

# Incontestability clause

Category: Opinion 16 November 2016

Written by Dennis B. Funa

---



Atty. Dennis B. Funa

**INSURANCE FORUM**

Under the New Civil Code, a contract is voidable if the consent by one party is vitiated by mistake or fraud. The incontestability clause in the Insurance Code is an exception to this Civil Code provision. The incontestability clause provides that a life insurance policy shall be incontestable after two years from the date of issuance, regardless of any mistake, fraud, concealment or misrepresentation. Under Philippine

laws, it may only be contested on the ground of non-payment of premiums.

The incontestability clause is one of the strongest protections for a policyholder or beneficiary, this rule is soundly on the side of the consumer

The ultimate aim of the incontestability clause is “to compel insurers to solicit business from or provide insurance coverage only to legitimate and bona fide clients, by requiring them to thoroughly investigate those they insure within two years from effectivity of the policy and while the insured is still alive. If they do not, they will be obligated to honor claims on the policies they issue, regardless of fraud, concealment or misrepresentation.” (*Manila Bankers Life Insurance Corporation v. Aban*, G.R. No. 175666, July 29, 2013).

The object of an incontestability clause is “to restrict the insurer to a definite time within which to discover any fraud or misrepresentation made by the insured in the application for insurance and to take appropriate action to cancel the policy.”

In *Manila Bankers*, Delia Sotero was issued a life insurance policy, with a face value of Php 100,000.00 on August 30, 1993. On April 10, 1996, when the insurance policy had been in force for **more than two years and seven months**, Sotero died. After receiving the claim, the insurer denied the claim and refunded the premiums on the ground that the insurance policy was void *ab initio* for want of insurable interest. The insurer pointed out that Sotero could not have personally applied for insurance as she was illiterate and did not have the financial capacity to pay the premiums. The court upheld the trial court’s findings that it was Sotero herself who obtained the insurance and not an impostor. More importantly, invoking the incontestability clause, the Court ruled that the insurer is barred from proving that the policy is void *ab initio* by reason of the insured’s fraudulent concealment, or misrepresentation or want of insurable interest on the part of the beneficiary.

A matter of query is whether or not such fraudulent concealment or misrepresentation can be contested, and the payment of claims consequently denied, if the insured died

during the contestability period or before the expiration of the two-years within which the insurer should investigate as provided in the Insurance Code.

In *Sun Life of Canada (Phil.), Inc. v. Sibya et al.* (G.R. No. 211212, June 8, 2016), Jesus Sibya, Jr. was issued a life insurance policy on February 5, 2001 by Sun Life with Daisy Sibya, Jesus III, and Jaime as the beneficiaries. The policy entitled them to a death benefit of Php 1,000,000 should Jesus die on or before February 5, 2021 or a sum of money if Jesus is still living on the endowment date. In his application, Sibya indicated that he had undergone lithotripsy due to kidney stone at the National Kidney Institute and was discharged after three days with no recurrence. On May 11, 2001, **or less than two years later**, Jesus died of a gunshot wound. Sun Life denied the claim and refunded the premiums paid on the ground that certain details about Jesus's medical history were not disclosed in his application. Sun Life alleged that Jesus did not disclose in his application his previous medical treatment at the National Kidney Transplant Institute on May and August of 1994 and that the insured was in "renal failure" making him a high risk individual.

The Supreme Court held, citing *Manila Bankers Life Insurance Corp. v. Aban*, that **if the insured dies within the two-year contestability period, the insurer is bound to make good its obligation** under the policy regardless of the presence or lack of concealment or misrepresentation. The Court ruled that "the death of the insured within the two-year period will render the right of the insurer to rescind the policy nugatory. As such, the incontestability period will now set in."

It should be noted that while the *Manila Bankers* case did state that the insurer must make good on the policy if the insured dies within the two-year period, such was a mere *obiter dictum*.

A review of two previous cases (*Tan et al. v. Court of Appeal et al.*; *Sunlife Assurance Company of Canada v. Bacani*) would show that the incontestability period does not set in if the insured dies during the contestable period.

In *Emilio Tan et al. v. Court of Appeals et al.* (G.R. No. 48049, June 29, 1989), Tan Lee Siong, was issued a life insurance by the Philippine American Life Insurance Company, effective November 6, 1973. On April 26, 1975, **or less than two years later, Tan Lee Siong died of hepatoma**. On September 11, 1975, the insurer denied the claim and rescinded the policy on the ground of concealment and misrepresentation.

The Supreme Court ruled that the policy was in force for a period of only one year and five months, that the insurance company is not barred from proving that the policy is void *ab initio* by reason of the insured's fraudulent concealment or misrepresentation. It noted also that respondent company rescinded the contract of insurance and refunded the premiums paid on September 11, 1975, previous to the commencement of the action on November 27, 1975.

The insurer has two years from the date of issuance of the insurance contract or of its last reinstatement within which to contest the policy, whether or not, the insured still lives within such period. After two years, the defenses of concealment or misrepresentation, no matter how patent or well founded, no longer lie. Congress felt

this was a sufficient answer to the various tactics employed by insurance companies to avoid liability. The petitioners' interpretation would give rise to the incongruous situation where the beneficiaries of an insured who dies right after taking out and paying for a life insurance policy, would be allowed to collect on the policy even of the insured fraudulently concealed material facts.

In *Sunlife Assurance Company of Canada v. Bacani* (G.R. No. 105135, June 22, 1995), Robert Bacani procured a life insurance for himself from Sunlife on April 15, 1986. He designated his mother as beneficiary. On June 26, 1987, **or less than two years later**, Bacani died in a plane crash. Upon filing a claim, Sunlife rejected it on the ground that Bacani did not disclose material facts thus rendering the insurance contract voidable. Bacani allegedly gave false statements in his application. He stated that he only had consultations with a doctor for cough and flu complications. The insurer had discovered that the insured was confined at the Lung Center of the Philippines where he was diagnosed for renal failure. The Supreme Court ruled that the insurer properly exercised its right to rescind the contract of insurance be reason of the concealment by the insured. The rescission was exercised within the two-year contestability period under Section 48.

**END.**

\*\*\*\*

Dennis B. Funa (dennisfuna@yahoo.com) is presently the deputy Insurance commissioner of the Legal Services Group of the Insurance Commission.