

IN THE HON'BLE SUPREME COURT OF ENGLAND AND WALES

TEAM CODE-

IN THE MATTER OF

FAWKES

...APPELLANT

V.

WESTMINSTER INSURANCE COMPANY

...RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

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LIST OF ABBREVIATIONS

&	And
¶	Paragraph
AIR	All India Reporter
Anr.	Another
Art.	Article
Co.	Company
CompLJ	Company Law Journal
Corpn.	Corporation
Cr.	Criminal
Edn.	Edition
Govt.	Government
Hon'ble	Honourable
i.e.	That is
Ltd.	Limited
No.	Number
Pvt.	Private
QB	Queens' Bench
SC	Supreme Court
SCC	Supreme Court Cases
v.	Versus
Vol.	Volume
www	World Wide Web

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STATEMENT OF JURISDICTION

THE APPELLANT HAS APPROACHED THIS HON'BLE SUPREME COURT OF ENGLAND AND WALES UNDER ARTICLE 40(2)¹ OF THE CONSTITUTIONAL REFORMS ACT, 2005.

¹ *Art. 40(2) of Constitutional Reforms Act, 2005* - An appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings.

STATEMENT OF FACTS

For the sake of brevity and convenience of this Hon'ble Court the facts of the present case are summarise as follows:

1. The Appellant, Mr. Fawkes was senior solicitor in a commercial law firm and an aficionado of rare cigars. He had taken out a home insurance policy with the Westminster Insurance, covering loss of or damage to his property, and the contents and personal possessions within. At that time, he had notified the Westminster Insurance of his collection of cigars, valued at Rs. 24000.
2. On 5th of November 2007, Mr. Fawkes was made redundant. Upset, he spent evening drinking alone at home and after consuming a considerable number of glasses of brandy he wondered whether or not if he smoked his cigars he could bring an insurance claim for them being damaged in fires. He reasoned as to that amount would be very useful in his current economic state, and proceeded to light his first cigar.
3. Whilst smoking the first cigar he decided against his plan. He threw his cigar on the floor in disgust, but unfortunately the carpet set alight. The blaze soon spread throughout the room and to other areas of the house. Mr. Fawkes was rescued by the fire- service, cradling his box of cigars, but the property was severely damaged in the fire and was rendered uninhabitable.
4. The fire damaged the property but no one was injured and even the remaining cigars were not damaged. Mr. Fawkes claimed on his home insurance policy for the damage to his house and contents due to the fire. Westminster Insurance refused the claim and subsequently an action was brought against the insurance company by Mr. Fawkes pertaining to the impugned order passed by the Court of Appeal and to quash the same.

STATEMENT OF ISSUES

- I. WHETHER THE DRUNKEN STATE OF MIND OF MR. FAWKES BE DEFENCE FOR INSANITY PLEA UNDER M'NAGHTEN RULES.**

- II. WHETHER THE DAMAGE CAUSED BY THE ACT OF MR. FAWKES EVEN OUT OF HIS OWN NEGLIGENCE ENTITLED HIM TO CLAIM INSURANCE.**

SUMMARY OF ARGUMENTS

I. THAT THE DRUNKEN STATE OF MIND OF MR. FAWKES BE DEFENCE FOR INSANITY PLEA UNDER M'NAGHTEN RULES.

Insanity measured as per M'Naghten Rules- To be able to recover for the consequences of his intentional act, the insured need to prove on the balance of probabilities that at the time of the incident the person did not know the nature and quality of the act he was committing as if he did know it, that he did not know what he was doing was wrong. It is settled position that the intention at the time of the commission of the offence plays crucial role while imposing the liability on a person. Further, in the instant case Mr. Fawkes whilst smoking his cigar, decided against the plan, at that moment his intention to commit any further crime dissolved. The person who would have malicious intent to burn the property in order to claim the insurance money fraudulently would ensure that he escapes from the premises before incurring any personal injuries.

II. THAT THE DAMAGE CAUSED BY THE ACT OF MR. FAWKES EVEN OUT OF HIS OWN NEGLIGENCE ENTITLED HIM TO CLAIM INSURANCE.

It is settled through various judicial pronouncements that the Insurance Company while refusing the claim under a fire policy on the grounds that the fire was caused by the deliberate act of the insured has to give particulars of such deliberate act or the acts alleged. Since the insurance policy is also an agreement between the insurer and the insured, thereby anything mentioned therein has to be strictly reasoned by the court. In the instant matter, the policy consists of General Exclusion Clause 1- 'any wilful or malicious act' done in manner to claim insurance for the damaged property is excluded from such entitlement of claimant.

ARGUMENTS ADVANCED

I. THE DRUNKEN STATE OF MIND OF MR. FAWKES BE DEFENCE FOR INSANITY PLEA UNDER M'NAGHTEN RULES.

1. The M'Naghten Rule as laid down in the case of *Queen v. M'Naghten*² sought to establish a defence on grounds of insanity. The requisite balance of probability needs to be recognized in furtherance to claim such defence which states- "To be able to recover for the consequences of his intentional act, the insured need to prove on the balance of probabilities that at the time of the incident the person did not know the nature and quality of the act he was committing as if he did know it, that he did not know what he was doing was wrong."³ The grounds for the defence of insanity includes mental incapability and drunken state of mind wherein the person's inability to think as that of prudent man diminishes to the extent that he become unable to know the nature of the act and the consequence thereby.
2. Lord Nicholas, in *Re H (Minor)*⁴ case contemplated the balance of probability standard and inferred that while assessing the probabilities, the court will have in mind the factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on such probability. In the instant matter, while proving the balance of probabilities, the Appellant at the time of the commission of the offence was not aware about the nature of the act or as to what he was doing was wrong, thereby rendering it to be a defence under the insanity plea, exempting him from his liabilities.
3. Further, in this regard the burden and standard of proof on the Insurance Company obligates to establish their case on the balance of probabilities, though the court opined that the proximate cause of the loss, even on a balance of probabilities, remains in doubt.⁵ Thus, the General Clause of exclusion of the terms of agreement puts an obligation on the Insurance Company to indemnify for the damage suffered by the claimant in manner of such accidental act.

² *Queen v. M'Naghten*, 10 Clark & F. 2002, Eng. Rep. 718 (H.L. 1843); *R v. M'Naghten*, (1843) X Clark & Fennelly 2008 E.R. 718.

³ *Id.*

⁴ *Re H (Minors)* [1996] AC 563, Pg.- 586.

⁵ *Rhesa Shipping Co. S.A. v. Edmunds* [1985] 2 Lloyd's Rep. 1.

4. It is trite law that the intention at the time of the commission of the offence plays crucial role while imposing the liability on a person.⁶ An intention must be at time before occurrence and can be inferred from the act, conduct or circumstances of the case.⁷ Intention, thus is a question of fact which is to be gathered from the act of the parties.⁸ In the instant case Mr. Fawkes whilst smoking his cigar, decided against the plan, at that moment his intention to commit any wrong dissolved. Henceforth, the requisite specific intent was not present in the act which resulted in damage to the house property, rendering the act to be negligent and not intentional thus entitling him for claiming such insurance.
5. Further, where a claimant seeks to recover under a policy of insurance for the consequences of his own act in setting a fire, they will need to prove, on the balance of probabilities, that they were insane, within the meaning of the M’Naghten Rules, at the time of the fire. The nature and extent of this test should not be neglected.⁹
6. The lack of specific intent on part of Mr. Fawkes can be supported from the fact that he was ‘rescued’ by the fire service and he was found to be in an incomprehensible state. The person who would have malicious intent to burn the property in order to claim the insurance money fraudulently would ensure that he escapes from the premises before incurring any personal injuries. The instance of him being rescued by the fire service, in state incomprehensible¹⁰ unable to understand the nature of the act reasoned that his intention to commit such an act to claim insurance money was lacking.
7. Further, where the fire is not the natural but merely an accidental consequence of the expected peril, the proximate cause of the loss is the fire, the expected peril¹¹ being the remote cause only, and the loss is therefore covered by the policy.¹² In the instant case, fire damaging the property by lighting of cigar was not the natural cause but the accidental cause of the expected peril thereby entitling the insured to claim the right over the damaged property.

⁶ Patrick v. Royal London Mutual Insurance Society Ltd. [2007] Lloyd’s LR 85, see also, DPP v. Beard (1920) AC 479; DPP v. Majewski, (1976) UK HL 2.

⁷ Munney v. State of U.P., 2002 Cri LJ 154 (All) (DB) : 2002 (44) ACC 218 at 223 : 2002 (1) A Cri R 280.

⁸ B. N. Srikantiah v. State of Mysore, AIR 1958 SC 672: 1958 CrLJ 1251.

⁹ Porter v. Zurich Insurance Company, [2009] EWHC 376 (QB).

¹⁰ Para 2, Moot Proposition.

¹¹ Lord Mackay of Clashfern, Halsbury’s Laws of England, Volume 25, Edn. 4th, 2003.

¹² Cf Marsden v. City and County Assurance Co. (1865) LR 1 CP 232; Winicofsky v. Army and Navy General Assurance Association Ltd. (1919) 35 TLR 283.

II. THE DAMAGE CAUSED BY THE ACT OF MR. FAWKES WAS OUT OF HIS OWN NEGLIGENCE, ENTITLING HIM TO CLAIM INSURANCE.

8. Black's Law Dictionary defines Negligence as: "*The failure to use such care as a reasonably prudent and careful person would use under similar circumstances. The conduct which falls below the standard established by law for the protection of other is unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances.*"¹³
9. In the case of *Peabody Donation Fund v. Sir Lindsay Parkinson*,¹⁴ Lord Keith reiterated that 'in determining whether or not a duty of care of particular scope was incumbent on a person it is material to take into consideration whether it is just and reasonable that it should be so.' The duty to take care of the property expected from a reasonable person cannot be extended to impose liability in circumstances wherein the conduct expectable falls below the standard established as the person is unable to know the nature and quality of the act.
10. Further, in another case of *Shaw v. Robberds*,¹⁵ Lord Denman, while discussing the vires of negligence in fire insurance policies established that, 'Fires are frequently due to negligence and one of the objects of the fire policy is to protect the insured against the consequences of negligence.' It then becomes immaterial as to whether the fire owes its origin to negligence of that of the insured.¹⁶
11. It is settled through various judicial pronouncements that the Insurance Company while refusing the claim under a fire policy on the grounds that the fire was caused by the deliberate act of the insured has to give particulars of such deliberate act or the acts alleged.¹⁷ The lack of care on part of the claimant must be proved by the defendants according to the usual civil standard of proof: balance of probabilities.¹⁸ Further, to constitute a loss within the meaning of a fire policy, it is not necessary to show that the subject matter of the insurance has itself been burned, it is sufficient that the loss has been proximately caused by fire.¹⁹

¹³ Garner B.A., Black's Law Dictionary, (5th Edn., 2005).

¹⁴ *Peabody Donation Fund v. Sir Lindsay Parkinson & Co. Ltd.*, [1985] AC 210 at 241, [1984] 3 All ER 529 at 534, HL.

¹⁵ *Shaw v. Robberds*, (1837) 6 Ad & El 75 at 84 per Lord Denman CJ; *A-G v. Adelaide Steamship Co.* [1923] AC 292 at 308, HL, per Lord Wrenbury.

¹⁶ *Trinder, Anderson & Co v. Thames and Mersey Marine Insurance Co.* [1898] 2 QB 114 at 124, CA, per AL Smith LJ; also see- *Jameson v. Royal Insurance Co.* (1873) IR 7 CL 126.

¹⁷ *London Assurance v. Kidson* (1935) 79 Sol Jo 641, CA.

¹⁸ *Owens v. Brimmel* [1977] QB 859; *Limbrick v. French* [1993] PIQR P 121.

¹⁹ *Sherwin-Williams v. Boiler Inspection*, [1950] S.C.R. 187.

12. The negligent act is an omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of the human affairs, would do or doing something which a prudent and reasonable man would not do. It must be determined in all cases by reference to the situation and knowledge of the parties and all attendant circumstances.²⁰
13. The mental element required to constitute many serious crimes is an intention to bring about a specified consequence, which may or may not be required to result from the defendant's conduct, such crimes can be committed only by intention. A person intends a consequence where it is his aim or purpose to bring it about.²¹ It is not entitled to find the necessary intention unless it is sure that the consequences were a virtual certainty as a result of the defendant's actions.²²
14. In order to constitute some offences the defendant must have acted with intent to do some further act. In these offences (and certain other offences) only proof of aim or propose can suffice to prove intention; the requirement of intention is in a context where it would be inappropriate to speak of intention where the defendant does not aim to achieve the relevant thing.²³
15. Also, it is well established that in a contractual agreement between the parties, the terms and conditions are to be followed in strict manner as to the parties are bound by those conditions only which forms a part of the agreement. Since the insurance policy is also an agreement between the insurer and the insured, thereby anything mentioned therein has to be strictly reasoned by the court. In the instant matter, the policy consists of General Exclusion Clause 1- 'any wilful or malicious act' done in manner to claim insurance for the damaged property is excluded from such entitlement of claimant.
16. Though Mr. Fawkes' act was negligent, but it does not constitute part of the Exclusion clause, thereby as per the strict interpretation, he is entitled to claim for the damages caused to his property as the nature of act was not malicious, rather accidental.

²⁰ Nitroglycerin Case, 15 Wall. 536, 21 Ed. 206; Blythe v. Birmingham Waterworks Co., 11 Evch. 7S4.

²¹ R v. Mohan [1976] QB 1 at 8, 60 Cr App Rep 272 at 276, CA, per James LJ; see also R v. Moloney [1985] AC 905 at 926, 81 Cr App Rep 93 at 106-107, HL, per Lord Bridge.

²² R v. Woollin [1999] 1 AC 82, [1999] 1 Cr App Rep 8, HL; see also R v. Nedrick [1986] 3 All ER 1, 83 Cr App Rep 267, CA.

²³ R v. Ahlers [1915] 1 KB 616, 11 Cr App Rep 63, CCA.

PRAYER

Wherefore in the light of facts presented, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Appellant humbly pray before this Hon'ble Court that it may be pleased to adjudge and declare that:

1. The appeal to be allowed.
2. The insurance company is liable to pay the insurance claim.

Or pass any other order that the court may deem fit in the light of equity, justice and good conscience and for this Act of kindness of Your Lordships the Appellant shall as duty bound ever pray.

Sd/- _____

Counsels for the Appellant.