Hier*, the insured, while insane, set fire to his house and barn. The court, upholding liability coverage under the fire insurance policy, declared that, even if the insured had burned another's buildings, liability might be imposed "not on the ground of negligence, as that word is usually understood, but . . . on the principle that where a loss must be borne by one of two innocent persons, it should be borne by him who occasioned it." 104 Mont. at 489, 67 P.2d at 838.

47. 308 So. 2d at 275.

committing deliberately injurious conduct.<sup>48</sup> If an insured is deranged and irrational at the time he causes harm, no such social interest is served by refusing compensation to the victim on the ground that the insured acted intentionally.

There is ample authority for construing the terms of a contract against its maker in doubtful cases.<sup>49</sup> It is doubtful that the clause relied upon by the insurer was inserted in the policy in anticipation of the insured becoming deranged and causing damage.<sup>50</sup> If the insurer had planned to exclude coverage under such a circumstance, it easily could have inserted such a proviso in its policy.<sup>51</sup> Given this approach, it would have been possible to achieve a far narrower holding in the instant case by finding that the character of the act performed by the insured was not within the scope of the insurer's exclusionary clause. It is submitted that it was unnecessary for the court to base its holding on the broad notion that insanity may

48. "A person should suffer the financial consequences flowing from his intentional conduct and should not be reimbursed for his loss, even though he bargains for it in the form of a contract of insurance." *Isenhardt v. General Cas. Co. of America*, 233 Or. 49, 53, 377 P.2d 26, 28 (1962).

49. LA. CIV. CODE art. 1957 states: "In a doubtful case the agreement is interpreted against him who has contracted the obligation." In regard to the interpretation of exclusionary clauses in insurance contracts, *see Brasseaux v. Girouard*, 269 So. 2d 590 (La. App. 3d Cir. 1972); *Bezue v. Hartford Acc. & Indem. Co.*, Hartford, Conn., 224 So. 2d 76 (La. App. 1st Cir. 1969); *Wigginton v. Lumbermens Mut. Cas. Co.*, 169 So. 2d 170 (La. App. 1st Cir. 1964).

50.

If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences and effects of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable.

*Life Ins. Co. v. Terry*, 82 U.S. (15 Wall.) 580, 591 (1873). Where the insured is deranged and irrational at the time he inflicted injury, "his actions cannot be regarded as 'intentional' within the meaning of an insurance contract." *Rosa v. Liberty Mut. Ins. Co.* 243 F. Supp. 407, 409 (D. Conn. 1965). "In framing the exception they [the insurer] did not have in mind nor intend to include the rare instance of the murder of the insured by one intending the murder of another." *Wildblood v. Continental Cas. Co.*, 182 La. 202, 206, 161 So. 584, 585 (La. 1935). "[I]t has come to be commonly accepted that where the death or loss involved . . . is the product of an insane act, recovery is not barred." *Ruvolo v. American Cas. Co.*, 39 N.J. 490, 496, 189 A.2d 204, 207 (1963).

51. "[I]f this company did not want to assume the risk of fire loss at the hands of a policy holder who, while insane, burned his insured buildings, it should have expressly excepted such risk." *Hier v. Farmers Mut. Fire Ins. Co.*, 104 Mont. 471, 488, 67 P.2d 831, 837 (1937).

negate the intent requisite for delictual liability. Rather, it would have been sufficient to determine that insanity may negate intent in regard to insurance liability.

Ultimately, the *von Dameck* decision allocates the risk of damages inflicted by an insane homeowner to the group of holders of homeowners' insurance policies, since they must eventually bear the cost in the form of higher premiums. While this allocation of risk is consonant with the fundamental aim of insurance,<sup>52</sup> it also serves as a guarantee to purchasers of homeowners' insurance that their liability coverage will not be excluded by a clause not designed to apply to the rare case of insanity. Since the peculiar facts of this case are not likely to be repeated, the risk placed upon insurers is not a formidable one. The underlying reason for the decision may be simply the court's belief that neither the insurer nor the insured contemplate an exclusion of coverage when damage is caused by the act of a nondiscerning person.

*James F. Shuey*

#### LOUISIANA'S PROTECTION FOR RAPE VICTIMS: TOO MUCH OF A GOOD THING?

In recognition of the problems faced by rape victims<sup>1</sup> who testify as prosecution witnesses at trials in which evidence of their sexual histories may be introduced, many states have enacted "rape shield

---

52. LA. R.S. 22:655 (Supp. 1962) states in part:

[A]ll liability policies within their terms and limits are executed for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable; and . . . it is the purpose of all liability policies to give protection and coverage to all insured . . . for any legal liability said insured may have as or for a tort-feasor within the the terms and limits of said policy.

---

1. For the sake of brevity, the term "victim" is used instead of "alleged victim" as a synonym for prosecutrix or rape complainant. Similarly, the term "rape" is used instead of "alleged rape," and "offender" instead of "alleged offender." Such usage is not intended to suggest that all rape complainants were in fact sexually assaulted. Nor is the use of the term "prosecutrix" intended to imply that the "victim" is the prosecuting party in the trial, rather than the state. Finally, although emphasis herein is placed on the problems of female complainants at rape trials, the same basic policies, problems, and proposed solutions should apply by analogy to male rape complainants and, where applicable, to "victims" of other sexual offenses as well. See LA. R.S. 14:41-43.1 (Supp. 1978).