

1939

DEEDS - FUTURE INTERESTS - RIGHT OF MURDERER TO ACQUIRE PROPERTY BY OPERATION OF CONDITION SUBSEQUENT THAT PROPERTY SHALL REVERT ON GRANTEE'S DEATH

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Recommended Citation

Russel T. Walker, *DEEDS - FUTURE INTERESTS - RIGHT OF MURDERER TO ACQUIRE PROPERTY BY OPERATION OF CONDITION SUBSEQUENT THAT PROPERTY SHALL REVERT ON GRANTEE'S DEATH*, 37 MICH. L. REV. 965 (1939).

Available at: <https://repository.law.umich.edu/mlr/vol37/iss6/18>

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DEEDS — FUTURE INTERESTS — RIGHT OF MURDERER TO ACQUIRE PROPERTY BY OPERATION OF CONDITION SUBSEQUENT THAT PROPERTY SHALL REVERT ON GRANTEE'S DEATH — Grantor, who had been adjudged insane, conveyed a farm to grantee on condition that the farm would revert to grantor should grantee predecease him. Grantee was killed under circumstances tending to show that he was killed by grantor, who was insane at the time of the death of the grantee. *Held*, title to the land, under the deed, reverted to grantor upon grantee's death, in spite of the general rule in Missouri that a murderer cannot inherit realty from his victim. *Eisenhardt v. Siegel*, (Mo. 1938) 119 S. W. (2d) 810.

Although the question of a murderer's right to acquire property as a result of his victim's death is not really in point here because the murderer's insanity excluded criminal intent and excused him from responsibility for the murder,¹ the case does suggest a fact situation new to this phase of the law. The adjudicated cases on this subject have dealt with the right of a murderer to acquire property from his victim through insurance,² will,³ intestacy,⁴ or as result of ownership of an estate by the entireties⁵ or of joint tenancy.⁶ The cases have

¹ *Holdum v. Ancient Order of United Workmen*, 159 Ill. 619, 43 N. E. 772 (1896); *Matter of Wolf*, 88 Misc. 433, 150 N. Y. S. 738 (1914).

² *Kascautas v. Federal Life Ins. Co.*, 189 Iowa 899, 179 N. W. 133 (1920); *Filmore v. Metropolitan Life Ins. Co.*, 82 Ohio St. 208, 92 N. E. 26 (1910); *Henry v. Knights and Daughters of Tabor*, 156 Ark. 165, 246 S. W. 17 (1922); *Cleaver v. Mutual Reserve Fund Life Assn.*, [1892] 1 Q. B. 147.

³ *Riggs v. Palmer*, 115 N. Y. 506, 22 N. E. 188 (1889); *Ellerson v. Westcott*, 88 Hun 389, 34 N. Y. S. 813 (1895).

⁴ *Box v. Lanier*, 112 Tenn. 393, 79 S. W. 1042 (1904); *Perry v. Strawbridge*, 209 Mo. 621, 108 S. W. 641 (1908); *Wilson v. Randolph*, 50 Neb. 371, 261 P. 654 (1927); *Eversole v. Eversole*, 169 Ky. 793, 185 S. W. 487 (1916).

⁵ *Beddingfield v. Estill & Newman*, 118 Tenn. 39, 100 S. W. 108 (1906); *Sherman v. Weber*, 113 N. J. Eq. 451, 167 A. 517 (1933).

⁶ *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N. E. 838 (1935); *In re Santourian's Estate*, 125 Misc. 668, 212 N. Y. S. 116 (1925).

never presented a discussion of the result when the murderer seeks to acquire property at his victim's death as a result of a condition subsequent in his deed.⁷ However, it is submitted that the general policy against allowing one to benefit from his own crime, which has been applied in the cases mentioned,⁸ has equal force in the situation suggested by the principal case. The courts have had no difficulty in interposing an exception into the insurance contracts eliminating the risk of murder by the beneficiary from the risks covered by the contract.⁹ There seems to be no reason why the policy mentioned should not cause the courts to read a similar exception or condition into a deed of the type used in the principal case. The grantor certainly has no vested interest from the deed such that this implied condition would result in an unconstitutional forfeiture. Even if this analogy to the insurance cases is not accepted, it would seem that a constructive trust, for the benefit of the heirs of the deceased, imposed on the property acquired by the murderer through his wrong would give a proper result. Such constructive trusts have been advocated and have been applied in some of the decided cases.¹⁰ It is submitted therefore that, although the fact situation here is new, the rules previously enunciated are broad enough to prevent the unjust result of the murderer benefiting from his crime.

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⁷ See Wade, "Acquisition of Property by Wilfully Killing Another—A Statutory Solution," 49 HARV. L. REV. 715 at 737 (1936).

⁸ *Price v. Hitaffer*, 164 Md. 505, 165 A. 470 (1933); *Bierbrauer v. Moran*, 244 App. Div. 87, 279 N. Y. S. 176 (1935); *In re Tyler's Estate*, 140 Wash. 679, 250 P. 456 (1926).

⁹ Note 2, *supra*; see also 15 COL. L. REV. 260 (1915); 20 CAL. L. REV. 210 (1932).

¹⁰ *Bryant v. Bryant*, 193 N. C. 372, 137 S. E. 188 (1927); *Van Alstyne v. Tuffy*, 103 Misc. 455, 169 N. Y. S. 173 (1918); *Barnett v. Couey*, 224 Mo. App. 913, 27 S. W. (2d) 757 (1930); 82 UNIV. PA. L. REV. 183 (1933); 44 HARV. L. REV. 125 (1930); *RESTITUTION RESTATEMENT*, §§ 187-189 (1937).