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Homicide -- Effect on Wrongdoer's Inheritance, Intestate and Survivorship Rights

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HOMICIDE—EFFECT ON WRONGDOER'S INHERITANCE, INTESTATE AND SURVIVORSHIP RIGHTS

Nullus commodum capere potest de injuria sua propria,[1] the ageless maxim that "no man shall profit by his own misdeed"[2] finds itself in a precarious position when considering the rights of a murderer to inherit either from his slain ancestor or from his murdered spouse, particularly in cases of tenancy by the entiety. There are three lines of decisions defining the slayer's position in succeeding to the property of the ancestor he so designedly dispatched.[3]

Murder of Ancestor

View I

The murderer or those claiming under him are not barred from taking by will or descent from the murdered person.[4] The legal title passes to the murderer and may be retained by him in spite of his crime.[5]

> This rule finds its inception in the theory that the public policy of a state is found in its constitution, its statutory enactments and its judicial records; and where the intestate law casts the estate of a deceased person upon designated persons this is absolute and peremptory, and no rule of public policy can take it away from the persons designated by statute and give it to others even for the reason that the designated person killed the intestate, without a violation of the statute.[6]

Those states that adhere to this rule subject the common law policy — prohibiting inheritance of property by descent, by distribution, or by virtue of marital rights from one whose death is caused by or results from the heir's felonious act[7] — to complete control by statues of descent and distribution.[8]

It has been held that denying the murderer his property would be violative of specific state constitutional limitations protecting inheritance

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1. 2 Co. Litt. *148(b).
2. 2 Domat's Civil Law 80 (Cushings ed. 1853); Code Napoleon, § 727; Broom's Legal Maxims 279 (8th ed. 1882).
3. Ames, *Can a Murderer Acquire Title By His Own Crime and Keep It?*, Am. L. Reg. (N.S.) 235 (1897); Thomas, *Public Policy as Affecting Property Rights Accruing to a Party as a Result of Wrongful Acts*, 1 Calif. L. Rev. 397 (1913); Note, 30 Neb. L. Rev. 601 (1951).
4. *In re* Kirby's Estate, 162 Cal. 91, 121 Pac. 370 (1912); Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); Bruns v. Cope, 182 Ind. 289, 105 N.E. 471 (1914); Kuhn v. Kuhn, 125 Iowa 449, 101 N.W. 151 (1904); McAllister v. Fair, 72 Kan. 533, 84 Pac. 112 (1906); Collnik v. Mengel, 112 Minn. 349, 128 N.W. 292 (1910); Shellenberger v. Ransom, 41 Neb. 631, 59 N.W. 935 (1894); Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888); Deem v. Milliken, 6 Ohio C. C. 357 (1892), *aff'd* 53 Ohio St. 668, 44 N.E. 1134 (1895); Holloway v. McCormick, 41 Okla. 1, 136 Pac. 1111 (1913); Carpenter's Estate, 70 Pa. 203, 32 Atl. 637 (1895); Hill v. Noland, 149 S.W. 288 (Tex. 1912).
5. Shellenberger v. Ransom, 41 Neb. 631, 59 N.W. 935 (1894); Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895).
6. Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914).
7. Riggs v. Palmer, 115 N. Y. 506, 22 N.E. 188 (1889).
8. Restatement, Restitution § 187 (1937) (acquisition of property by murderer).

to an heir, and preventing corruption of blood.[9] Furthermore, it has been argued that denial of the inheritance is punishment for the crime in addition to that prescribed by criminal law.[10] In these jurisdictions, there is a rigid adherence to the written word despite its inadequacies and gross inequities. Where the statute specifically states to whom the estate is to descend, no question of policy, good or bad, arises. The legal title is immediately vested in the heir. The courts shut their eyes to the manner in which the heir brought about this shift of title. They claim to be bound by legislative enactments. If there is to be a change, the courts place the burden upon the legislature. Until such time as the legislatures choose to alleviate this condition, the operation of the statutes of succession will continue to be unaffected even though the death was caused by the heir.

View II

Legal title to an estate will not pass to a murderer even though the statutes of succession are clear and unambiguous.[11] The murderer can take nothing.[12] His act has barred him from ever acquiring title to the property.[13] Where the murderer is a beneficiary of a will, the killing of the testator does not render the will invalid,[14] but makes the testamentary gift inoperative only as to the murdering beneficiary.[15] This rule is based on the common law tenet that no man shall profit by his own wrong, or found any claim upon his own iniquity.[16] The public policy that no murderer, or his heirs, can take property by will or otherwise from his victim,[17] is so strong that the rules of title are modified.[18] The courts express the opinion that it is better to legislate judicially than to allow the killer to enrich himself unjustly.[19] The decisions handed down in these

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9. Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950); Hodapp v. Oleff, 40 Ohio L. R. 209 (App. 1934), *aff'd* 129 Ohio St. 432, 196 N.E. 838 (1935); Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895); 1 STIMSON, AMERICAN STATUTE LAW 379 (1886).

10. Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950).

11. Ames, *Can a Murderer Acquire Title By His Own Crime and Keep It?*, 36 AM. L. REG. (N.S.) 235 (1897); Note, 1 CALIF. L. REV. 397 (1913).

12. Riggs v. Palmer, 115 N. Y. 506, 22 N.E. 188 (1889); Cleaver v. Mutual Reserve Fund Life Association, 1 Q. B. 147 (1892).

13. Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908).

14. Ellerson v. Westcott, 148 N. Y. 149, 151, 42 N.E. 540, 542 (1896).

15. *In re* Wilkins, 192 Wis. 111, 211 N.W. 652 (1927).

16. Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Riggs v. Palmers, 115 N.Y. 560, 22 N.E. 188 (1889); *In re* Wolf, 88 Misc. 433, 150 N.Y. Supp. 738 (Surr. Ct. 1914); Box v. Lanier, 112 Tenn. 393, 79 S.W. 1042 (1903); Cleaver v. Mutual Reserve Fund Life Association, [1892] 1 Q. B. 147; *In re* Crippen, [1911] 27 Times Law Reports 258; Lundy v. Lundy, 127 Can. S. C. 650 (1895); *In re* Cash, 30 N. Z. L. R. 577 (1911).

17. Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Box v. Lanier, 112 Tenn. 393, 79 S.W. 1042 (1903); *In re* Wilkins 192 Wis. 111, 2 N.W. 652 (1927).

18. Courts agree that beneficiary cannot maintain action for insurance proceeds after murdering insured. Mutual Life Ins. Co. v. Armstrong, 117 U.S. 591 (1886); Equitable Life Assurance Soc. v. Weightman, 61 Okla. 106, 160 Pac. 629 (1916).

19. Comment, 30 NEB. L. REV. 601 (1951).

jurisdictions form a direct antithesis to those cited in the former group.[20]

View III

The legal title passes to the murderer subject to a constructive trust in favor of those who would take in the event of his disqualification.[21] Although the legal title must vest in the slayer, circumstances bring it within the province of equity to deprive him of its beneficial use.[22] This method appears to be midway between two diametrically opposed views. The statutory law is not disturbed since the legal title vests immediately in the slayer. However, public policy against the murderer finds a proper outlet in the courts of equity. Equity provides a solution which alleviates the fears of the strict constructionists, yet satisfies the common law doctrine by not allowing the wrongdoer to enjoy that which he has brought about by unconscionable means.

Legislative Hodge-Podge

In an attempt to remedy the diversity of decisions and to stabilize the status of the murderer, a number of state legislatures have enacted statutes.[23] These statutes differ in context. A few eliminate the murderer both as a devisee or legatee and as an heir.[24] The remaining statutes are broader in scope. Some bar the slayer from receiving any interest by intestacy, will, deed or otherwise;[25] or preclude the murderer from taking as a surviving spouse by operation or law, or by virtue of a marriage settlement;[26] or prevent the killer from obtaining any interests by intestacy, by will, or as surviving spouse.[27] Still others will not allow the wrongdoer to take by intestacy, will or otherwise;[28] by intestacy, will or remainderman;[29] or by intestacy, will, remainderman or otherwise.[30] A majority of

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20. *Cf.* Cardozo, THE NATURE OF THE JUDICIAL PROCESS 43 (1921).

21. 4 POMEROY, EQ. JURIS. §§ 1044, 1054d (5th ed. 1941); Chadwick, *A Testator's Bounty to His Slayer*, 30 L. Q. R. 211 (1914); Comment, 29 MICH. L. REV. 745 (1931); Comment, 30 NEB. L. REV. 601 (1951); Comment, 8 N.Y.U. L.Q. REV. 492 (1931); Note, 44 HARV. L. REV. 125 (1930); Note, 79 U. OF PA. L. REV. 100 (1930).

22. Whitney v. Lott, 134 N.J. Eq. 586, 36 A.2d 888 (Ch. 1944); *In re* Santourian's Estate, 125 Misc. 668, 212 N. Y. Supp. 116 (Surr. Ct. 1925).

23. CAL. PROB. CODE § 258 (1949); COLO. STAT. ANN. c. 176, § 12 (1935); FLA. STAT. § 731.31 (1951); ILL. ANN. STAT. c. 3, § 167 (1941); IND. ANN. STAT. § 6-2352 (Burns 1933); IOWA CODE c. 636, §§ 47, 48, 49 (1946); KAN. GEN. STAT. § 22-133 (1949); LA. CIV. CODE arts. 966, 1560, 1710 (1947); MINN. STAT. § 525.87 (1949); MISS. CODE ANN. §§ 479, 672 (1942); NEB. REV. STAT. §§ 30-119, 30-120 (1948); N. C. GEN. STAT. §§ 28-10, 30-4, 52-19 (1950); N. D. REV. CODE § 56-0423 (1943); OKLA. STAT. tit. 84, § 231 (1941); ORE. CODE ANN. § 10-213 (1913); PA. STAT. ANN. tit. 20, §§ 1.6, 3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449, 3450, 3451, 3452, 3453, 3454, 3456 (1952); S. C. CODE § 19-5 (1952); TENN. CODE ANN. §§ 8388, 8395 (Williams 1934); UTAH CODE ANN. § 74-3-22 (1953); VA. CODE § 64-18 (1950); W. VA. CODE ANN. § 4095 (1949); WYO. COMP. STAT. ANN. § 6-2518 (1945); D. C. CODE ANN. § 18-109 (1951).

24. Indiana, Nebraska, Virginia, Wyoming.

25. Kansas, Tennessee.

26. North Carolina.

27. Minnesota, Oklahoma, Oregon, Pennsylvania.

28. Colorado, North Dakota, Utah.

29. District of Columbia.

30. South Carolina.

these statutes require a conviction of crime as described in the statute.[31] In a small number of states no conviction is required.[32] The constitutionality of these enactments has been upheld by the courts.[33]

MURDER OF SPOUSE

A similar problem arises where one causes or procures the death of a spouse. In the absence of a statute expressly governing, the courts differ as to whether one who feloniously takes the life of his spouse is entitled to succeed to the latter's estate.[34] Even where applicable statutes do exist, there is no uniformity.

In some states where a conviction is required to create a forfeiture of the inheritance, manslaughter will suffice;[35] in others, proof of murder is essential.[36] In one case where the surviving spouse was not convicted, but was committed to a state hospital for the insane, the survivor was excluded from the inheritance.[37] In another case, the conclusion of a coroner's jury that the defendant murdered the deceased did not satisfy the statute.[38] Furthermore, conviction of murder in another state was held not to create a forfeiture of the inheritance.[39] A kaleidoscope of views, interpretations, constructions and decisions exists.

Further complications occur in private litigation. It is a rule of policy that, when an accusation of crime is involved in concurrent criminal and civil actions, the civil trial will be suspended until determination of the criminal prosecution.[40] Yet, the conviction would not be the legal fact of the murder in a civil action between private litigants.[41] Nor is the record of the conviction admissible in evidence to establish the truth of the facts on which the conviction was had.[42] Truly, confusion reigns.

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31. California, Colorado, District of Columbia, Indiana, Kansas, North Carolina, North Dakota, Oklahoma, South Carolina, Utah.

32. Iowa, Minnesota, Oregon, Pennsylvania, Tennessee, Wyoming.

33. *In re* Kirby, 162 Cal. 91, 121 Pac. 370 (1912); *In re* Mertes, 181 Ind. 478, 104 N.E. 753 (1914); *In re* Emerson, 191 Iowa 900, 183 N.W. 327 (1921); Hamblin v Marchant, 103 Kan. 508, 175 Pac. 678 (1918), *aff'd* 104 Kan. 689, 180 Pac. 811 (1919); Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Beddingfield v. Estill & Newman, 118 Tenn. 39, 100 S.W. 108 (1907).

34. *Not entitled*: Weaver v. Hollis, 247 Ala. 57, 22 So.2d 525 (1945); Price v. Hitaffer, 164 Md. 505, 165 Atl. 470 (1933); Slocum v. Metropolitan Ins. Co., 245 Mass. 565, 139 N.E. 816 (1923); Bierbrauer v. Moran, 244 App. Div. 87, 279 N.Y. Supp. 176 (4th Dep't 1935); *In re* Sparks' Estate, 172 Misc. 642, 15 N.Y.S.2d 926 (Surr. Ct. 1939); Parker v. Potter, 200 N. C. 348, 157 S.E. 68 (1931).

Entitled: Smith v. Greenberg, 121 Colo. 417, 218 P.2d 514 (1950); Crumley v. Hall, 202 Ga. 588, 43 S.E.2d 646 (1947); Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950); Holloway v. McCormick, 41 Okla. 1, 136 Pac. 1111 (1913).

35. Hamblin v. Marchant, 103 Kan. 508, 175 Pac. 678 (1918), *aff'd* 104 Kan. 689, 180 Pac. 811 (1919).

36. *In re* Lysholm's Estate, 79 Cal. App. 2d 467, 179 P.2d 833 (1947).

37. *In re* Hoffman's Estate, 39 Pa. D.&C. 208 (1941).

38. Hogg v. Whitham, 120 Kan. 341, 242 Pac. 1021 (1926); Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930).

39. Harrison v. Moncravie, 264 Fed. 776 (8th Cir. 1920).

40. Matter of Fleming, 16 Misc. 442, 38 N.Y. Supp. 611 (Sup. Ct. 1896).

41. *In re* Johnston's Estate, 220 Iowa 328, 261 N.W. 908 (1935); Goodwin v. Continental Cas. Co., 175 Okla. 469, 53 P.2d 241 (1936).

42. Sorbello v. Mangino, 108 N.J. Eq. 292, 294, 155 Atl. 6, 8 (Ch. 1931);

ESTATES BY THE ENTIRETY

So far we have been concerned with the murdering spouse's right to *inherit* from his or her victim. A situation may exist, however, where the question is not one of inheriting from the deceased spouse, but rather of taking as the surviving spouse.[43] Where this occurs, statutes barring a murderer from inheriting from his spouse are obviously of no avail and do not apply.[44] This occurs where husband and wife hold property as tenants by the entirety. The essential characteristic of an estate by the entirety is that each spouse is seized of the whole or entirety, and not of a share, moiety, or divisible part.[45] Upon the death of one spouse the estate continues in the survivor.[46] The survivor does not inherit the interest of the other, but merely comes into the full beneficial enjoyment of such estate.[47] Nothing passes. "The survivor takes no new estate or interest — nothing that was not in him or her before . . .",[48] but by a condition in law the one who lives longer takes the entire estate.[49]

There are four distinct approaches to the effect of murder of one's spouse upon an estate by the entirety. The first three are similar in essence to decisions governing the succession of property to one murdering an ancestor. The fourth is a recent decision — a solution peculiar to and pertaining only to dissolution of estates by the entirety.

View I

The legal title vests in the murderer as the survivor in fact, as well as in law, by virtue of the nature of an estate by the entirety.[50] The devolution of the property in cases of tenancy by the entirety is controlled by the nature of the estate as originally created.[51] The fact of death is the controlling factor; the cause of death is of no consequence.[52] The courts following this view have held that the common law rules barring a murderer from inheriting do not apply, as the murdering survivor becomes vested of the entire estate under the "conveyance", and not by inheritance from or through the murdered spouse.[53] They stress the bare *words* of the common law doctrine rather than the basic *theory* embodied within those words. In *Sorbello v. Mangino*,[54] the first case of its kind to arise in

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Kowalski v. Director General, 93 N.J.L. 340, 107 Atl. 477 (1919), *aff'd* 96 N.J.L. 293, 114 Atl. 927 (1921).

43. Stelz v. Shreck, 128 N.Y. 263, 28 N.E. 510 (1891); Davis v. Bass, 188 N.C. 208, 124 S.E. 566 (1924); Stuckey v. Keefe, 26 Pa. 397 (1865); Corinth v. Emery, 63 Vt. 505, 22 Atl. 618 (1891); BURBY, REAL PROPERTY §§ 208, 209 (1943).

44. Beddingfield v. Estill and Newman, 118 Tenn. 39, 100 S.W. 108 (1907).

45. Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205 (1945).

46. Johnson v. Lusk, 46 Tenn. 115, 98 Am. Dec. 445 (1868); CO. LITT. *187(b); 2 BL. COMM. *182; 2 KENT, COMMENTARIES *132.

47. Knapp v. Fredricksen, 148 Fla. 311, 4 So.2d 251 (1941).

48. CO. LITT. *234(b).

49. Johnson v. Lusk, 46 Tenn. 115, 98 Am. Dec. 445 (1868).

50. *Supra* note 44.

51. Sorbello v. Mangino, 108 N.J. Eq. 292, 294, 155 Atl. 6, 8 (1931).

52. Note, 30 NEB. L. REV. 601 (1951).

53. *Supra* note 44.

54. 108 N.J. Eq. 292, 155 Atl. 6 (Ch. 1931).

New Jersey, the court presented this query: "Can a murderer acquire property by or as a consequence of his crime and keep it?"[55] The reply, until the legislature enacts a statute to the contrary, will remain in the affirmative. The courts in these "letter of the law" jurisdictions will do nothing to alleviate this gross injustice to the murdered spouse's heirs. There is a complete and utter refusal to interfere with the operation of law[56] which vests the estate in the survivor.

View II

Neither the legal nor the equitable title to the victim's property can be acquired by the slayer.[57] Equitable rules and principles, based on common law and civil law theory that one who procures the death of another is unworthy of succeeding to his estate,[58] provide the justification for this view. Although the crime was not committed for the purpose of acquiring property, the courts may deprive the murderer of the estate.[59] The presumption arises that the victim would have outlived the slayer.[60] The murdering spouse is considered as having predeceased his victim and the estate passes in its entirety to the victim's heirs.[61] The murderer is the survivor in fact, but not in contemplation of law.[62] The murderer and his heirs are completely out of the picture. They take nothing.

View III

The legal title passes to the murderer, or those who claim under him, but equity will treat him as a constructive trustee because of the unconscionable mode of its acquisition, and will compel him to convey it to the heirs or next of kin of the deceased.[63] Although the crime was not committed for the purpose of getting title, equity, acting in personam, will compel the criminal to hold the acquired res as a constructive trustee for the deceased's heirs.[64] However, where the murdered spouse was older and had a life expectancy shorter than that of the murderer, it has been held that the title vested in the murderer in fee as the survivor, subject to a trust in favor of the victim's heir to the extent of the value of the victim's half interest in the net income of the property for the deceased's normal life expectancy.[65] The constructive trust is purely a remedial device employed by the courts in an attempt to prevent unjust enrichment.[66]

A constructive trust is the formula through which the con-

55. Sorbello v. Mangino, 108 N.J. Eq. 292, 155 Atl. 6 (Ch. 1931).
56. *Supra* note 52.
57. Van Alstyne v. Tuffy, 103 Misc. 455, 169 N. Y. Supp. 173 (Sup. Ct. 1918).
58. Riggs v. Palmer, 115 N. Y. 506, 22 N.E. 188 (1889).
59. *Supra* note 57.
60. *In re* Sparks' Estate, 172 Misc. 642, 15 N.Y.S.2d 926 (Surr. Ct. 1939).
61. *In re* Taylor's Estate, 34 Pa. D.&C. 551 (1934).
62. *Supra* note 57.
63. Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927).
64. *Ibid.*
65. Sherman v. Weber, 113 N.J. Eq. 451, 167 Atl. 517 (Ch. 1933); Barnett v. Couey, 224 Mo. App. 913, 27 S.W.2d 757 (1930).
66. SIMES, TRUST AND SUCCESSIONS, 587 (1942).

> science of equity finds expression. When property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.[67]

View IV

The murder severs the estate by the entirety.[68] The wilful dissolution of the marital relationship by the felonious act changes the status of the parties.[69] Instead of tenants by the entirety they become tenants in common.[70] As such, each is entitled to a one-half undivided interest in the estate.[71] The killer, or his representatives, cannot assert the right of complete ownership as a survivor,[72] when he is merely a tenant in common. The effect is similar to that obtained when an estate by the entirety is severed by a divorce of the parties.[73] Upon the divorce of one tenant by the entirety from the other, the divorced spouses each retain a one-half undivided interest.[74] Upon the murder of one tenant by another, a one-half undivided interest is vested in the heirs of the deceased and a one-half undivided interest remains in the survivor.[75] There is one infinitessimal difference between the two situations — in the latter, someone has been murdered. It is difficult to draw an analogy between a divorcing spouse and a murdering spouse, yet both are treated in the same manner in jurisdictions following this view.

THE FLORIDA VIEW

Florida has a provision precluding a murderer from inheriting from his slain decedent:

> Any person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any portion of his estate as a legatee or devisee. The portion of the decedent's estate to which such murderer would otherwise be entitled shall pass to the persons entitled thereto as though such murderer had died during the lifetime of the decedent.[76]

The guilt of the murderer must be established beyond a reasonable doubt.[77] However, this section is not applicable to a murdering spouse insofar as property held as an estate by the entirety is concerned.[78] Once the entirety is created, certain representative features arise.[79] The husband

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67. Mr. Justice Cardozo in Beatty v. Guggenheim Exporation Co., 225 N. Y. 380, 386, 122 N.E. 378, 380 (1919).
68. Hogan v. Martin, 52 So.2d 806 (Fla. 1951); Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951).
69. Comment, 5 MIAMI L. Q. 592 (1951).
70. *Ibid.*
71. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951).
72. Barnett v. Couey, 224 Mo. App. 913, 917, 27 S.W.2d 757, 761 (1930).
73. *Supra* note 69.
74. Hogan v. Martin, 52 So.2d 806 (Fla. 1951); Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205 (1945).
75. *Supra* note 68.
76. FLA. STAT. § 731.31 (1951).
77. Peeples v. Corbett, 117 Fla. 213, 157 So. 510 (1934).
78. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951).
79. 2 BL. COMM. *182.

and wife become one person in contemplation of law.[80] Each spouse is seized of the whole and does not take a divisible part.[81] Upon the death of either party, by operation of law the estate remains in the surviving spouse, to the exclusion of the heirs of the deceased.[82] The survivor does not take by inheritance, or even by the usual method of survivorship.[83] The survivor holds the entire estate by virtue of the original title.[84] The title of the survivor dates, not from the death of the spouse, but rather from the date of the original conveyance.[85]

The Florida courts present an interesting approach to the effect of murder upon an estate by the entirety. They do not grant the murderer free and clear title to the estate; nor do they deprive him of it. Neither do they give rise to a constructive trust in favor of the deceased's heirs. The decisions of the Florida courts follow those handed down by the courts of Missouri.[86] They form the fourth category of decisions as mentioned above. By operation of law, upon the death of one spouse, the survivor of an estate by the entirety is entitled to the whole estate.[87] There is a basic prerequisite, however, that the death contemplated in the laws on estates by the entirety must be "in the ordinary course of events and subject only to vicissitudes of life."[88] Needless to say, murder is never considered ordinary in a legal sense. Therefore, the husband (or wife) is the survivor in fact, but not in contemplation of law.[89] The act of murder is treated as a wilful severance of the marriage.[90] In a divorce, there is also a wilful severance of the marriage followed by a consequent change of the estate by the entirety into a tenancy in common.[91] Therefore, the following rule has been introduced. Where one spouse, by a wilful (and felonious) act, dissolves the marital relationship, and, as a consequence, there is a severance of the estate by the entirety, such property is treated as a tenancy in common.[92]

A Statutory Solution

The most direct approach to the problem presented here would be

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80. Comment, 5 Miami L.Q. 592 (1951).
81. Knapp v. Fredricksen, 148 Fla. 311, 4 So.2d 251 (1941).
82. Miller v. Mobley, 136 Fla. 351, 186 So. 797 (1939); Menendez v. Rodriguez, 106 Fla. 214, 143 So. 223 (1932).
83. Palm Beach Estates v. Croker, 106 Fla. 617, 143 So. 792 (1932).
84. Bailey v. Bailey, 89 Fla. 303, 103 So. 833 (1925); English v. English, 66 Fla. 427, 63 So. 822 (1913).
85. *Supra* note 80.
86. Grose v. Holland, 357 Mo. App. 874, 211 S.W.2d 464 (1948); Barnett v. Couey, 224 Mo. App. 913, 27 S.W.2d 757 (1930).
87. Miller v. Mobley, 136 Fla. 351, 186 So. 797 (1939).
88. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951).
89. Barnett v. Couey, 224 Mo. App. 913, 27 S.W.2d 757 (1930).
90. Hogan v. Martin, 52 So.2d 806 (Fla. 1951); Comment, 5 Miami L. Q. 592 (1951); 6 Wyo. L.J. 266 (1952).
91. Fla. Stat. § 689.15 (1949); Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205 (1945).
92. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951); Note, 14 U. Detroit L. J. 147 (1951); Note, 4 U. Fla. L. Rev. 273 (1951).

by statute. Having such a statute, the equitable constructive trust would not be necessary. It has been suggested that a uniform statute be enacted[93] for the purpose of preventing ". . . the acquisition of any property or benefit by one who has wilfully and unlawfully killed another, as the result of the death of such other, and to provide for the disposition of such property."[94] "Wilfully and unlawfully" would limit the crime to murder, but should a conviction of such murder be essential to invoke the statute? What of the cases where the murderer dispatches his victim and immediately thereafter commits suicide?[95] Should this situation be considered without the statute? The common law doctrine applies to the murderer as well as those claiming under him.[96] To require a conviction would defeat the purpose of the statute in many instances. In those states which do require convictions, proposed Section 14 would expedite a great deal of litigation. It provides: "The record of his [the murderer's] conviction of having wilfully and unlawfully killed the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this Act."[97] Heretofore, private litigants could not introduce the record of criminal conviction in a civil case to establish the truth of the facts on which the conviction was had.[98] This proves a hardship in many cases.[99]

Sections 3 and 4 of this proposed statute provide that the murderer shall be considered to have predeceased the decedent.[100] Statutes of descent and distribution, dower rights, curtesy rights, rights of surviving spouse, and testamentary dispositions shall be interpreted as though the slayer died first.[101] Section 5 considers the effect upon estates by the entirety.[102] One half of the property held by the slayer and the decedent shall pass upon the death of the decedent to his estate. The other half shall be held by the slayer during his life subject to pass upon his death to the estate of the decedent.[103] An alternative provision is suggested for those states in which the husband is entitled to possession, use and income of the property:[104] If the wife is the slayer, one half shall pass upon the

93. Wade, *Acquisition of Property by Wilfully Killing Another—a Statutory Solution*, 49 HARV. L. REV. 715 (1936).
94. *Id.* at 753.
95. Varnes v. Cooper, 204 Ark. 118, 161 S.W.2d 8 (1942); *In re* Tarlo's Estate, 315 Pa. 321, 172 Atl. 139 (1934).
96. Ames, *Can a Murderer Acquire Title By His Own Crime and Keep It?*, 36 AM. L. REC. (N.S.) 225 (1897).
97. Wade, *Acquisition of Property by Wilfully Killing Another — A Statutory Solution*, 49 HARV. L. REV. 715, 755 (1936).
98. Sorbello v. Mangino, 108 N.J. Eq. 292, 155 Atl. 6 (Ch. 1931).
99. Kowalski v. Director General, 93 N.J.L. 340, 107 Atl. 477 (1919), *aff'd* 96 N.J.L. 293, 114 Atl. 927 (1921); Goodwin v. Continental Casualty Co., 175 Okla. 469, 53 P.2d 241 (1936).
100. Wade, *Acquisition of Property by Wilfully Killing Another—a Statutory Solution*, 49 HARV. L. REV. 715, 753 (1936).
101. *Ibid.*
102. *Id.* at 754.
103. *Ibid.*
104. *Ibid.*

death of the husband to his estate; the other half to be held by the wife during her life and to pass upon her death to the estate of the husband.[105] If the husband is the slayer, he shall hold the property during his life and it passes to the estate of his wife upon his death.[106]

In response to those jurisdictions which cling to the idea that depriving the murderer of the inheritance or survivorship is punishment in addition to a criminal sentence,[107] the statute expressly states in Section 15: "This Act shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong."[108] The final clause of the proffered statute is a severability clause.[109] In the event that any one portion of the statute might be declared unconstitutional, that part may be severed from the statute without destroying the statute in its entirety.

The suggested statute appears to be a comprehensive panacea. It considers all aspects of the enigma and adequately dispenses with them. The Pennsylvania legislature has enacted a major part of the statute as suggested by Wade.[110] However, Section 5, dealing with estates by the entirety, seems inconsistent with the avowed purpose of the Act. In practical effect, the murderer, who is the surviving tenant by the entirety, does acquire a substantial benefit by the death of his spouse. Before such death, each was entitled to enjoy the whole and each had a chance of survivorship and consequent acquisition of the whole. After the death of the spouse, the survivor has eliminated the possibility of loss of interest during his life. Moreover, he does not share current profits with any one. Whatever practical benefit the murderer has obtained should be taken from him, not merely from his heirs as suggested by this section. The successors of the deceased spouse should come into the full benefit of the entire estate, exclusive of either the murderer or his heirs.

An Equitable Solution

In the absence of a comprehensive statute, there is a secondary approach to the problem through the courts of equity. Equity, in its broadest and most general sense denotes ". . . the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men . . .; or, as it is expressed by Justinian,[111] 'to live honestly, to harm nobody, to render to every man his due.' It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rather than jural, and . . . (it) belong to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of

105. *Ibid.*
106. *Ibid.*
107. Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950).
108. Wade, *Acquisition of Property by Wilfully Killing Another — a Statutory Solution*, 49 Harv. L. Rev. 715, 755 (1936).
109. *Ibid.*
110. Pa. Stat. Ann. tit. 20, §§ 3441-3456 (1952).
111. Justinian, 1 Inst. 1, 3.

positive law."[112] Equity is ". . . doing justice between parties where there is no guidance or remedy in . . . law; . . . ."[113] The principles of equity are extensive and relatively unencumbered. Justice is the high point; not conformity with written law or stare decisis. For example:

> If one obtains a deed or will by misrepresentation, duress, or undue influence, the conveyor or his innocent successors in interest can admittedly obtain a decree from equity that the conveyee is a constructive trustee. In the case at hand the murderer has by his own criminal conduct put into motion the forces of the law which caused the title to move from the intestate or testator to himself (the murderer). By his own felonious act he caused the death of his benefactor, and that death brought into play the laws of intestacy or the will.[114]

The theory of constructive trust as a solution to the question of the murderer's inheritance has been propounded by some courts of equity.[115] It has been advocated by a number of legal authors.[116] This proposal avoids the reproach of permitting the criminal to profit from his iniquitous act. It also averts the censure of evasion of statutes of wills and descent or distribution. Legally, the title vests in the one designated by will, by succession, or by operation of law (as in an estate by the entirety). Equitably, the use and enjoyment of the estate is removed from the criminal and conveyed to those who would take if the slayer were disqualified. In the case of an estate by the entirety, the legal title vests in the murderer as the survivor in fact, but he is deprived of its benefits. In this manner, the common law and civil law tenets that no man shall profit by his own wrong transcends statutory complications and finds its satisfaction in equity.

If the principles of equity could be embodied in statutory garb, we would have the ideal solution — a solution which would bar a murderer from taking any advantage whatsoever from a felonious killing. Degrees of homicide, proof of the killer's intent to benefit from the crime, and the necessity of conviction are severe hindrances to arriving at an equitable solution. They are detours supplied by those who are unsure of their right to invoke justice. If the murder is wilful and felonious, the murderer and his heirs should be excluded from the deceased's estate whether by testamentary disposition, intestate succession, or as surviving spouse. If we consider the murderer as having predeceased the decedent, the legal title

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112. BLACK'S LAW DICTIONARY 634 (4th ed. 1951).
113. WEBSTER'S ENCYCLOPEDIC DICTIONARY 256 (1941).
114. 3 BOGERT, TRUSTS AND TRUSTEES § 478 (1935).
115. Sherman v. Weber, 113 N.J. Eq. 451, 167 Atl. 517 (Ch. 1933); Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927).
116. BOGERT, TRUSTS AND TRUSTEES § 478 (1935); 1 PERRY, TRUSTS AND TRUSTEES § 183a (7th ed. 1929); 3 TIFFANY, REAL PROPERTY § 598 (2d ed. 1920); Comment, 30 HARV. L. REV. 622 (1917); Comment, 29 MICH. L. REV. 745 (1931); Note, 44 HARV. L. REV. 125 (1930); Note, 9 ILL. L. REV. 505 (1915); Note, 64 U. OF PA. L. REV. 307 (1916).

never vests in the murderer so that there can be no cry of "forfeiture".

Give the "strict constructionists" a statute they can construe in only one manner — a statute that answers the query: "Can a murderer acquire property by or as a consequence of his crime and keep it?" — in simple terms subject to a single interpretation —— "No!"

ESTELLE L. AGUE

SECURITY INTERESTS — COMMERCIAL FINANCE COMPANIES IN FLORIDA

INTRODUCTION

Florida needs more commerce. Transportation and large-scale financing pose problems that seem best answered by small business, since this type of enterprise is characterized by relatively light investment in fixed assets, a high ratio of manpower to machinery, and individualized products and services that do not compete on a price (including transportation) basis alone.[1]

Small business often raises working capital by the sale of, or borrowing on, current non-cash assets, *i.e.*, the more liquid assets exclusive of cash.[2] Commercial finance companies are typical buyers or lenders in such transactions.[3] Discussed below are the legal positions of commercial finance companies in Florida resulting from their acquiring interests (total or security) in accounts receivable, inventory and chattel paper.[4]

ACCOUNTS RECEIVABLE

Seventy years ago, the Florida Supreme Court held the assignment of a book account valid in equity.[5] There can be little doubt of the assignability of accounts receivable today.[6] Furthermore, by statute, "Any civil action at law may be maintained in the name of the real party in interest."[7] There may be some doubt, however, as to whether the assignor is a necessary party plaintiff in a suit upon a partial assignment.[8]

An account receivable involves two major risks: (1) the solvency

1. DIRKS AND HOPKINS, PRIVATE CAPITAL REQUIREMENTS, 46-48, 53-56 (Board of Governors of the Federal Reserve System, Postwar Economic Studies, No. 5, 1946).

2. *Id.* at 71. This is probably for at least two principal reasons: sheer lack of other assets to borrow on, and the rough correlation between the amount of current non-cash assets and the amount of business activity.

3. They are not the only financial institutions in the field, however.

4. The scope of this discussion was suggested by SEIDMAN, FINANCE COMPANIES AND FACTORS (National Conference of Commercial Receivable Companies, New York, 1949). In fact, this comment is really an application of the cited volume to the law of Florida, omitting two chapters dealing with drop-shipments and with imports and exports. The volume cited also provided valuable practical observations reflected throughout this paper.

5. Sammis v. L'Engle, 19 Fla. 800 (1883).

6. "Under the common law, a right of action, choses in action, future or contingent interests, possible and existing estates or interest, were not assignable, but all of these are now assignable by statute or in equity." Richardson v. Holman, 160 Fla. 65, 71, 33 So.2d 641, 644 (1948).

7. FLA. STAT. § 45.01 (1951); Smith v. Westcott, 34 Fla. 430, 16 So. 332 (1894) (assignee of accounts and due bills).

8. *See* Robinson v. The Springfield Co., 21 Fla. 203, 217-219 (1885).