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# Need for Slayer Statute to Determine Effect of Homicide on Property Rights

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Six score and four years ago, our New York Court of Appeals determined that a slayer should not acquire property by his own crime.[1] Elmer Palmer was thus disqualified from receiving the farm under his grandfather's will having poisoned him to accelerate the bequest and prevent its planned revocation.

In the *Riggs v. Palmer* case, the "slayer rule" was adopted based upon fundamental principles of equity. The court held that equity trumped the strict letter of the law under which Elmer would take the farm pursuant to a valid will. The majority in *Riggs* relied upon a presumed legislative intent to not give effect to such a will provision. It asked rhetorically, "If the law-makers could, as to this case, be consulted, would they say that they intended by their general language that the property of a testator or of an ancestor should pass to one who had taken his life for the express purpose of getting his property?"[2]

The dissent in *Riggs* was wary of judicial remediation to achieve what the Court concluded was the fair result. The dissenters were uneasy with this judicial activism and believed that any exception to the strict law of wills should be a legislative determination. Despite this suggestion, there has not been any statute dealing with the disqualification of a slayer in New York for 124 years. It has been left up to the courts, on a case-by-case basis, to apply the *Riggs* doctrine and determine when a slayer may not take advantage of her own wrong and acquire property by her own crime.

**Application of the 'Riggs' Rule**

The case-by-case approach to application of the slayer rule has had a checkered and inconsistent history. Lacking a definitive statute, the case-by-case approach has been the only way to reach a fair result in New York.[3]

Several significant areas of conflict and concern relating to the application of the *Riggs* doctrine have surfaced in the New York jurisprudence. First, there is significant lack of clarity on what exact crimes or wrongs would result in a forfeiture of a slayer's interest. Second, there is confusion on the precise extent of the types of property subject to the general *Riggs* forfeiture provisions. Third, the extent of forfeiture required when one co-owner kills another is an issue.

New York courts have, in particular, struggled without clear success on how to reconcile the *Riggs* doctrine with the statutory prohibition against forfeiture of property upon conviction set forth in New York Civil Rights Law §79-b. The enactment of EPTL 4-1.6 to deal with joint bank accounts has complicated and confounded forfeiture in these instances. Fourth, the case law does not deal adequately with the consequences of forfeiture upon the slayer's innocent beneficiaries and distributees.[4] Finally, the case law raises troubling questions regarding the extent of forfeiture as the result of homicide of someone other than the decedent.[5]

We believe that short examination of these issues will demonstrate the necessity for a comprehensive statute regarding the effect of homicide on property rights similar to the new EPTL 2-1.15 recommended by the New York State Bar Association. The NYSBA draft statute is patterned upon the Uniform Probate Code Section 2-803 (1990) adopted by nine states. A substantially large number of other states have adopted their own versions of a slayer statute.[6]

**Wrongs Creating Forfeiture**

Under EPTL 4-1.6, a joint tenant convicted of certain designated crimes of murder in the first degree and murder in the second degree is not entitled to the distribution of any money in a joint bank account except for monies contributed by the convicted joint tenant. Following the pattern of that statute the proposed slayer statute defines a "Killer" or "Slayer" as an individual who is convicted, or would have been convicted by a preponderance of the evidence of certain designated crimes of manslaughter first degree, murder second degree and murder first degree or any similar statute of another state or nation other than by self-defense, insanity or any other circumstance that would excuse the individual from criminal responsibility.

New York case law has been inconsistent on the issue of whether homicides other than intentional homicides result in forfeiture of the right to inherit.[7] There are problems in whether some of these Penal Law offenses fit within the *Riggs* equity concept that an individual not profit from his intentional wrong. For example, some subdivisions of Penal Law 125.25 (Murder Second Degree) and Penal Law 125.27 (Murder First Degree) are based upon reckless conduct with or without depraved indifference, and others are based upon transferring an intent to commit a non-homicidal crime (so-called "felony murder").[8] There are other homicide provisions of the Penal Law that merely require "criminal negligence"[9] and others in which homicidal liability is based simply upon causing death while operating a vehicle in an intoxicated condition.[10]

An analysis of what "wrong" is a predicate to forfeiture depends first upon whether one is guided by the equitable concept that a wrongdoer shall not profit from the crime and the corollary that courts will not enforce the claim of slayers and be a party to their wrongdoing. An alternative is to view the matter in terms of the laws of donative intent effectuating presumed intent.[11] The result, depending on the analysis, could lead to disqualification of all homicides or alternatively, only intentional homicide, thus excluding certain homicides without a state of mind other than an intentional one, or any homicide other than one excused by law such as justification (self-defense) or insanity.

Certainly a cogent argument can be made that most individuals would wish to preclude their slayer from succeeding to any portion of their estates regardless of the presence or absence of intent to commit a wrong. The Uniform Probate Code and the proposed NYSBA statute adopt the *Riggs* rationale and require the killing to be intentional and thus exclude non-intentional homicides, self-defense and insanity defense slayers from forfeiture. A statute that clarifies the extent of the wrongs giving rise to forfeiture, considers the existing case law and sets forth the legislative judgment in these matters is necessary to avoid inconsistent results.

**Property Subject to Forfeiture**

There has been a general trend to unify the treatment of disqualification of a slayer to apply to all testamentary dispositions and testamentary substitutes. With more and varied testamentary substitutes, there is a statutory necessity to clarify that all types of dispositions effective on death should be treated consistently. Thus bequests under wills, intestacy distributions, life insurance proceeds, revocable trust dispositions, jointly held property and other forms of survivorship rights should be consistently subject to the same forfeiture rules. New York courts have generally followed this approach but not all dispositions effective on death have been the subject of case law. The Uniform Probate Code and the NYSBA proposal provide for the forfeiture of benefits under all of these various governing instruments.

**Joint Property**

New York courts generally agree that slayers should forfeit their rights of survivorship that they would otherwise have had in joint property. They have differed upon whether the slayer-survivor should be entitled to his or her moiety, contribution in the property or alternatively, should forfeit their entire interest in the joint property. The enactment of a statute (EPTL 4-

1.6) that deals with only one form of joint property, joint bank accounts, limited to accounts in which the deceased joint tenant created or actually contributed to, has further confused this issue. Adding to the complexity of the resolution of the forfeiture of these properties are questions of how differences between joint tenancies with rights of survivorship and tenancies by the entirety ought to be treated.

The central characteristics of a joint tenancy with right of survivorship are the ability to unilaterally sever the tenancy by either joint tenant during their lives and disparities in contributions result in the joint owner contributing the greater sum making a gift at the time the joint tenancy was created. The result of these concepts has been a holding by the Court of Appeals[12] that the retention by the slayer of the moiety does not represent profit from wrongdoing but rather a preexisting property interest which cannot be taken from the slayer by virtue of the civil rights law.

There is another view of this situation adopted by several New York courts, prior to *Matter of Covert*, that the slayer must forfeit the entire interest in the property on the grounds that in the absence of the wrong, the decedent might have survived and taken the whole.[13] Whether such a view should be adopted or the *Covert* holding adhered to is a legislative judgment. The NYSBA draft statute adopts the holding of *Covert*.

Tenancy by entirety property is more troublesome because of the unity or non-severability of the property during the life of the marriage. Some decisions ordering forfeiture of all interest held in the tenancy by the entirety are consistent with the concept of unity of ownership. However, most decisions recognize some separate alienable interest of the slayer in the tenancy by the entirety property. In adopting this view, these decisions recognize a life interest in such property and allow the slayer an interest equal to one-half of the value of a commuted life estate.

*Matter of Covert* resolved some questions of joint property by providing that such property is transformed by the killing by operation of law into a tenancy in common so that the slayer receives a fractional interest in the property outright. The NYSBA proposed statute adopts the *Covert* approach to the problem by holding that the slayer not profit from his or her wrong and be limited to the commuted value of his or her life estate in one-half of the property. Once again, a legislative judgment approving such an approach to tenancies by the entirety would assist in reconciling divided case law. In particular, the Legislature should address the morass created by EPTL 4-1.6 which sets forth a "contribution" approach inconsistent with current New York law that the establishment of a joint tenancy constitutes an immediate gift of the moiety.

**Slayer's Beneficiaries**

The *Riggs* rule prevents the victim's property from passing to the slayer; so too does it prevent the victim's property from passing to the slayer's estate or beneficiaries. So that in the ordinary forfeiture situation, the slayer is deemed to have predeceased the victim and the victim's property passes according to her will, or to her distributees.

The problem area has been where a beneficiary is the natural object of the bounty of the victim as well as the slayer. Under this principle, there is a view that beneficiaries of the slayer, who are nevertheless related to decedent, should not succeed to the victim's property. Generally, most New York courts faced with succession by the innocent beneficiaries of a slayer have refused to require forfeiture. The Uniform Probate Code and the NYSBA proposed statute attempt to codify this concept but do not preclude forfeiture by the court under other general principles in appropriate cases.

**Other Than Decedent**

In at least two cases decided since 1999, Surrogates have struggled with the question of forfeiture where the slayer killed someone other than decedent but indirectly benefited from property that passed through the victim's estate to another person from whom the killer would take. In *Matter of Macaro*,[14] Surrogate Albert Emanuelli found that a convicted murderer of distributees interested in a decedent's estate who died intestate, could not succeed to the victims' interest and disqualified the killer as a distributee of the decedent's estate.

In *Matter of Edwards*[15] Surrogate John Czygier found that the murderer of his mother-in-law could not inherit from his post-deceased wife who took the victim's estate. Czygier was persuaded by the concept in the case law of other states with slayer statutes that an intervening estate should not expurgate the wrong of the murdered or thwart the intent of the Legislature that the murdered not profit from his wrong where the benefits were directly traceable to the victim's estate.

These cases are not readily resolvable by virtue of the formulation of a specific rule because of the problem of a causal connection factually between the slayer's wrong and the succession to property of another. Nevertheless, a statute should exist that incorporates a general formulation of the *Riggs* rule, such as exists in Uniform Probate Code Section 2-803(f) and in the proposed NYSBA statute. In the absence of a specific statute, a wrongful acquisition of property should statutorily be treated according to the principle that a killer cannot profit from his or her wrong.

**Conclusion**

The authors believe that some variation of the proposed EPTL 2-1.15 would end 124 years of judicial confusion and a morass of conflicting interpretations of *Riggs v. Palmer*. We recommend that the Legislature consider the NYSBA sponsor legislation on this issue.

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**Endnotes:**

1. *Riggs v. Palmer*, 115 NY 506 (1889).

2. Id. at 510.

3. 6-74 Warren's Heaton on Surrogate's Court Practice §74.13.

4.*Matter of Covert*, 97 NY2d 68 (2001).

5. *Matter of Edwards*, NYLJ April 13, 2012 at 35; *Matter of Macaro*, 182 Misc.2d 625 (Sur. Ct. Westchester County, 1999).

6. See, Olenn, "Till Death Do Us Part: New York's Slayer Rule and 'In re: Estate of Covert'," 49 Buffalo Law Review 1341, (at fn. 3 (2001) (setting forth 40 states' slayer statutes)).

7. See, e.g., *Matter of Savage*, 670 NYS2d 716 (Rockland Sur. Ct. 1998); contra, *Matter of Wolf*, 150 NYS 738 (N.Y. Sur. Ct. 1914).

8. See, Penal Law Section 125.25(3); see generally, Donnino, McKinney's Practice Commentary to Penal Law Section 125.00.

9. See, Penal Law Section 125.10.

10. Penal Law Section 125.12 (Vehicular Manslaughter).

11. Presumed intent exists throughout our laws, in intestacy (EPTL 4-1.1), the antilapse statute (EPTL 3-3.3), the revocatory effect of divorce (EPTL 5-1.4) and the revocatory effect of the births of a child (EPTL 5-3.2).

12. *Matter of Covert*, supra. fn 4.

13. *Matter of Bobula*, 25 AD2d 241 (4th Dept 1966), rev'd on other grounds, 19 NY2d 818 (1967).

14. See, fn 5.

15. See, fn 5.