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“SPECIFIC GOODS” AS CONTAINED IN DIVISION (D) OF SEC. 1317.01, R.C.—INCLUDES INSURANCE POLICIES—RETAIL INSTALLMENT SALE OF AN INSURANCE POLICY IS SUBJECT TO PROVISIONS OF CHAPTER 1317., R.C.—§§1317.01, 1305.01, R.C., CHAPTER 317., R.C.

## SYLLABUS:

The term “specific goods” as contained in division (D) of Section 1317.01, Revised Code, includes insurance policies, and the retail installment sale of an insurance policy is subject to the provisions of Chapter 1317., Revised Code, pertaining to retail installment sales.

Columbus, Ohio, May 31, 1960

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“A very pressing insurance question is causing difficulties in this county for public officials in certain cases and private persons as well.

“The question is whether or not the Retail Installment Sales Act, R. C. Sections 1317.01 and following, applies to sales of insurance policies. Section 1317.01 of the said Act provides in part that:

(A) ‘Retail installment sale’ includes every retail installment contract to sell specific goods and every retail sale of specific goods to any person in which the cash price may be paid in installments over a period of time.

\* \* \*

(C) ‘Goods’ includes all chattels personal, other than money, emblements, industrial growing crops, things so affixed to the land as to become a part thereof, or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(D) ‘Specific goods’ means goods, including related services, identified and agreed upon at the time a contract to sell or a sale is made.

\* \* \*

“More particularly the question is whether or not the sale of an insurance policy is covered under the term ‘specified goods.’”

I have been unable to find any case law on this subject either in Ohio or elsewhere.

With respect to the meaning of the term “specific goods” as defined in Section 1317.01 (D), Revised Code, it is apparent that an insurance policy must first be “goods” as defined in Section 1317.01 (C), Revised Code, to be included as “specific goods” in Section 1317.01 (D), Revised Code.

The first task is to determine the meaning of “chattels personal” as used in Section 1317.01 (C), Revised Code.

In Blackstone Commentaries, Book 2, Chapter 24, it is said that chattels are distributed by law into two kinds, “chattels real” and “chattels personal.” This chapter further states:

“Chattels personal are, properly and strictly speaking, things movable; which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another. Such are animals, household stuff, money, jewels, corn, garments and everything else that can properly be put in motion, and transferred from place to place.”

In 73 Corpus Juris Secundum, Section 8, at page 173, it is said after restating Blackstone's definition :

"Property in 'chattels personal' may be either in possession or in action, as where a man has only a base right, without any occupation or enjoyment. The term includes every species of property lacking the two characteristics of real estate, namely, immobility as to place, and indeterminate duration as to time, and such as are not annexed to real estate."

While the definition of "goods" as contained in Section 1317.01, *supra*, does not treat the question of whether a chose in action is a chattel personal, I note that in Section 1315.01 (J), Revised Code, part of the Uniform Sales Law, the definition of "goods" specifically excludes choses in action from the term "chattels personal." Division (J) of Section 1315.01, Revised Code, reads as follows :

"(J) 'Goods' includes all chattels personal other than choses in action and money. It includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

Although this definition is limited to Chapter 1315., Revised Code, it indicates the understanding of the legislature as to the meaning of the term.

It is apparent, then, that a chose in action is a chattel personal and, as such, is subject to the Retail Installment Sales Act, Chapter 1317., Revised Code.

In the case of *Western and Southern Life Insurance Company, Plaintiff, v. Hague, Admr. Defendant*, 74 Ohio Law Abs., 259, the Common Pleas Court of Franklin County said at page 262 of the opinion :

"\* \* \* It is unlike most contracts as to which the statutes of 'descent and distribution' or 'administration of estates' dictate the method of distribution. Actually, a policy of life insurance is merely a chose-in-action; choses-in-action are 'owned' by the person having title to them just the way he owns his other chattels. He may do with them as he pleases without the leave or consent of any other party. Should he die, his estate succeeds to his ownership of his choses-in-action just the way the estate succeeds to the ownership of his other chattels."

It is clear from the above quotation that the court was of the opinion that life insurance is a chose in action and as such is a chattel.

In Cyclopedia of Insurance Law, by Couch, Volume 1, Section 27, it is stated:

“\* \* \* Also, a fire insurance policy is a chose in action and does not partake of the nature of the property insured by it. \* \* \*”  
It is stated in 30 Ohio Jurisprudence, 2d, Section 163, at page 178:

“The general nature of the relation between an insurer and an insured is purely a contractual one. *No matter of what variety, insurance is a contract whereby, for a stipulated consideration, one party undertakes to compensate the other or his designee for loss, damage, or death by specified perils, and the basic laws applicable to contracts generally are applicable to contracts of insurance.*” (Emphasis added)

Since the nature of the insurance contract remains the same regardless of what risk or peril of loss is insured against, it would naturally follow that a policy of insurance would always represent the same type of property.

42 American Jurisprudence at page 207, in speaking of property at Section 26, says in part:

“A chose in action has been defined as a personal right not reduced into possession, but recoverable by a suit at law. *It has been defined also as a thing of which one has not the possession or actual enjoyment, but only a right to or a right to demand by an action at law.*\* \* \*” (Emphasis added)

From this definition and the court’s opinion in the *Western and Southern Life Insurance Company v. Hague* case, *supra*, and in light of the fact that all insurance contracts are basically the same, it must be concluded that the property represented by an insurance policy is a chose in action. As such, it is included in the definition of “goods” in Section 1317.01 (C) and therefore a particular policy would be specific goods as defined in Section 1317.01 (D), Revised Code.

Accordingly, it is my opinion and you are advised that the term “specific goods” as contained in division (D) of Section 1317.01, Revised Code, includes insurance policies, and the retail installment sale of an insurance policy is subject to the provisions of Chapter 1317., Revised Code, pertaining to retail installment sales.

Respectfully,  
MARK McELROY  
Attorney General