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Wendell Carnahan

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THE DELIVERY OF A LIFE INSURANCE POLICY:
FUNCTION AND SCOPE OF THE DELIVERY CONCEPT FOR CONFLICT OF LAWS PURPOSES*

By Wendell Carnahan†

The word "delivery" constitutes one of the most important terms in the cases dealing with the conflict of laws of life insurance. This term does not have a single meaning but is applied in a number of different ways and with different connotations when employed in relation to various factual situations. It is the purpose of this article to examine the cases and the considerations which bear upon the function and scope of the delivery concept as it is employed in connection with life insurance policies in the conflict of laws.

As a basis for certain essential distinctions, it is necessary to make explicit certain established principles, even though they are generally familiar ones. In dealing with problems of contracts in the conflict of laws various courts have evolved three main and distinct rules—the rules of the place of making, of the place of performance, and of the intention of the parties. The majority of courts, for most purposes, follow the rule of the place of making in determining the validity of contracts in conflict of laws cases. But the decisions from any single jurisdiction do not consistently adhere to any one of these three rules. While various considerations underlie a judicial choice and employment of these three rules, they are not entirely distinct, in that the factor of the place of making may also be important in the application of the latter two rules. That is, a court which employs the place of performance rule may find that the matter of performance in question was to occur in the state which was also the place where the contract was made and is therefore to be governed by its law; in this situation the rule of the place of performance is applied, but is expressed in the opinion as being the same as the rule of the place where the making of the contract occurred. Courts which apply the test of the intention of the parties in life insurance cases limit the scope of their choice to states of the place of making or of performance of the contract; consequently when a court applying

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*This paper forms the basis for a chapter in a forthcoming book on Conflict of Laws in Life Insurance Contracts. All rights reserved.
†Professor of Law, Washington University, St. Louis, Mo.
this rule finds an intention of the parties that the problems presented by the contract shall be governed by the law of the place of making, it is necessary that the opinion designate where the contract came into existence. Hence the importance of the phrase “place of making” is not confined to the first rule, but extends to all three basic choice-of-laws principles governing contracts. It is therefore essential that the term “place of making” be clearly defined.

A recent treatise on Conflict of Laws gives the following definitions:

“The phrase ‘place of contracting’ and its equivalents, the place of making or the place where the contract was made, properly mean the place in which the final act was done which made the promise or promises binding.”

And, in regard to insurance, “in general, of course, the place of contracting is where the policy is delivered.” The place of contracting, then, is that place in which was performed the last necessary act in order to constitute a binding agreement and that place will usually be the place of acceptance of the offer; in insurance cases acceptance of the offer will be manifested by “delivery” of the policy.

Unless the term “delivery” has a rigid and inflexible meaning it is apparent that, even among courts which follow the place of making test, the choice-of-laws rule may shift from one state to another accordingly as a court so defines this term as to connect the contract with one of the important states. In other words, if “delivery” is synonymous with “acceptance,” and if courts find that for various purposes acceptance may be manifested by different sets of facts, then the rules ultimately chosen to govern specific conflict of laws problems in life insurance will be dependent upon the courts’ determination of what constitutes acceptance.

A court may hold that acceptance of the offer to become insured occurred at the time and place where the policy itself came into the physical, manual control of the applicant; then that state is the place of delivery. But a court may find that acceptance of the offer to become insured occurred at the time and place when the insurer approved the application and prepared the policy for transmission to the applicant; then the state of the insurer's home-office is the place of delivery. The rules of those two states

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1 Beale, Treatise on the Conflict of Laws (1935) sec. 311.1, p. 1045. This rule is also stated in the American Law Institute's Restatement of the Law of Contracts (1932) sec. 74.

in relation to the precise question before a forum court may be entirely different.

For most purposes the overwhelming majority of conflict of laws cases which follow the place of making rule hold that the last act necessary to make a binding contract of life insurance occurred at the place of physical receipt of the policy by the applicant; but in reaching this conclusion various factors are considered and expressed in opinions which give different connotations to the term "delivery," even though these connotations all point to selection of rules of law of the same state. In certain types of cases—including those dealing with binder receipts issued at the time of application, instances of death before manual receipt of the document, and some phases of non-forfeiture problems—a court may hold that making and delivery of the contract occurred at the place of the insurer's home-office. While cases of the latter type are in the distinct minority, both in number of cases and in the types of situations in which the rule of the place of making will be applied in an unusual way, these cases present important problems and in them it is essential that shifting content of the terms "place of making," "last necessary act," and "delivery" be sharply noticed. Although courts may be in almost universal agreement upon one content of these phrases as applied to specific problems, it does not follow that the same content of the terms will apply to all other problems.

Furthermore it is to be pointed out that these terms do not necessarily have the same meaning in cases presenting conflict of laws problems of insurance which they have in cases dealing only with the "general or internal law" of insurance. By the latter terms is meant a non-conflict of laws situation—one in which interstate factors which might give rise to application of choice-of-laws rules are either non-existent or are ignored by the courts in their opinions dealing with concrete facts. By a conflict of laws case is meant one wherein the opinion recognizes and discusses the interstate relationships, by reason of which judicial application of conflict of laws rules selects for enforcement the general or internal law rule of the state having dominant contacts with the operative facts of the case.

Before considering conflict of laws decisions notice will first be taken of the function of the delivery concept as used in the general law of insurance for comparison with its function in conflict of laws cases. In the light of these purposes the conflict of
laws cases developing various contents of the term "delivery" may be more readily grouped. The connotations of the phrase, as indicated in this article, run throughout the whole conflict of laws portion of the insurance field in subdivisions such as warranties, beneficiaries, incontestability, etc.

Several analyses which no doubt are familiar to lawyers have been made of cases dealing with the delivery of a life insurance policy. But those materials deal almost exclusively with problems of delivery in relation to the various internal law rules adopted by courts and the types of problems there considered are different from those raised by conflict of laws cases. Consequently the approach taken and the conclusions reached in analyses of general insurance law are of only limited utility in reference to conflict of laws problems and important distinctions must be noticed.

In the internal law of insurance, that is, where conflict of laws problems are not considered, the cases which discuss the element of delivery are concerned with ascertaining the time when insurance became effective, and are not concerned, as are the conflict of laws cases, with the place where the contract had its inception. In the general law of insurance the question is this: Was there effective insurance coverage? The time at which insurance became effective then becomes important in deciding such mediate questions as these: Was the applicant under a duty to disclose changes in health after the application was signed; or, was a subsequent premium paid promptly? In those cases the time of inception of the contract is expressed in terminology of delivery, and subsidiary questions which are dependent upon that preliminary determination are decided by the general principles of insurance law obtaining in the state where suit is brought.

In the conflict of laws cases, on the other hand, there is seldom any issue as to whether the insurance relationship had come into existence; determination of the time when the contract had its inception is useful only for the purpose of determining the place of making of the contract in order that the court may thereby ascertain a rule of law to be used for resolving problems presented by a particular policy. Furthermore, the time of inception may be different for internal and for conflict of laws purposes.

It cannot be too much emphasized that, in both internal law
cases and in conflict of laws cases dealing with life insurance policies, the delivery concept is only a means and never an end. The point in issue in a concrete case is not whether or where the policy was delivered. The question in a particular case is whether health statements are warranted, whether suicide constitutes an excepted risk, what constitutes insurable interest, whether an applicant must make disclosure of changes in health after the application was signed, etc. In the internal law cases, if a preliminary determination of time of inception of the contract bears upon a solution of these ultimate questions, a court will ascertain when the policy was in force and will use the concept of delivery for that purpose. In conflict of laws cases, when a preliminary determination of the place where the contract had its inception is necessary in order to select a choice-of-laws rule to govern these ultimate questions, a court will ascertain where the contract was made by determining where it was delivered; that is, the delivery concept is employed to find the place of making of the contract and then inquiry is made into the appropriate rule of that state. In strict theory the consequence of the selection is not considered before the choice is made; actually one often suspects from the cases that selection was made with the consequence in view. The delivery concept is only a tool and how that tool will be employed in relation to problems of life insurance cannot accurately be determined merely by an inspection of the four corners of the insurance policy.

Although the functions of the delivery concept in internal and conflict of laws situations are different there are some points of similarity which may be noticed in the operation of the rule in the two types of cases. The social need for certainty in rules of law and the formalism anciently attendant upon the delivery of instruments in writing carried over in a formative period to insurance policies and then resulted in a tendency for the internal law to define delivery in terms of manual tradition of the document. In conflict of laws cases the perpetuation of this interpretation has been influenced by two factors.

The first factor is that of social policy in relation to life insurance. The great majority of conflict of laws cases will arise in the state where the applicant lived and "took out" his policy of

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insurance, where the beneficiaries dependent upon the proceeds reside and where there is the strongest social policy in their favor. Numerous cases reiterate the vital concern of each state over insurance contracts made with its citizens or within its borders. In every case the governing rule is selected from two or more divergent expressions of general law, each of which prevails in a state having one or more contacts with the insurance relationship. Determination that certain facts constitute delivery designates, emphasizes and localizes one of the most important steps in the progression from circumstances to legal consequences by which rights and duties are created and measured, and the cases all declare that delivery is one of the few possible dominant contacts indicating the appropriate law to govern relationships represented by a policy of life insurance.

The consequence is expected that in many instances the term delivery will be defined in such ways as to draw control over the contract away from the law of the insurer's home-state to a law favorable to the insured; that expectation has been fulfilled. Employment of delivery in a literal sense, for the purpose of fixing the governing law, will serve to refer most questions of insurance to the general internal rules of the state where the applicant resided and where the contract is thus said to be made. Similarly, in cases where the forum was not the place of making, if the place of trial adopts the place of making rule for choice-of-laws purposes, the effect again is to refer to the law usually most favorable to the insured. And if a case presents a question on which the home-state of the insured is not sympathetic to his claim, the place of trial is not likely to be more so. A formalistic and literal interpretation of delivery tends to effectuate the social policy of a state by enabling it to apply its own rules which are favorable to its residents claiming under an insurance policy.

The second factor tending to perpetuate a formalistic conception of delivery in these cases is found in conflict of laws rules themselves. It was pointed out that not only do the majority of courts adopt in insurance cases the rule of the place of making, which emphasizes delivery, but also that determination of the place where the contract was made may be an important step in the application by other courts of the rules of the place of performance and the intention of the parties. Definition of delivery in a literal sense for conflict of laws purposes tends toward certainty in the selection of a state whose law will be applied to specific questions raised by life insurance policies.
It was pointed out above that the function of the delivery concept is different in problems of internal law and of conflict of laws, and it is also true that the operation of the concept is different in the two fields. The cases show that for conflict of laws purposes most courts, for most purposes, adopt the most literal connotation of the term—that of manual receipt of the policy by the applicant; in internal law cases, for purposes there important, the term is related to circumstances antecedent to and occurring at a different place than manual tradition of the paper.

The delivery concept, while of major importance, is not the only factor which must be considered in determining the rules of law by which courts solve conflict of laws problems raised by life insurance policies. Life insurance law has been characterized by the great number of cases decided against the carriers; in the conflict of laws there are several important tools in the judicial workbench which assist in accomplishing that end. If the policy expressly provides, as many of the earlier ones did, that the contract shall be construed and governed by the law of the home-state of the carrier, and hence not by the law of the place of making, will this specification be effective? Quite generally not, if the law of the place of making is more favorable to the insured upon the precise point in issue. But if the law of the state specified is more favorable to the insured, the express provision may be controlling. The policy may expressly provide for or be construed to contemplate payment of premiums at the home-office of the insurer and payment of death benefits there, i.e., that state may be taken as the place of performance. A court finding a liberal rule prevailing at that place may adopt the rule that questions relating to the contract are governed by the law of the place of performance and may employ the law of the state so indicated. Then also it is possible to divide up the right-duty relationship into small bundles and hold that some of these bundles are governed by rules distinct from the original contract and may have their own places of making; some writers consider that this has been done

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This question has been an important one in connection with problems of warranties and representations and has also arisen in connection with certain aspects of non-forfeiture legislation. See Carnahan, Conflict of Laws Treatment of Warranties and Representations in Life Insurance Policies, (1941) 27 Wash. U. L. Q. 30.


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in connection with assignments\(^7\) and with loan agreements.\(^8\) Another device, which may lead to a governing rule different from that of the place of making, turns around procedural limitations of the forum;\(^9\) while of limited scope it is nevertheless an important factor.

Even as applied to cases dealing only with internal law rules, the word "delivery" is not self-defining and the idea of manual transfer of the policy is only one of its connotations;\(^10\) it has been pointed out above that this is also true in the use of the term in conflict of laws cases. In the following pages are considered the various ways in which courts have employed different connotations of the delivery factor and given meaning and content to the general concept, adapting the term and fitting it into the scope of the place of making rule until the two phrases are almost synonymous, both conveniently indefinite, and both working toward accomplishment of the public policy in favor of the insured.

1. The Last Necessary Act

It is very common to find opinions, relying upon the broadest general propositions, which declare that the state where the last act necessary to create a contract occurred is the place of delivery; these cases do not necessarily hold that delivery is the last necessary act. Sometimes the general statement is amplified by indication of the precise act which was the last necessary link in the formation of the contractual relationship. The following language from a California case\(^11\) is typical, although the courts are frequently not as explicit:

"In this case, as intended by the parties, the plaintiff received the policy in California upon the payment of the first year's pre-

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\(^8\)This was employed, e.g., by the state courts in John Hancock Mut. L. Ins. Co. v. Yates, (1936) 182 Ga. 213, 185 S. E. 268; but the Supreme Court of the United States held that this particular application went too far and violated the full faith and credit clause (1936) 299 U. S. 178, 57 Sup. Ct. 129, 81 L. Ed. 106. The case was widely discussed in law journals: (1937) 6 Brooklyn L. Rev. 463; (1937) 37 Col. L. Rev. 485; (1937) 22 Corn. L. Q. 384; (1937) 50 Harv. L. Rev. 520; (1937) 21 Minnesota Law Review 842; (1937) 3 U. Pitts. L. Rev. 216; (1937) 43 W. Va. L. Q. 229.


mium in advance. The last act, therefore, essential to the consummation of the contract of insurance was done in California; and it follows under the authorities that the contract was made in California. . . . While the law of the place of performance of the insurance contract governs as to its construction and legal effect, nevertheless, as a general proposition, the law of the place where the contract was made controls as to its execution and validity, including the capacity of the parties to make the contract. . . .”

Definition of the place of making of the contract of insurance in terms of the general phrase “last necessary act” has been employed to designate the law governing a wide variety of problems. As the cases have used this general phrase they have tended to develop a connotation of delivery which is that of the formalistic manual transfer of the policy.

The narrow definition of the place of “the last necessary act” given in the cases cited occasions difficulty when a court is confronted with unusual circumstances. If the applicant dies while the policy is in the mails it may be highly expedient to hold that the insurance contract was concluded antecedent to receipt of the evidentiary symbol. On these facts a court may reject the idea of manual receipt as constituting delivery and may find that the “last necessary act” occurred at an earlier time and at the place of the insurer’s home-office, or a court may decide the case

upon principles of general insurance law, which are favorable to the insured in this situation, without consideration of conflict of laws features of the case.

2. Payment of Premiums—in General

An examination of the forms currently employed by one hundred thirteen American companies shows that almost universally the application or the policy provides that the insurance shall not be effective until payment of the first premium by the applicant. Very frequently this condition is coupled with the requirement of delivery. These provisions have had important effects in the conflict of laws cases.

While information is not available showing the origin and evolution of these clauses, the provision for payment of the premium was designed entirely to prevent attachment of the risk and not as a device for controlling the place of making of the contract. This stipulation has quite consistently been construed by the courts as a condition precedent, but the cases have failed to differentiate between conditions precedent-to-formation of the contract and conditions precedent-to-performance by the carrier.


For this purpose comparison was made of the forms of the one hundred thirteen American companies given in the Handy Guide (Spectator Co. 1938). In nineteen instances this publication does not give the form of the application used. In sixteen of those instances the companies supplied the writer with specimen application blanks. Of these one hundred ten forms, eighty-three provide in the application that the policy is not in force until payment of the first premium; six include this provision in the policy only; sixteen include it in both policy and application; and five make no provision on this point.

Of the one hundred ten forms examined, ninety-six provide in the application or policy or both that the policy must be delivered; there is variance in the form of this provision, including the following clauses: "delivered by a duly authorized agent of the company;" "manually (or actually) delivered to the applicant;" and "delivered during applicant's life and continuance in good health."

The distinction is made in Costigan, Performance of Contracts (1911) 5. It has been utilized in analyzing problems of representations and warranties by Patterson, Warranties in Insurance Law, (1934) 34 Col. L. Rev. 595, 605, 608; and in reference to the delivery-in-good-health clause in Note, (1934) 34 Col. L. Rev. 1508, 1515. In regard to general clauses requiring delivery, Patterson states that "most courts have held these stipulations fix a condition precedent to the commencement of the risk." Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 220.
This distinction might well be taken by the courts, and would have a material bearing upon the approach to some insurance problems. Several factors must occur before a contract comes into existence; they include at least the offer and acceptance which give rise to legal rights and obligations expressed in the agreement. In respect to contracts requiring the payment of money, it is generally sufficient that one party is legally bound to make payment, and it is not required that he should have paid the money before the contract comes into existence; that is, payment is not a condition precedent-to-formation of the contract. As applied to insurance, the obligation of the applicant to make payment arises at the time the contract was formed, i.e., when the insurer approved the risk and manifested an intention to be bound. There are two circumstances in insurance cases which militate against the view that payment of the premium must be made before the contract is formed. The first is the fact that the insurance company does actually accept the offer contained in the application and does issue the policy before payment has been made; this may be taken as an indication that no condition actually existed or, if so, that the condition has been waived. The second is a matter of construction of the payment-of-the-premium clause. The payment clause in the application is usually not sufficiently clearly phrased as to justify an interpretation which is unusual in contracts cases; if the clause in the policy is the important factor, it is introduced after the offer has been made and accepted by the insurer. Although it is proper to consider the clause as a condition, it is not one which must be complied with before the offeree (insurer) shall be taken as having entered into a contractual relationship. It is therefore precedent only to performance. The importance of the distinction lies in the fact that it is of greatest concern to the applicant that the contract shall have its inception at the earliest possible time. This conforms with the public policy of a state to secure the greatest protection for its residents. This public policy may be reflected in two other rules. The first is the rule that in some circumstances, constituting impossibility of performance, recovery may be permitted although strict performance has not occurred: one of those situations might arise when the applicant died after the risk had been approved and before he had had opportunity to make performance of payment at the time the policy would be tendered by an agent of the insurer. The second is the tendency of most courts in conflict of laws cases to hold that
the insurance contract is made in the state where the application is taken.

The contractual elements in an insurance agreement consist of an offer on the part of the applicant to become insured and bound to pay the premium, an acceptance by the insurer issuing the policy in reliance upon the covenant or promise of payment but also subject to a condition of payment and, finally, performance of the condition by the insured. The company is subject to expenses for approval of the application and for the medical examination in the event the applicant changes his mind before receipt of the policy. But the difficulty of enforcing these small claims leads an insurer to avoid the contract for failure of the condition rather than to insist upon performance of the covenant of payment. Retention of the policy for delivery, from the legal point of view, is for the purpose of preventing a waiver of the condition (payment).

The insurer is, of course, vitally interested in two points; it wishes to secure payment of the premium and to have opportunity to refuse the offer if the applicant is not an acceptable risk. In instances where the premium is paid in advance it is possible to hold that approval of the application at the home-office of the insurer completes the contract. Adoption of this principle as an internal rule of insurance will protect the applicant in case of death or adverse changes in health in the period between approval and actual manual transfer of the policy to him by the soliciting agent. The converse situation presented when application has been made without advance payment of the premium might also be construed as an offer, subject to a condition precedent-to-formation that the home-office indicate its acceptance of the offer by approval of the application; as indicated above, there is yet the condition precedent-to-performance that the first premium shall be paid. Here, also, the insured could be protected against contingencies of death or interim changes in health after approval of the application. But this possibility is based upon weaker facts and it also has generally been rejected.

Of the policies and applications examined, thirteen provide that the application must be approved and accepted by the home-office; it is probably an open question whether, upon approval and acceptance, the policy would be deemed "delivered" without further facts. Modification of the figure given must be recognized in some instances where payment of the first premium is made in advance and a certain type of binder receipt is issued. Binder receipts are considered in the following subdivision.

Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 221.
Whatever may have been the purpose of the payment-of-the-premium clause and whatever may be the judicial approach to purely internal law problems, it is clear that the conflict of laws cases have utilized this clause for localization of the contract. Usually this relation connects the contract with the state which was the domicil of the insured and in most instances his domicil will be in the state of the forum. The conflict of laws cases, in which making of the contract has been connected with the factor of payment of premiums, have been of the second type suggested above, that is, instances where payment was apparently to occur after the time when the policy had been received by the soliciting agent. For conflict of laws purposes the courts have here focused attention upon payment as the significant act\(^{20}\) rather than considering approval of the application as constituting acceptance by the insurance company. This approach emphasizes payment as a significant contact with the forum or domicil of the applicant and the law of that place will then be applied.

Although many of the older cases pay homage to the formation of a contract as a result of meeting of the minds of the parties, the prevailing rule in contract law requires an element of communication.\(^{21}\) Most frequently the act amounting to acceptance will actually be communicated to the offeror\(^{22}\) but, as will be indicated in a later subdivision dealing with mailing of the policy, in some types of contract cases it has been settled that constructive accep-

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\(^{21}\) The only conflict of laws case found in which there was intimation that communication of acceptance was not necessary is Lincoln Nat. L. Ins. Co. v. Hammer, (C.C.A. 5th Cir. 1930) 41 F. (2d) 12; the case involved application for reinstatement and it is possible that the types of problems are distinct. The court did, however, rely heavily upon the "meeting of the minds" explanation of acceptance. Cf. Prudential Ins. Co. v. Milonas (1933) 118 N. J. Eq. 343, 179 Atl. 107.
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Deliverance may occur at the time when a letter is posted.23 There are insurance cases following the rule that communication may be constructive, but most of them deal with questions of internal law, and in them the court was considering only the time and not the place factor. The latter becomes of primary importance only in conflict of laws cases,24 and decisions involving general insurance law are not authoritative in solution of the other type of problem. It is entirely possible that in conflict of laws cases the courts have generally been disinclined to adopt a theory of constructive delivery because of its tendency to relate applicable law to the state of the insurer's home-office instead of to the state residence of the applicant.

The prevalent practice of delaying acceptable arrangements for payment of the first premium until receipt of the written document, and the existence of strong reasons for connecting the contract with a state whose laws are favorable to the insured have combined to make payment one of the most significant acts. In conflict of laws the great majority of courts, for most purposes, have not considered the possibility of acceptance occurring upon some significant act at the company's home-office but have stressed payment of the premium as the last necessary act. This has been true even in instances where it appeared that payment had been made in advance and it would have been possible for the court to find, with this condition and covenant already performed, that the insurance had its inception at the time the insurer approved the application.25 "Payment of the premium" has been made one of the major connotations of the delivery concept in conflict of laws cases.26

23 The leading case establishing this rule is Adams v. Lindsell, (1818) 1 B. & Ald. 681; see 1 Williston, Contracts (2d ed. 1936) sec. 81.
24 The conflict of laws cases are indicated in a later division dealing with mailing of the policy.
Contra, Equitable L. Assur. Soc. of U. S. v. Perkins, (1907) 41 Ind. App. 183, 80 N. W. 682. A resident of Kentucky paid the first premium at the time of application to the agent of a New York corporation and the policy was received by mail, but whether from the home-office or the Kentucky agency does not appear. Under Kentucky law a forfeiture would later have occurred, so plaintiff tried to secure protection of a New York statute requiring notice by mail of premiums due. The court held for plaintiff upon the ground that acceptance occurred in New York by mailing for unconditional delivery.
3. Payment of Premiums—Binder Receipts

Another phase of the conflict of laws rule based upon payment of premiums is presented by the use of the so-called binder receipts. Some time must necessarily elapse between the application and receipt of a policy. When the premium is not paid in advance it is possible for an applicant to change his mind during this period; the insurance company bears the incidental expenses. It is also possible that an applicant may die or suffer impairment of health. For different reasons each party is therefore interested in security against adverse circumstances in the interim. As has

been noticed, payment of the premium in advance generally does not protect the applicant from the latter types of contingencies. Nor have courts considered unimportant the fact that the policy is dated back to the application, and so deprives the applicant of a few days or weeks of insurance.

Because an applicant otherwise has little incentive for making premium payments in advance, a number of companies have authorized the soliciting agent to use a special type of receipt when payment occurred in advance and have indicated this authority in the application. This paper is variously known as a conditional receipt, binder, or binding receipt. In some instances no special receipt is used but the application embodies special provisions applicable when payment is made in advance. In these circumstances the applicant has generally understood that he was temporarily insured from date of the medical examination until notice of rejection of the application by the home-office. The use of the binder receipts has presented questions of their effect in cases of interim changes in health; of the time within which the company may set aside the policy for fraudulent procurement; and of the time within which subsequent premiums must be paid to prevent forfeiture. Before considering conflict of laws cases it is necessary to notice the provisions of these receipts and some general problems raised by them.

These receipts are of several possible varieties, which may lead to radically different results. One constitutes a contract of unconditional temporary insurance; if it is used an applicant is protected during the period thereof.

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27 Of the policy forms of one hundred thirteen companies examined, application forms were available for one hundred ten of these companies; of these either the policy or application or both of sixty companies provided substantially "that except under conditions stated in the binding receipt there shall be no contract of insurance until the policy shall be issued by the company," implying a possibly different rule if a binder receipt were issued.

28 For discussion and cases on these points see Havighurst, Life Insurance Binding Receipts, (1938) 33 Ill. L. Rev. 180; Note, Operation of Binding Receipts in Life Insurance, (1935) 44 Yale L. J. 1223; 1 Couch, Cyc. of Ins. Law (1929) sec. 91; 1 Cooley, Briefs on Insurance (2d ed. 1927) 809-820; Vance, Insurance (2d ed. 1930) 195-198; Richards, Law of Insurance (4th ed. 1932) 103.

29 One company, but to only a very limited extent, uses this form of receipt: "That the insurance granted hereunder is only for the period of thirty consecutive days immediately following the delivery of this receipt, and shall automatically terminate, without notice or any action on the part of the company, at the end of that period, and shall automatically terminate before the end of that period if a policy shall be issued by the company and delivered to the applicant while in good health and the balance of
The others are for conditional temporary insurance and are of two types. The first conditional type is substantially as follows:

"If the first premium is paid at the time of making this application and the receipt therefor is delivered by the agent and if after investigation and medical examination the company approves this application, such insurance shall be effective from the date of the medical examination."  

Another company uses this form: "... If the first premium has been paid or settled for, the policy shall be in force from its date. If the first premium has not been paid or settled for, there shall be no contract of insurance until and unless the policy is delivered to the applicant and the first premium paid or settled for while the person insured is living and in good health."

Goble, Cases on Insurance (1931) 42, gives the following form of receipt: "... In consideration of the representations and agreements contained in the said application, and of the payment of the above sum, the above-mentioned life is assured, in accordance with the terms and conditions of the policy which may be granted in this particular case, for thirty days from the present date. Should the company decline to issue the policy, the assurance hereby granted thereupon ceases, and in such case the amount herein acknowledged shall be returned to the applicant. ..."

See also Havighurst, Life Insurance Binding Receipts, (1938) 33 Ill. L. Rev. 180, 181.

These forms are discussed in Note, 44 Yale L. J. 1223, 1224-1225.

From an examination of binder receipts available from forty-one companies, this and the following note show the variances in forms, and in comparison only with the number examined give some indication of the relative frequency of the clauses. It is possible, of course, that this ratio would not obtain upon comparison of forms of all companies.

"If the first premium is paid ... and receipt ... is delivered ... the insurance shall be effective, subject to the provisions of the policy applied for, from the date of the medical examination therefor as shown ... upon approval by an executive officer of the company ..." etc. (used by three companies).

"If the first premium is paid ... and this application is thereafter approved by the company for the amount ... the insurance will be enforced from the date of such approval ... and the policy year begins with such approval" (used by four companies). "Provided that on said date I was insurable in accordance with the plan" etc. (added by one company). "And shall not have consulted a physician between the date of the application and approval" (added by one company).

"If the first premium is paid ... and receipt ... and if after medical examination and full investigation the company ... unconditionally approves this application for the amount and plan ... such insurance, subject to the provisions of the policy applied for, shall be effective as from the date of the medical examination" (used by one company). "Whether the policy be delivered to or received by me or not" (added by one company).

"... And if said company at its home-office shall after investigation unconditionally approve and accept this application ... then and not otherwise it shall be in force from the date of the medical examination" (used by three companies).

"... The insurance applied for shall take effect from the date of this application in accordance ... Provided this application is accepted and approved ..." (used by four companies).
This may be contrasted with the second conditional type:

"If the first premium is paid at the time of making this application and the receipt therefor is delivered by the agent, then if the company, after investigation and medical examination, shall be satisfied that at the time of said medical examination I was insurable and entitled under the company's rules to the insurance on the plan and for the amount applied for, the insurance shall take effect as of the date of said medical examination."\(^{32}\)

It will be noticed that the first of the conditional receipts quoted above is dependent upon approval and acceptance at the home-office of the insurer. It follows that a contract will not occur until the time of that approval and acceptance. The general result, of course, is that the applicant is not protected against the contingency of interim changes in health or of death.\(^{33}\)

Under the second type of conditional receipt quoted above, it has been pointed out\(^{34}\) that the company must accept the application and issue a policy if the risk was satisfactory at the time of the medical examination, regardless of subsequent changes; here the term "satisfactory" should be limited to meaning "honestly satisfied."

\(^{32}\)The variances in this clause can be indicated by the use of symbols for additions or omissions to be indicated below:

"If the first premium is paid (a) and the company (b) (after investigation and medical examination) shall be satisfied that at the time of said medical examination the applicant was insurable and entitled under the company's rule and standards to the insurance on the plan and for the amount applied for, the insurance shall take effect as of the date of said medical examination: (c) (d) (e) but if another policy is issued, then . . . ."

In substance the foregoing provision is used by fourteen companies, of which four omit the clause in parentheses following the symbol (b).

(a) At this point may be inserted: "the company shall consider and act upon said application in accordance with its rules . . . and if it shall be satisfied . . . ." (one company). This does not change the tenor of the receipt. Or there may be inserted at that point this clause: "and if the application is approved and a policy issued as applied for . . . it shall be in force from the date of the application (or from the date of the medical examination). . . . ." (three companies); classification under type I or II is doubtful.

(c) At this point there may be inserted the following clause: "But the company may at any time before delivery of said policy, upon receipt of additional information, reconsider any approval hereof and decline the insurance if it is not then satisfied that I was insurable on the date of said medical examination" (one company). This clause throws the whole provision into conditional type I.

(d) Inserted; "whether the policy is delivered to and received by the applicant or not" (two companies).

(e) Inserted: "the company having until its approval of such application to consider the question of such insurability" (one company). Classification under conditional type I or II then becomes doubtful.

\(^{33}\)See, 44 Yale L. J. 1223, 1226.

\(^{34}\)See, 44 Yale L. J. 1223, 1227.
The cases dealing with these problems—in both internal and conflict of laws situations—have occasioned a great deal of confusion. Courts have frequently failed to distinguish between binder receipts providing for unconditional temporary insurance of the two types indicated above. The majority of courts have construed these receipts as embodying only an offer which must first be accepted by the company and have ruled that the insurance came into effect at the time of approval of the application at the home-office of the insurer. It has been suggested that clarification can come most quickly by the insurance companies adopting the unconditional temporary insurance plan. In conflict of laws cases the confusion indicated has resulted in a strong tendency to apply the law of the state of the insurer’s home-office; the available cases on both sides of the question are indicated in the notes.

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35 Havighurst, Life Insurance Binding Receipts, (1938) 33 Ill. L. Rev. 180, 186.

On the other hand, MacLean, Life Insurance (5th ed. 1939) 514-515, takes the view that the function of the binding receipt is not to insure in the interim, but it is not made clear which type of receipt is there considered or whether a distinction is to be made.

36 Havighurst, Life Insurance Binding Receipts, (1938) 33 Ill. L. Rev. 180, 186.

37 Equitable L. Assur. Soc. of U. S. v. Nixon, (C.C.A. 9th Cir. 1897) 81 Fed. 796 (binder apparently of first conditional type; law of insurer’s home-state applied regarding obligation to pay premium); Equitable L. Assur. Soc. v. Trimble, (C.C.C. 9th Cir. 1897) 83 Fed. 85 (same judge as in Nixon Case, on same facts, gave same decision); Metropolitan L. Ins. Co. v. Cohen, (C.C.A. 2d Cir. 1938) 96 F. (2d) 66 (binder of first conditional type and law of insurer’s home-state applied regarding question of misrepresentations); Ruhlin v. New York L. Ins. Co., (C.C.A. 3d Cir. 1939) 106 F. (2d) 921, cert. denied (1940) 309 U. S. 655, 60 Sup. Ct. 169, 84 L. Ed. 1005, rehearing denied (1940) 309 U. S. 695, 60 Sup. Ct. 588, 84 L. Ed. 1035 (court did not make clear which type of receipt was used and applied law of insurer’s home-state on issue of incontestability); Harrington v. Home L. Ins. Co., (1899) 128 Cal. 531, 58 Pac. 180 (receipt of first conditional type and law of insurer’s home-state applied regarding premium notices); Fried v. Royal Ins. Co. of Liverpool, (1866) 47 Barb. (N.Y.) 127, affirmed (1872) 50 N. Y. 243 (apparently unconditional type of binder receipt and court applied law of place of making on effectiveness of tender of premium to agent); Fields v. Equitable L. Assur. Soc. of U. S., (Mo. App. 1938) 118 S. W. (2d) 521 (apparently treated as conditional receipt of first type and law of insurer’s home-state applied regarding suicide); Kempf v. Equitable L. Assur. Soc. of U. S., (Mo. App. 1916) 184 S. W. 133 (same type of binder as in Fields case but court treated it as the second conditional type and applied law of state of making when applicant died before receiving a "rated" policy); Weed v. Bank Sav. L. Ins., (Mo. Ap. 1930) 24 S. W. (2d) 653 (conditional receipt of second type and court applied law of place of making in regard to duty to mail premium notices); Pickett v. Equitable L. Assur. Soc. of U. S., (Mo. App. 1930) 27 S. W. (2d) 452 (type of binder not indicated and court applied law of place of making in regard to suicide); Keenan v. John Hancock Mut. L. Ins. Co. of Boston, Mass., (1929) 50 R. I. 158, 146 Atl. 401 (type of binder not indicated and court applied law of place
In both the internal law and conflict of laws situations this result is unfortunate. For both types of cases the function of the binder receipt, which can be of benefit to both the applicant and the insurer, is to get the insurance into force at the earliest possible time, namely, at the time of payment of the first premium in advance. For conflict of laws purposes there are frequently strongest reasons against reference by a forum court to rules of the state of the insurer’s home-office.

It should not be overlooked that in earlier days insurance companies provided in applications and policies that the contract should be taken as entered into at the insurer’s home-office and subject to construction by the law of that place; except in unusual circumstances, these provisions were consistently struck down by the courts. If the binder receipts are so treated by the courts that they defeat the expectation of the applicant that he is protected from the time of the medical examination, and are further accepted as selecting choice-of-laws rules favorable to insurers by reference to their home-states, then the use of this device may well be increased. The history of insurance law indicates that if serious mistakes recur one or both of two steps are taken, that is, either the courts must change their approach to troublesome problems, which for a "time will increase the confusion already surrounding that part of the field, or legislation will be enacted.

The current general use by the companies of clauses calling for delivery, delivery in good health, and payment of the first premium point to a desire to postpone the risk until a time when the policy is finally connected with the applicant. The binder receipts represent an important trend in the opposite direction.


35This is not true, as to the insurer only, in respect to conditional binding receipts of the first type. They are at least misleading to the applicant. But for conflict of laws purposes this type of receipt presents no reason for shifting choice-of-laws rules from the usual connection with manual receipt of the policy. Conditional receipts of the first type are now dropped out of further discussion of these problems.

36Only one of the one hundred thirteen American policy forms examined provided for construction by the law of the home-office as the place of making; a provision of this type would be valid where the insurer was not engaged in interstate activity. On the other hand, one policy expressly provides that if any portion is inconsistent with laws of any state where the insurance is written, it shall be held to be modified to the extent necessary to conform thereto, inconsistent policy provisions be considered stricken out, and there be read into the policy any further provisions necessary to conform to such state laws.
Although courts may continue to effectuate the manual conception of delivery connected with those clauses first mentioned, the binder receipts should not be permitted to become a device for shifting governing rules of law to the home-office of the insurer, or for postponing the time of inception of the relationship. Use of the binder receipt in the internal law of insurance can result in the applicant becoming insured at the earliest possible time; for purposes of conflict of laws the contract can be considered made in the state where the application was made and the binder receipt was given. Here delivery need not be an important problem; if delivery connotes payment of the premium, that has occurred. If delivery connotes manual transfer of the document, it may be related to the binder receipt, instead of to the insurance policy, or it may be said that manual delivery is not required since the circumstance of the binder receipt is sufficient to point to the time and place where the risk had its inception. If the use of binder receipts increases, with possible benefits to both the future applicant and the insurer, each will need certainty in both internal and conflict of laws rules to be applied.

4. Mailing of the Policy

An important question is whether an insurance policy may be taken as delivered at the time the document is mailed from the home-office of the company. In a leading article dealing with the problems of delivery in the general field of insurance law it has been said:\textsuperscript{40}

"In only two states, it seems, is the formation of the contract postponed until the delivery of the policy by the local agent to the applicant, and in those states the conclusion is supported upon the theory that the insurer's acceptance of the applicant's offer must be actually communicated to the latter; not until then is a contract formed. On the other hand, the decided weight of authority is that the contract comes into existence before this final step takes place. . . ."

In the past twenty years there has been a decided increase in the number of companies using forms which contain a clause requiring delivery while the applicant is in good health; at the present time ninety-one companies employ it.\textsuperscript{41} It is possible that examination of the more recent cases would indicate that increased use of this clause may have changed the pattern of

\textsuperscript{40}Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 203.
\textsuperscript{41}This provision is considered in subdivision 6, infra.
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decisions on this point. This possibility was foreseen, for that article states:42

"The stipulations requiring a delivery of the policy to the applicant have been literally construed in most instances and it has accordingly been held by most of the courts which have passed on the question that if the applicant dies before the delivery of the policy to him, no recovery can be had."

Whatever may be the present rule in internal law situations, in the conflict of laws decisions, on the other hand, there have been relatively few cases holding that delivery occurred at the time the policy was mailed from the home-office to the insured43 or to the soliciting agent of the company.44 In the former instance, a life insurance policy would very probably not be mailed to the insured unless he had complied with all conditions including that of payment of the premium.

In internal law cases where payment was made at the time of application there is no reason for delaying inception of the contract until its actual receipt; the necessity for holding that an applicant is protected by insurance at the earliest possible time has been persuasive with the great majority of courts which have held that mailing of the policy constitutes delivery. But several important considerations bear upon unlikelihood of this rule being extended in conflict of laws cases.

There is now an almost universal practice by insurers to mail the policy to the soliciting agent for transfer to the applicant; modern advertising shows the effort of the companies to build up personal insurance contacts between the solicitor and those

42Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 221.
with continuing needs. A general practice of mailing policies direct to the applicant would destroy valuable contacts useful to the continued flow of premium payments and the possibility of new business. Further, no insurer is likely to mail the policy direct to the applicant in circumstances where a collector is needed for the unpaid first premium.

If premiums are paid in advance and the insurer mails the policy directly to the applicant, courts may deal with insurance problems in several different ways. When a binding receipt has been issued at the time of payment, it was suggested in the preceding subdivision that courts may well hold that the insurance became effective at the time and place where the application was signed and the premium was paid; the law of that state may be used for conflict of laws purposes. In this situation it is unnecessary for a court to consider whether the mailing of the policy or its physical receipt by the applicant to determine the date of the inception of the insurance relationship or to localize the law governing the contract.

If, in another situation, the first premium is paid in advance but no binder receipt is issued and the insurer mails the policy directly to the applicant, courts may determine the time and place of delivery according to other legal problems presented in the cases. If the question of the time when the insurance becomes effective is raised by death of the applicant after the policy was approved and mailed but before it was received, or if the question is raised by an adverse change in health conditions of the applicant during this interim, a court may hold that delivery occurred at the time of mailing of the policy; in these circumstances it is seldom important to determine which law governs this question and the case will accordingly be treated as one of general insurance law. But if the applicant receives the policy in his lifetime and good-health, then the legal questions presented by warranties, suicide, assignment, etc., may turn upon the choice-of-laws rules selected; here it is necessary for a court to define the place of delivery. "Delivery" may be defined as "mailing of the policy," relating the conflict of laws rule to the state of the insurer's home-office; or "delivery" may be defined as "physical receipt of the document," relating the conflict of laws rule to the applicant's home-state. In varying situations different connotations of delivery may be used.

The same considerations noticed above in connection with policies mailed directly to the applicant apply also in circumstances
where the policy is transmitted to the soliciting agent of the insurer. As a practical matter most policies are mailed to the agent and insurers generally make no distinction between policies for which there has or has not been payment of premiums. This is true even though there may not be included a provision for delivery only while the applicant is in good health. Probably because of this common practice and because of a desire to connect the contract with local law, the courts in conflict of laws decisions generally have attached no importance to the act of transmitting the policy through the mail, whether addressed to the insured or to the soliciting agent, and although these facts were shown have not treated them as constituting delivery. "Mailing of the policy" has not become an important connotation of "delivery" in conflict of laws cases.


Before indicating the conflict of laws cases defining "delivery" as equivalent to manual receipt of the document, it is useful for purposes of comparison to notice some principles of contract law which may be operative in insurance cases not presenting conflict of laws problems. Consideration was made at an earlier point of the proposition that, even when the policy was issued subject to payment of the first premium, the contract might be taken as formed by acts of acceptance at the place of the insurer's home-office, subject to avoidance by the insurer for non-performance of a condition precedent-to-performance—that of payment of the premium. A difficulty with this proposition lies in the word "acceptance" as applied to the act of the insurer, and interpretation of this term depends upon the theory of contract which courts may adopt. In the general field of insurance law the contractual theories of meeting of the minds, communication, and significant act bearing upon acceptance will all tend to determine the inception of the contract antecedent to the time at which the applicant receives the printed policy. The act of mailing from the insurer's home-office would constitute not only a significant act indicating that a contract had been formed but would also furnish the probability-of-notice factor which is the basis of the communication theory of contracts and would represent the meeting of the minds of the parties in all but a minute fraction of the cases. That this

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45An excellent short discussion of these views is found in Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 202-218.
approach constitutes a departure from orthodox contracts principles is recognized.46

In the general law of insurance the trend of decisions holding that for some purposes the legally significant act of acceptance may occur before manual delivery of the policy to the insured operated to remove defenses based upon interim changes in health and, in some jurisdictions, death of the insured before the policy came into his physical possession. To meet the challenge insurers inserted clauses in the application, policy or receipt stating that the insurance should not be effective until the policy was delivered.47 The internal law cases adopted a traditional attitude toward freedom of contract and generally enforced these provisions.48

This tendency is also marked in the conflict of laws cases. The terms "significant act" or "last necessary act" are not there employed in the sense of theoretical acceptance of the offer by the insurance company but are used in the sense of an act definitely linking the contract to the place of application as the locus contractus. The formalistic conception of delivery associated with deeds and negotiable instruments is the one commonly employed in connection with insurance policies in conflict of laws decisions. The indefinite phrase "delivery to the insured" is frequently all that is thought necessary to relate the contract to the place where application was made and the courts have employed the term in the sense of physical receipt of the document.49 Many courts are

46"It is important to note, however, that the foregoing decisions in which the contract was held to have been completed when the policy reached the local agent, or at some earlier stage in the process, represent a distinct advance in legal doctrine beyond the ordinary contract-by-correspondence cases." Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 207.

47Of the one hundred thirteen forms examined, ninety-six provide in the application or policy or both that the policy must be delivered; there is variance in the form of this provision, including the following clauses: "delivered by a duly authorized agent of the company"; "manually (or actually) delivered to the applicant" (only nine carry this clause); and delivered "during applicant's life and continuance in good health." The last of these provisions is considered in the following subdivision.


only a trifle more explicit in saying that the policy "was mailed to the agent for delivery to the insured," again implying that manual transfer is the significant act.50 As pointed out, this is

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frequently connected with "payment of the first premium" to the agent. Either factor—alone has been sufficient to draw control of the law governing the contract away from the state of the home-office of the company. When conjoined the effect of the two clauses has been almost irresistible.

6. Delivery in Good Health

The "delivery-in-good-health" clause plays an important part in defining the term "delivery" in conflict of laws cases. In the absence of statutes insurance companies formerly had the benefit of warranties in the application and also of the common law rule imposing a duty upon an applicant to disclose interim changes in health. But with the development of statutes converting most statements of health from warranties into representations, the insurers sought to regain a measure of protection by insertion of clauses requiring delivery of the policy while the applicant was in good health. This clause is usually worded as a condition precedent. In internal law cases the effect of the decisions has been to treat the clause as if it were a condition precedent-to-performance, rather than precedent-to-formation as was the apparent intention of the insurers, and the burden of proof of non-per-


In comparison, a study by Fouse, Policy Contracts in Life Insurance, appearing in September, 1905, 26 Annals Am. Acad. Pol. & Soc. Science 209, 220, reported that of fifty-one companies whose forms were examined all had a provision in the policy that it shall not become effective and binding until delivered during the lifetime and good health of the insured and after the required premium is actually paid. A later study by Coke, The Commencement of the Risk in the Case of a Life Insurance Policy (1921) Paper 51, Assoc. of Life Ins. Counsel 2, 3, reported that the clause appeared in one hundred twelve out of one hundred twenty-five policies examined. See Note, Delivery in Good Health Clause in Life Insurance Policies (1934) 34 Col. L. Rev. 1508.

The present writer has found that in forms examined of one hundred thirteen companies writing in 1938, ninety-one carried the delivery-in-good-health clause; in these further provision was found that that policy must also be delivered within a limited time or the application be considered rejected; within sixty days (thirteen companies); within forty-five days (one company); within thirty days (three companies).

52Patterson, The Delivery of a Life Insurance Policy, (1919) 33 Harv. L. Rev. 198, 220.
formance has been allocated to the company. In these circumstances it is only a short step to hold that the duty to perform may arise before manual transfer to the applicant, and hence the cases holding that constructive delivery is sufficient are controlling even in the face of the delivery-in-good-health clause.

In the conflict of laws cases, on the other hand, where the problem is not primarily as to the time of inception of the risk but as to the choice-of-laws rules to govern various problems, there are a number of cases emphasizing the presence of the clause and regarding the policy as requiring manual transfer of the document. But it has been held that a somewhat similar phrase, "delivered in my lifetime," added nothing to the phrase "delivered to" and recovery was allowed without manual transfer.

7. Acceptance of the Policy

A factor bearing upon the content of the delivery conception which has received unnecessary, and frequently erroneous, emphasis is acceptance of the policy or acceptance of the conditions by the insured. Several distinct situations may be noticed.

In cases where the terms of the policy forwarded by the company are materially different than those called for by the appli-

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54Note, The Delivery in Good Health Clause in Life Insurance Policies, (1934) 34 Col. L. Rev. 1508, 1510.


cation, the policy submitted amounts to a counter-offer.\textsuperscript{57} If the application was contingent upon the applicant's approval of the policy, the latter represents an offer. In either case some act of the applicant is necessary to constitute an acceptance and the insurance is in effect only from the time of his approval.\textsuperscript{58} There is no question regarding the correctness of the principle in cases of this type. Nor is there difficulty with instances in which the insurer calls for a final act of written acceptance of the contract by the insured; this most frequently occurs in the case of membership in fraternal benefit associations.\textsuperscript{59}

But objection lies to the inclusion in opinions of general statements implying that acceptance by the insured is necessary in all cases. Statements such as those following, unless coupled with factors mentioned above, are at variance not only with the general rules of contracts but also with sound principles of insurance law. Thus courts have used this language in conflict of laws cases:

"On the contrary, we see no reason why the general rule applicable to contracts of this character should not apply, namely, that the contract is not a completed contract until it is tendered by one party and accepted by the other."\textsuperscript{60} "The delivery of the policy was essential to the completion of the contract, and was

\textsuperscript{57} That this is not an uncommon situation is indicated by the following clause, the substance of which appears in the applications of sixty-six out of a total of one hundred ten examined: "and if the company shall issue a policy on the applicant's life other than as herein applied for and the same shall be accepted, this application shall constitute the applicant's application for the policy, but no change shall be made in the amount of insurance, classification, plan or benefit unless agreed to in writing."


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requisite to an action thereon. By this we mean there must have been a final acceptance by both parties of the terms thereof, and in this case such final acceptance did not take place until the company presented the policy to the insured and he made payment and accepted it.\textsuperscript{61}

The idea of "acceptance of the policy" is not a normal and proper connotation of delivery.

8. Other Connotations of Delivery

It was formerly a common practice for life insurance companies to include a provision in their forms that the policy should not be effective until countersigned by the soliciting agent; apparently this was designed to prevent inception of the contract until payment of the premium and until a final opportunity to ascertain that the applicant continued in good health. This provision is still common in fire and some other types of insurance where the agent may have power to approve the risk, but is not now used by life companies. In conflict of laws cases where this clause was included in the policy courts have held that delivery did not occur until the time when the policy was countersigned and that the law of that place properly governed a variety of problems presented.\textsuperscript{62}

Mutual benefit certificates or by-laws frequently provide that insurance shall not be effective until the applicant has been initia-


ed into the local lodge; in these cases delivery is not effective until induction into membership.  

CONCLUSIONS

An examination of the delivery cases shows that the different purposes for which definitional content may be made in internal and conflict of laws rules are of primary importance. Employment of the delivery concept for choice-of-laws purposes may lead to different connotations than in cases involving primarily the question of the time at which the insurance was effective. In respect to purely internal law situations, it has been suggested: "At all events, indications are not wanting to show that the contract-to-status transition may ere long attain conscious and articulate recognition." But the same optimism can apply to conflict of laws problems only by predicking the status as based upon some significant factor closely connected with the state wherein application was made to a foreign insurance company. There is nothing inherently inconsistent with this position if it be clearly borne in mind that the purposes of the two rules are distinct—one pertaining to time and the other to place—and that it is only confusing to rely upon internal law cases to decide conflict of laws problems. Connotations of the delivery concept, even in conflict of laws cases, also vary according to the type of situation in which it is utilized. The foregoing pages have indicated these connotations and have shown that in conflict of laws cases, except in a few unusual situations, the courts adopt one or another connotation of delivery which will connect the policy with the law of the state where the applicant resided and manually received the policy. Thus the delivery concept is used as the basis for selection of a governing rule of law to be applied to various issues arising under policies of life insurance in conflict of laws cases.
