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## BARRING SLAYERS' ACQUISITION OF PROPERTY RIGHTS IN VIRGINIA: A PROPOSED STATUTE

The social interest served by refusing to permit the criminal to profit by his crime is greater than that served by the preservation and enforcement of legal rights of ownership.<sup>1</sup>

### I. INTRODUCTION

The above passage by Justice Benjamin Cardozo clearly reflects the age-old maxim of the common law, *Nullus commodum capere potest de injuria sua propria*, which expounds the philosophy that no individual shall profit from his own wrong. The present Virginia statute concerning homicide and succession to property<sup>2</sup> was enacted by the legislature to reflect this common law policy. However, because of the very narrow scope of the statute and the requirement that it be strictly construed, it is presently inadequate to respond to many of the issues facing our judges in Virginia. Section 64.1-18 of the Virginia Code states that no convicted murderer shall be allowed to acquire any interest in the estate of the person he murders either by descent or distribution or by will, nor shall he be allowed to receive any payment on a life insurance policy covering the victim's life.<sup>3</sup> This statute covers only a very limited number of factual situations and is presently inadequate to respond to the variety of cases which arise, as illustrated by the following approach taken by the Circuit Court of Russell County:

The sole question before the Court in this case is whether or not a husband who is convicted of murder in the death of his wife may take the entirety under a survivorship deed. The Court is of the opinion that Section 64.1-18 of the Code of Virginia must be strictly construed and applies only to property acquired by descent, distribution, will or under an insurance policy.

The Court must agree with the contention of the complainant that *property rights cannot be taken from an individual who is legally entitled to*

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1. B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 43 (1921).

2. VA. CODE ANN. § 64.1-18 (Repl. Vol. 1973).

[When homicide to bar acquisition of estate or proceeds of life insurance policy.] No person shall acquire by descent or distribution or by will any interest in the estate of another, nor receive any payment under any policy of life insurance upon the life of another, for whose death such person has been convicted of murder. In such event should any life insurance be payable, then it shall be paid as if such person predeceased the insured to such other person as may be named in the policy, or if no such other person is named, then to the estate of the insured. Any insurer making payment according to the terms of its policy or contract shall not be subjected to additional liability by the terms of this section if such payment is made without notice of circumstances bringing it within the provisions of this section.

3. *Id.*

*it [sic] because he violates a public policy, even if that public policy is the wilful murder of one spouse by the other.*<sup>4</sup>

The court in that case was faced with a factual situation concerning survivorship property which the statute did not cover. Because it was limited by a narrow construction of section 64.1-18, the court was unable to reflect the general policy of the statute, which is not to allow a slayer to acquire property from one whom he kills. Generally, cases which have allowed a slayer to retain his ill-gotten bounty have been decided by courts which reasoned that statutes of intestate succession and statutes of wills were exclusive and that courts should not legislate in the absence of a statutory provision.<sup>5</sup> Thus, Virginia courts are faced with an inapplicable and inadequate statute in many instances,<sup>6</sup> and the result is a strict construction of common law property rights which produces results totally contradictory to the policy that no man shall profit by his own wrong.

Two cases presently on appeal to the Supreme Court of Virginia demonstrate the need for statutory expression to cover slayings arising in a tenancy by the entirety relationship.<sup>7</sup> The legal trend across the country, both

4. *Sykes v. Shelia*, mem. op. (Cir. Ct. of Russell County, Va. 1975) (emphasis added). In this unreported decision, the court referred to an earlier Virginia case, *Blanks v. Jiggetts*, 192 Va. 337, 64 S.E.2d 809 (1951), in making the statement that "[t]his Court . . . does not subscribe to the righteousness of the murderer's legal status but this is a Court of law and not a theological institution." Thus, the courts in *Blanks* and *Sykes* reasoned that because the statute was designed to be a penal statute, it must be strictly construed. The result in *Sykes* was to allow a spouse convicted of murder to acquire property that he held with his wife under a survivorship deed. In *Blanks*, the court allowed a son who had murdered his father to take a remainder which had vested in the son under his mother's will. The remainder was to have followed the father's life estate. In addition to the life estate, the father also held a general power of appointment under his wife's will which provided that in default of appointment, the property would pass to the life tenant's issue. The court in *Blanks* stated the following:

The reason the son is allowed the benefit of the shortened life estate is *because this statute does not prohibit it*. . . .

It is true that the reprehensible act of the appellant accelerated the falling in of his father's life estate and enriched him by vesting in him the immediate usufruct from the estate which normally he could not expect until sometime in the future, if at all. However, this does not result in his acquiring any interest in the estate of his father, which is all that is denied him by the terms of Section 64-18 of the Code.

192 Va. at 342-43 (emphasis added).

5. Bolich, *Acts Barring Property Rights*, 40 N.C. L. REV. 175, 186 (1962) [hereinafter cited as Bolich].

6. *Sundin v. Klein*, No. 790200 (Sup. Ct. of Va., writ granted June 5, 1979); *Jackson v. Morrison*, No. 781405 (Sup. Ct. of Va., writ granted Feb. 2, 1979); *Sykes v. Shelia*, mem. op. (Cir. Ct. of Russell County, Va. 1975); *Blanks v. Jiggetts*, 192 Va. 337, 64 S.E.2d 809 (1951).

7. *Jackson v. Morrison*, No. 781405 (Sup. Ct. of Va., writ granted Feb. 2, 1979); *Sundin v. Klein*, No. 790200 (Sup. Ct. of Va., writ granted June 5, 1979). In *Jackson v. Morrison*, the

legislative and judicial, is to prohibit the murderer from profiting by his own wrong.<sup>8</sup> The Virginia General Assembly should address this problem before further injustices are inflicted upon innocent heirs or devisees of slain victims who are deprived of their rights merely because of an inadequate statute which does not address their problem.

The deficiency of the Virginia statute is not merely its failure to recognize acquisition of survivorship property, but rather its failure to address certain contingencies. What will happen if the slayer is convicted of manslaughter rather than murder? Perhaps, the slayer may commit suicide prior to a conviction.<sup>9</sup> A situation might arise in which the slayer may have sold his newly acquired property to a bona fide purchaser. Or perhaps, the slaying was done in self-defense or by an insane person. These are merely a few of the many factual situations which could arise.

Although the present statute is inadequate to provide a remedy at law in all cases, this does not mean that a remedy is unavailable. In order to prevent unjust enrichment of the slayer, courts of equity could impose a constructive trust to prevent the slayer from profiting from his wrongful act, as favored by the authors of the Restatement of Restitution.<sup>10</sup> The constructive trust has two basic advantages:

The first is that it placates those favoring a literal construction of statutes. A constructive trust "avoids the dubious practice of reading implied excep-

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husband, Buddy C. Morrison, murdered his wife, and as a result, obtained certain property located in Alexandria, Virginia, which had been deeded to husband and wife as tenants by the entirety with common law rights of survivorship. The trial court sustained a demurrer in favor of the husband stating:

In the absence of a statute, land held by husband and wife as tenants by the entireties passes, upon the death of either spouse, to the survivor absolutely.

Section 64.1-18 of the Code is not applicable since no estate had passed by will, descent or distribution and life insurance proceeds are not involved.

Petition for appeal at 2, No. 781405 (Sup. Ct. of Va., filed Sept. 29, 1978). In *Sundin*, a husband was convicted of second degree murder of his wife. The Circuit Court of Accomack County, Virginia, held that the property interest of the wife passed by survivorship to the husband and declared him to be the fee simple owner of real property which the couple had held as tenants by the entirety with right of survivorship at common law. No. 790200 (Sup. Ct. of Va., writ granted June 5, 1979).

8. Bolich, *supra* note 5, at 186.

9. Section 64.1-18 requires a conviction of murder before the statute will apply.

10. RESTATEMENT OF RESTITUTION §§ 187-89 (1937). Under Comment (a) of § 187 at 765, the following statement appears: "The rules stated in this Section are applicable although the Statute of Wills or the Statute of Descent and Distribution makes no provision for the situation where the devisee or legatee or heir or next of kin kills the decedent." The following statement advocating the propriety of establishing a constructive trust was made in *Jackson v. Morrison*, *supra* note 6, Petition for Appeal at 5: "[I]t is no defense to plead that no statute applies to deprive one of such a gain from a heinous murder."

tions into a statute [because] the court is not making an exception to the provisions of the statutes, but is merely compelling the murderer to surrender the profits of his crime . . . ."

The second advantage . . . is that it protects the rights of one who has purchased property in good faith from the murdering heir, since a bona fide purchaser of the legal title is not subject to the constructive trust.<sup>11</sup>

It should be noted, however, that there may be problems involved in using the constructive trust in the case of intestate succession. Since the constructive trust should be imposed only in favor of one who has been unjustly deprived of property, it has been suggested that there can be no *cestui que* trust in the case of intestate succession, as the other heirs cannot contend that they were deprived of property by the slayer's act, because they would not have taken it anyway.<sup>12</sup> Although the constructive trust is a certain way to prevent the wrongdoer from holding the legal right to property which he ought not in good faith hold, there are uncertainties as to the amount of property to which the constructive trust will attach, especially in the area of survivorship property.<sup>13</sup> Until the General Assembly changes section 64.1-18, the constructive trust certainly is more equitable than allowing the murderer or those to whom he conveys his interest to be unjustly enriched at the expense of the innocent victim's successors in interest.

It is the purpose of this comment to suggest a statutory solution to meet the inadequacies of section 64.1-18. In 1936, Professor John W. Wade proposed a model act which he believed would cover almost all potential areas concerning the acquisition of property by one who had wilfully killed another.<sup>14</sup> It is the opinion of this writer that Professor Wade's model statute, with some minor modifications, would offer the best and most comprehensive solution to the inadequacies inherent in section 64.1-18. The Uniform Probate Code, which was approved by the National Conference on Uniform State Laws and by the American Bar Association in August, 1969, also

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11. McGovern, *Homicide and Succession to Property*, 68 MICH. L. REV. 65, 68-69 (1969), quoting G. BOGERT, TRUSTS § 478 (2d ed. 1960).

12. Wade, *Acquisition of Property by Wilfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 719 n.18 (1936). However, the note further states that an argument in favor of the constructive trust could be made by heirs in cases of intestate succession, who could suggest that there was a possibility that the decedent might have survived the slayer, and, in that case, the property which the slayer acquired would then have passed to them. *Id.*

13. This problem will be discussed in Section 5 of this comment.

14. WADE, *supra* note 12, at 753. Professor Wade's suggested statute [hereinafter cited as WADE Statute] was adopted by Pennsylvania in 1941, 20 PA. CONST. STAT. ANN. §§ 8801 to 8815 (Purdon 1975), and was "substantially followed" by the Special Drafting Committee for Chapter 31A of the North Carolina Code, N.C. GEN. STAT. §§ 31A-3 to 31A-15 (Repl. Vol. 1976).

suggests a model statute which, although not as comprehensive, is much shorter and more concise than Professor Wade's statute. In the remainder of this comment, a proposed statutory solution will be suggested as an alternative to the Virginia statute by choosing the best provisions from each of these model acts. An act will be presented section by section together with comments explaining why this writer believes the suggested provisions will prevent slayers from taking advantage of their own wrongful acts.

## II. PROPOSED STATUTE

### SECTION 1. DEFINITION OF TERMS. As used in this section:

- (1) "Slayer" shall mean any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.
- (2) "Decedent" shall mean any person whose life is so taken.
- (3) "Property" shall include any real and personal property and any right or interest therein.<sup>15</sup>

The current Virginia statute requires a conviction of murder before the slayer will be precluded from acquiring property from the decedent.<sup>16</sup> The Uniform Probate Code requires that a killing be done "feloniously and intentionally."<sup>17</sup> It is recommended by this writer that the words "wilful and unlawful" be used in determining the degree of wrongfulness required before the slayer will be barred from acquiring any property rights. "This duality of requirement excludes any killing by a noncriminal act such as mere negligence, a homicide which was justifiable or excusable or one committed while the slayer was insane, and by any non-wilful crime, including involuntary manslaughter."<sup>18</sup> Thus, an intentional criminal homicide such as voluntary manslaughter would bar acquisition; whereas slayings done in self-defense or by accident or by an insane person, or as the result of mere negligence, or involuntary manslaughter would be excluded from this section. It is important to understand why "felonious killing" as suggested by the UPC would not be appropriate in Virginia. The following language is used in the Virginia statute in determining which homicides are felonies: "Any person who commits capital murder, murder of the first degree, murder of the second degree, voluntary manslaughter, or involun-

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15. WADE Statute, § 1 at 753; 20 PA. CONST. STAT. ANN. § 8801 (Purdon 1975).

16. VA. CODE ANN. § 64.1-18 (Repl. Vol. 1973).

17. UNIFORM PROBATE CODE § 2-803 (a) (5th ed. 1977) [hereinafter referred to as the UPC].

18. Note, *Decedents' Estates—Forfeitures of Property Rights by Slayers*, 12 WAKE FOREST L. REV. 448, 451 (1976), quoting Bolich, *supra* note 5, at 193.

*tary manslaughter*, shall be guilty of a felony.”<sup>19</sup> Thus, while use of the word “wilful” would exclude involuntary manslaughter in Virginia, if “felonious” were used, this would cause all involuntary manslaughter cases to be included. It is interesting to note the following position of the Restatement of Restitution in its determination as to when the principles of the constructive trust shall apply: “They are not applicable where the slayer was guilty only of manslaughter.”<sup>20</sup> It is also noteworthy that many courts which operate under common law principles, in the absence of a controlling statute, have also concluded that an intentional killing, albeit without premeditation, is a bar.<sup>21</sup>

The words “either as a principal or as an accessory before the fact” have been added to include conspirators or those who take or procure the taking of the life of another individual. The UPC does not include this provision and only requires a “felonious and intentional killing.”<sup>22</sup> It would seem wiser to include accessories or conspirators in this section; otherwise they would be able to avoid the provisions of this section merely by hiring another person to slay the decedent for them.

There are several reasons for eliminating the requirement of a conviction which presently exists under section 64.1-18. Suppose the slayer has not been convicted and never will be convicted because he committed suicide shortly after the slaying. Since conviction would be impossible, the entire purpose of the statute would be avoided for the benefit of the slayer’s successors in interest. In the comments on the application of the constructive trust, the Restatement of Restitution states the following:

The rules stated in this Section are applicable although the person acquiring the property has not been convicted of murder in a criminal proceeding. Thus, it is applicable although the murderer commits suicide before any criminal proceeding is brought against him. In such a case the person who acquires the murderer’s estate on his death, not being a bona fide purchaser,

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19. VA. CODE ANN. § 18.2-30 (Repl. Vol. 1975) (emphasis added). See the annotations to § 64.1-18 where it is stated that this “section does not extend to voluntary manslaughter.” Life Ins. Co. of Va. v. Cashatt, 206 F. Supp. 410 (E.D. Va. 1962).

20. RESTATEMENT OF RESTITUTION § 187, comment e (1937).

21. McGovern, *supra* note 11, at 91.

22. UPC § 2-803(a). The West Virginia statute actually uses the word “conspiracy”:

No person who has been convicted of feloniously killing another, or of conspiracy in the killing of another, shall take or acquire any money or property, real or personal, or interest therein, from the one killed or conspired against, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise. . . .

W. VA. CODE § 42-4-2 (1966).

is, like the murderer himself before his death, chargeable as constructive trustee.<sup>23</sup>

The case of *Smith v. Greenberg*<sup>24</sup> points out the disastrous effect the requirement of conviction has upon disposition of the property. In that case, after killing his wife and daughter, the husband committed suicide. Although he was prohibited from receiving proceeds as a beneficiary of their life insurance policies, he was allowed to inherit from them because the statute barred inheritance by one "convicted of murder." It is anticipated that this proposed section will cover the present deficiencies in section 64.1-18 and will fulfill the requirements of the almost universal rule that no man shall be allowed to profit by his own wrong: *Ex turpi causa oritur non actio*.<sup>25</sup>

SECTION 2. SLAYER NOT TO ACQUIRE PROPERTY AS A RESULT OF SLAYING. Neither the slayer nor any person claiming through him shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.<sup>26</sup>

Professor Wade included this section with its intentionally broad language "to cover every situation that may arise,"<sup>27</sup> and to provide how the property shall pass. This section could be considered optional.

SECTION 3. DESCENT, DISTRIBUTION, DOWER, CURTESY, AND STATUTORY RIGHTS AS SURVIVOR. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the estate of the decedent to the slayer under the statutes of descent and distribution or have been acquired by dower, by curtesy, or by statutory right as surviving spouse.<sup>28</sup>

According to Professor Wade, "[i]t is here that a statute is needed most . . . ."<sup>29</sup> Although section 64.1-18 addresses the property interests under the statutes of descent and distribution, the present statute makes no reference to marital rights.

23. RESTATEMENT OF RESTITUTION § 187, comment f (1937). For the cases where as a result of the suicide of the slayer his heirs acquired the property, see *Hogg v. Whitham*, 120 Kan. 341, 242 P. 1021 (1926); *In re Tarlo's Estate*, 315 Pa. 321, 172 A. 139 (1934). See also Wade, *supra* note 12, at 723 n.34.

24. 121 Colo. 417, 218 P.2d 514 (1950).

25. *Life Ins. Co. of Va. v. Cashatt*, 206 F. Supp. 410, 412 (E.D. Va. 1962).

26. WADE Statute, § 2 at 724; 20 PA. CONST. STAT. ANN. § 8802 (Purdon 1975). The North Carolina statute omitted this provision.

27. Wade, *supra* note 12, at 724.

28. WADE Statute, § 3 at 724-25; 20 PA. CONST. STAT. ANN. § 8803 (Purdon 1975).

29. Wade, *supra* note 12, at 725.

At this point, reference will be made to provisions against forfeiture or corruption of blood as affecting the constitutionality of the entire proposed statute. "No suicide, nor attainder of felony, shall work a corruption of blood or forfeiture of estate."<sup>30</sup> Normally, then, it would appear to be unconstitutional to take away from a slayer any property interest which he already has. But it may be argued that "[t]here can be no forfeiture of that which the murderer never had."<sup>31</sup> This argument is equally applicable in the area of marital rights as it is in the area of jointly held property.

The court is not taking away from the slayer an estate which he has already acquired, but "is simply preventing him from acquiring property in an unauthorized and unlawful way, *i.e.*, by murder. It takes nothing from him but simply says you cannot acquire property in this way." And if this course may be taken by a court, obviously the legislature may provide that property cannot be *acquired* through a wilful and unlawful slaying.<sup>32</sup>

Since statutory rights of dower and curtesy are considered inchoate and thus subject to being abolished or changed, there seems to be no problem of unconstitutionality. Thus, "no property is *taken from* the slayer; he is merely *prevented from getting* property by killing someone—a salutary moral principle and crime deterrent."<sup>33</sup>

**SECTION 4. DEVISE OR LEGACY.** The slayer shall be deemed to have predeceased the decedent as to property which would have passed to the slayer by devise or legacy from the decedent, except that section 64.1-64, preventing lapse of devise or legacies when the person named in the will dies before the testator, shall not apply.<sup>34</sup>

30. VA. CODE ANN. § 55-4 (Repl. Vol. 1974). Professor Wade notes, however, that statutes of this sort were passed in order to prevent forfeiture to the state. Thus, if the property goes to another person, then there is no forfeiture. Wade, *supra* note 12, at 720 n.21.

31. Bradley v. Fox, 7 Ill.2d 106, 129 N.E.2d 699, 706 (1955).

32. Wade, *supra* note 12, at 720.

33. Bolich, *supra* note 5, at 188. See generally: Bradley v. Fox, 7 Ill. 2d 106, 129 N.E.2d 699 (1955); Hamblin v. Marchant, 103 Kan. 508, 175 P. 678 (1918); Colton v. Wade, 32 Del.Ch. 122, 80 A.2d 923 (1951). The RESTATEMENT OF RESTITUTION takes the following position:

Where a wife murders her husband, she is not entitled to dower in his land. The mere fact that she had an inchoate right of dower prior to the murder is not a sufficient reason for permitting her to claim dower on his death, since if she had not survived him she would not have been entitled to dower, and it is only by murder that she made sure of surviving him. Similarly, a husband who murders his wife is not entitled to curtesy. So also, where one spouse murders the other the surviving spouse is not entitled to a statutory distributive share of the estate of the deceased spouse; and this is true even though by statute a surviving spouse cannot be deprived of the statutory share by the will of the deceased spouse.

RESTATEMENT OF RESTITUTION § 187, comment j (1937).

34. WADE Statute, § 4 at 727; VA. CODE ANN. § 64.1-64 (Supp. 1979).

Basically property will be disposed of under this section in the same manner as in section 3; however, this section provides for Virginia's anti-lapse statute.<sup>35</sup> If the anti-lapse statute had not been expressly held inapplicable, it would be possible for property to be acquired by the individuals claiming under the slayer. Professor Wade does qualify this by saying that "the heirs or next of kin of the slayer may claim the property if they are entitled to it in their own right, but they cannot claim through an ancestor who has disqualified himself by his wrong."<sup>36</sup>

#### SECTION 5. TENANCIES BY THE ENTIRETY.

This is perhaps the most difficult area in which to propose a statutory solution, as well as the most important area in which a solution is needed. There has been a split of authority across the country as to the particular solution, and the three broad categories of how property has been disposed of are as follows: (1) The slayer acquires the entire estate; (2) The slayer acquires less than the entire estate; (3) The slayer acquires nothing.<sup>37</sup> As mentioned earlier, the question of disposition of tenancy by the entirety property is presently on appeal before the Supreme Court of Virginia in the case of *Jackson v. Morrison*.<sup>38</sup> Perhaps defendant's counsel in *Jackson* expressed the difficulty the court will face when deciding how to deal with the problem when he stated the following:

Courts in jurisdictions where it is held that the surviving spouse did *not* acquire the entirety property in fee simple then are required to determine whether the survivor:

- (a) Takes no part of the property
- (b) Becomes a tenant in common
- (c) Takes a life estate
- (d) Receives the income from the property for his lifetime—in trust
- (e) Receives a non-assignable life estate with remainder to the decedent's estate
- (f) Receives a life estate in one half of the property and the other half and all remainder interests going to the decedent's estate, or
- (g) Is entitled . . . to a commuted value of the net income from one half of the property for his life expectancy.<sup>39</sup>

The Restatement of Restitution states that "[w]here two persons have an interest in property and the interest of one of them is enlarged by his murder of the other, to the extent to which it is enlarged he holds it upon

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35. VA. CODE ANN. § 64.1-64 (Supp. 1979).

36. Wade, *supra* note 12, at 727.

37. Annot., 42 A.L.R.3d 1116, 1140 (1972).

38. No. 781405 (Sup. Ct. of Va., filed Sept. 29, 1978).

39. *Id.*, Brief in Opposition at 3-4.

a constructive trust for the estate of the other,"<sup>40</sup> thus ascribing to the view that everything but the slayer's life interest will go to the victim's estate. Perhaps the difficulty is due to the common law fiction of unity of person in husband and wife, and the fact that, unlike joint tenancy property, neither spouse is able to extinguish the other's survivorship rights by severance. It is further complicated by the constitutional problem of forfeiture, because the slayer already has a property interest during his life. "The solution must therefore not take away from the slayer any property interest which he already has, but at the same time it should not allow him to acquire any additional interest as a result of the death of the decedent."<sup>41</sup>

In joint tenancy property, as well as tenancy by the entirety property, it would appear that an implied condition of the contract or deed is that neither party will try to acquire the other's interest through killing the other party. Thus, the survivorship incident of jointly held property "presupposes that the death of either [party] will be in the natural course of events and that it will not be generated by either tenant murdering the other."<sup>42</sup>

It is also interesting to note that even though it was stated earlier that some courts have allowed the slayer to acquire the entire estate, these cases were decided over twenty years ago.<sup>43</sup> The modern trend appears to be that courts will not turn their backs on the policy of preventing one from profiting from his own wrong, but rather they will divest the slayer of at least a portion of the property which had formerly been held in a tenancy by the entirety with the decedent.<sup>44</sup>

Rather than suggesting one section on tenancy by the entirety for the proposed statute, this writer feels that it would be wiser to offer three alternatives and to let the reader decide for himself which seems to be the most logical, equitable, and practical solution. Each alternative would appear to be workable; however, the decision as to the best choice most likely will involve individual moral considerations.

(ALTERNATIVE A.) SECTION 5. TENANCIES BY THE ENTIRETY. One half of the property held by the slayer and the decedent shall pass upon the death of

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40. RESTATEMENT OF RESTITUTION § 188 (1937).

41. Wade, *supra* note 12, at 728.

42. Bradley v. Fox, 7 Ill. 2d 106, 129 N.E.2d 699, 705 (1955).

43. Wyckoff v. Clark, 77 Pa. D. & C. 249, 41 Luzerne Leg. Reg. R 371 (1951); *In re Smith Estate*, 3 Pa. D. & C.2d 757, 42 Del. Co. 193, 5 Fiduciary R. 328 (1941); Hamer v. Kinnan, 16 Pa. D. & C. 395 (1931); Beddingfield v. Estill & Newman, 118 Tenn. 39, 100 S.W. 108 (1907).

44. Jackson v. Morrison, No. 781405 (Sup. Ct. of Va., writ granted Feb. 2, 1979), Petition for Appeal at 8.

the decedent to his estate, and the other half shall be held by the slayer during his life subject to pass upon his death to the estate of the decedent.<sup>45</sup>

Professor Wade, in proposing this solution, assumes that the decedent would have outlived the slayer, thus resolving all doubts in favor of the decedent as opposed to the slayer who deprived the decedent of all chances of surviving. For this reason, the heirs of the slayer are totally deprived of acquiring any of this property through him. The phraseology "subject to pass upon his death to the estate of the decedent" is employed to indicate that the slayer is not free to alienate the property.<sup>46</sup>

(ALTERNATIVE B.) SECTION 5. TENANCIES BY THE ENTIRETY. As to property held by the slayer and the decedent as tenants by the entirety, the resulting death of the decedent caused by the slayer thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the slayer has no rights of survivorship.<sup>47</sup>

This is the position of the UPC, causing a severance in the property whereby the slayer and the decedent's estate become tenants in common in the property formerly held as a tenancy by the entirety. A recent Florida case<sup>48</sup> used this theory in an equitable and novel approach. In that case, the husband had killed his wife and entered a plea of guilty to manslaughter. The Florida Probate Code provided that the convicted murderer of a decedent could not inherit from the decedent.<sup>49</sup> The statute was held inapplicable not only because the husband was not convicted of murder, but also because property held as an estate by the entirety is not an asset of a deceased tenant's estate. Although the statute was inapplicable, the Supreme Court of Florida relied on two earlier decisions<sup>50</sup> in subscribing "to the fundamental principle of equity that 'no one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own iniquity, or profit by his own crime,'"<sup>51</sup> and held that the estate was severed by the "willful, felonious act of one spouse which results in the death of the other."<sup>52</sup> Thus, the interest of the deceased spouse was to be treated as if it had been held by the spouses as tenants in common.

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45. WADE Statute, § 5 at 728; 20 PA. CONST. STAT. ANN. § 8805 (Purdon 1975).

46. Wade, *supra* note 12, at 730. See *Bryant v. Bryant*, 193 N.C. 372, 137 S.E. 188 (1927).

47. UPC § 2-803(b).

48. *In re Estate of Nunnelley*, 343 So.2d 657 (Fla. App. 1977).

49. FLA. STAT. ANN. § 732.802 (West 1976).

50. *Ashwood v. Patterson*, 49 So.2d 848 (Fla. 1951); *Hogan v. Martin*, 52 So.2d 806 (Fla. 1951).

51. *In re Estate of Nunnelley*, 343 So.2d at 658 (Fla. 1977).

52. *Id.*

Although in a tenancy by the entirety there can be no unilateral severance by either party, some courts have allowed a severance and have divided land equally between the slayer and the decedent's estate relying on an analogy to divorce, which transforms a tenancy by the entirety into a tenancy in common.<sup>53</sup> Thus, it is apparent that Alternatives A and B are mutually exclusive since the constructive trust theory "requires that the property pass to the survivor as if the interest had not been severed."<sup>54</sup>

(ALTERNATIVE C) SECTION 5. TENANCIES BY THE ENTIRETY. As to property held by the slayer and the decedent as tenants by the entirety, the slayer shall be treated as having predeceased the decedent, and the entire property shall pass to the estate of the decedent.

This alternative is perhaps the most equitable solution in depriving the slayer of all of his rights, but it could run into opposition on a constitutional basis since it deprives the slayer of his lifetime income to the property, a right which was not acquired by the unlawful act. However, it can be just as easily argued that the implied condition of the contract was that death would result from natural causes. This alternative would be most appropriate in situations where the slayer committed suicide immediately following the slaying of the spouse.<sup>55</sup>

#### SECTION 6. JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGES.

In discussing property held in joint tenancy, the same basic approach will be taken, because the same three approaches appear to be taken as to disposition of the property: (1) The slayer acquires the entire estate; (2) The slayer acquires less than the entire estate; (3) The slayer acquires nothing.<sup>56</sup> Three alternative solutions again will be proposed. The word "joint" will be used in a technical sense implying that there are rights of survivorship. Furthermore, the use of the words "joint owners" and "joint obligees" shall imply that joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents shall be included.<sup>57</sup>

No statute will be suggested which would allow the slayer to acquire the entire estate. It appears that most of the cases which allowed the killer to acquire the entire jointly-held property did so because there was no appli-

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53. *Ashwood v. Patterson*, 49 So.2d 848 (Fla. 1951); *National City Bank v. Bledsoe*, 237 Ind. 130, 144 N.E.2d 710 (1957).

54. *In re Estate of Nunnolley*, 343 So.2d at 658 n.1 (Fla. 1977).

55. See *Welch v. Welch*, 252 A.2d 131 (Del. Ch. 1969); *In re Pinnock's Estate*, 83 Misc.2d 233, 371 N.Y.S.2d 797 (1975); *Van Alstyne v. Tuffy*, 103 Misc. 455, 169 N.Y.S. 173 (1918).

56. Annot., 42 A.L.R.3d 1116, 1148-57 (1972).

57. *Wade*, *supra* note 12, at 732. UPC § 2-803(b).

cable statute to prevent that from occurring. These courts have held that "[i]n the absence of a statute declaring that public policy requires the surviving joint tenant to relinquish interests in property, . . . [the courts will be] reluctant to declare such policy."<sup>58</sup> Thus, these cases merely show the need for an appropriate statute to cover the problem.

(ALTERNATIVE A) SECTION 6. JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGEES.

(a) One half of any property held by the slayer and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer; unless the slayer obtains a separation or severance of the property or a decree granting partition.

(b) As to property held jointly by three or more persons, including the slayer and decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one half of the property shall immediately pass to the estate of the decedent, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(c) The provisions of this Section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other.<sup>59</sup>

Professor Wade noted that the major distinction between sections 5 and 6 was the fact that "[a] single tenant by the entirety cannot alienate his interest or compel a division of the property, but a joint tenant or joint obligee can."<sup>60</sup> He indicates that the slayer's interest in the property and the right to have it severed or separated should neither be taken from the slayer nor caused to be forfeited. Thus, if the slayer has not severed the property at the time of his death, the presumption will be that the slayer would have predeceased the decedent, and the rest of the property will go to the decedent's estate.<sup>61</sup>

Subsection (b) covers the situation of multiple joint tenants or joint obligees. A simple example of this provision would be that if there were

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58. *Jackson v. Morrison*, No. 781405 (Sup. Ct. of Va., writ granted Feb. 2, 1979), Brief in Opposition at 4. See generally: *Shuman v. Schick*, 95 Ohio App. 413, 120 N.E.2d 330 (1953); *Oleff v. Hodapp*, 129 Ohio St. 432, 195 N.E. 838 (1935).

59. WADE Statute, § 6 at 732; 20 PA. CONST. STAT. ANN. § 8806 (Purdon 1975).

60. Wade, *supra* note 12, at 733.

61. Wade, *supra* note 12, at 733-74.

three joint tenants, on the death of the decedent a one-sixth interest goes to the slayer and a one-sixth interest to the other joint tenant, as well as one-sixth of any additional profits from the property.<sup>62</sup> Subsection (c) merely provides that the statute will not interfere with any prior agreements or resulting trusts between the parties.

(ALTERNATIVE B) SECTION 6. JOINT TENANCIES, JOINT OWNERS, AND JOINT OBLIGEES. As to property held by the slayer and the decedent as joint tenants, joint owners, or joint obligees, the resulting death of the decedent caused by the slayer thereby effects a severance of the interest of the decedent, so that the share of the decedent passes as his property and the slayer has no rights of survivorship.<sup>63</sup>

Again, the theory of severance of the jointly held property is the position advocated by the UPC. The theory of severance presents no problem in this situation, as jointly held property may be severed at any time. *Bradley v. Fox*<sup>64</sup> followed this theory and the position of the court is stated as follows:

One of the implied conditions of the contract is that neither party will acquire the interest of the other by murder. It is fundamental that four coexisting unities are necessary and requisite to the creation and continuance of a joint tenancy; namely, unity of interest, unity of title, unity of time, and unity of possession. Any act of a joint tenant which destroys any of these unities operates as a severance of the joint tenancy and extinguishes the right of survivorship.<sup>65</sup>

Thus, the court held that the husband, who had killed his wife, lawfully retained only the title to his undivided one-half interest in the property as a tenant in common with the heir at law of his deceased wife. The court added further in response to the forfeiture issue on constitutional grounds that "[t]here can be no forfeiture of that which the murderer never had."<sup>66</sup>

(ALTERNATIVE C) SECTION 6. JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGEES. As to property held by the slayer and the decedent as joint tenants, joint owners, or joint obligees, the slayer shall be treated as having predeceased the decedent, and the entire property shall pass to the estate of the decedent. As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, the

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62. Wade, *supra* note 12, at 735, n. 72.

63. UPC § 2-803(b).

64. 7 Ill.2d 106, 129 N.E.2d 699 (1955).

65. *Id.* at 705-06.

66. *Id.* at 706.

entire property shall pass to the estate of the decedent.

The same arguments that were expounded in Section 5, Alternative C, are applicable here. Again, this choice seems most appropriate in situations where the slayer commits suicide after killing the spouse or joint tenant.<sup>67</sup>

In conclusion regarding the sections covering tenancy by the entirety and property held jointly, perhaps the following statements are appropriate:

The public need for judicial definition and clarification of the law on this subject is clear and compelling. If one spouse, foreseeing an impending separation, and partition of property acquired during marriage, may secure the entire ownership of all property held jointly with survivorship by murdering his spouse, this alternative may be elected rationally by some . . . one may prevent losing one-half of the joint marital property by murdering his spouse and, even if convicted of such crime, be free in several years to enjoy possession of his illgotten wealth.<sup>68</sup>

As one court has aptly stated, "I am opposed to subscribing to any doctrine of law that will offer a premium to husbands to kill their wives."<sup>69</sup>

SECTION 7. REVERSIONS AND VESTED REMAINDERS. Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of the decedent if he held the particular estate, or if the particular estate is held by a third person and measured by the life of the decedent, it shall remain in the possession of the third person during the period of the life expectancy of the decedent.<sup>70</sup>

This is reminiscent of the life tenant-remainderman situation discussed above in *Blanks v. Jiggetts*,<sup>71</sup> and would have offered a better solution than that which was obtained. The slayer should not be prohibited from acquiring his remainder or reversion, since that had previously vested in him and to deny him this would be unconstitutional. Professor Wade suggests that

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67. See generally: *Whitfield v. Flaherty*, 228 Cal. App.2d 753, 39 Cal. Rptr. 857 (1964); *In re Estate of Bobula*, 25 App. Div.2d 241, 269 N.Y.S.2d 599, *rev'd on other grounds* 19 N.Y.2d 818, 280 N.Y.S.2d 152, 227 N.E.2d 49 (1966). See also *Sikora v. Sikora*, 499 P.2d 808 (Mont. 1972).

68. *Jackson v. Morrison*, No. 781405 (Sup. Ct. of Va., writ granted Feb. 2, 1979), Petition for Appeal at 13.

69. *In re Santourian's Estate*, 125 Misc. 668, 212 N.Y.S. 116, 118 (1925).

70. WADE Statute, § 7 at 735; 20 PA. CONST. STAT. ANN. § 8807 (Purdon 1975); N.C. GEN. STAT. § 31A-7 (Repl. Vol. 1976). The UPC does not expressly provide for this situation.

71. 192 Va. 337, 64 S.E.2d 809 (1951). See note 4, *supra*.

the mortality tables must be used to cover this situation. The Restatement of Restitution is in accord with this provision as the following comment illustrates:

Where a remainderman murders the life tenant and thereby accelerates the enjoyment of his interest, he can be compelled to hold his interest upon a constructive trust for the estate of the life tenant to the extent of the life expectancy of the life tenant at the time when the murder was committed.<sup>72</sup>

The proposed statute may refer to the appropriate mortality tables which shall apply, if so desired.

**SECTION 8. INTERESTS DEPENDENT ON SURVIVORSHIP OR CONTINUANCE OF LIFE.** Any interest in property, whether vested or not, held by the slayer subject to be divested, diminished in any way or extinguished if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately after the death of the slayer or the reaching of such age.<sup>73</sup>

Professor Wade wanted to resolve all doubts against the slayer in this section, and it will be presumed that the decedent would have lived to have survived the slayer or at least to have reached a certain age.

**SECTION 9. CONTINGENT REMAINDERS AND FUTURE INTERESTS.** As to any contingent remainder or executory or other future interest held by the slayer subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent;

(2) In any case, the interest shall not be vested or increased during the period of the life expectancy of the decedent.<sup>74</sup>

Professor Wade anticipated that this section was general enough to cover every type of future interest in this type of situation.<sup>75</sup> Subsection (1) is self-explanatory. Subsection (2) covers the situation of interests which are not contingent upon the slayer's surviving the victim, and which would vest in the heirs of the slayer on the death of the decedent, even though

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72. RESTATEMENT OF RESTITUTION § 188, comment c (1937).

73. WADE Statute, § 8 at 737; 20 PA. CONST. STAT. ANN. § 8808 (Purdon 1975); N. C. GEN. STAT. § 31A-9 (Repl. Vol. 1976). The UPC does not expressly provide for this situation.

74. WADE Statute, § 9 at 738; 20 PA. CONST. STAT. ANN. § 8809 (Purdon 1975); N. C. GEN. STAT. § 31A-8 (Repl. Vol. 1976). The UPC does not expressly provide for this situation.

75. Wade, *supra* note 12, at 738.

the slayer is also dead. This subsection prevents those inheriting through the slayer from acquiring any interest during the period of the decedent's life expectancy. The Restatement of Restitution goes a step further and provides that the murderer may be forced to surrender his whole interest:

if the murderer's interest was contingent upon his surviving the life tenant, he might have received nothing except for the murder, since there is no way of ascertaining with certainty whether he would have survived his victim. In such a case, therefore, the murderer can be compelled to surrender his whole interest, and can be compelled to hold it upon a constructive trust. He can be compelled to hold it upon a constructive trust for the estate of the life tenant during the life expectancy of the life tenant at the time of the murder, and subject thereto for the person who would have been entitled in remainder if the murderer had predeceased his victim.<sup>76</sup>

SECTION 10. POWERS OF APPOINTMENT. (a) As to any exercise in the will of the decedent of a power of appointment in favor of the slayer, the slayer shall be deemed to have predeceased the decedent and the appointment to have lapsed.

(b) Property held either presently or in remainder by the slayer subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent; and property so held by the slayer subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons shall pass to such person or persons or in equal shares to the members of such class of persons, exclusive of the slayer.<sup>77</sup>

Under subsection (a), since the will becomes operative only upon the death of the victim, the slayer may constitutionally be prohibited from acquiring the property as he had not previously been awarded anything which was later forfeited. Professor Wade noted, however, that any exercise by the decedent of a power of appointment in an instrument which was operative before the decedent's death could not be affected by this section.<sup>78</sup>

The first half of subsection (b) covers powers of revocation which indicates that since the slayer has denied the decedent the privilege of exercising this power, then it will be assumed that the decedent would have exercised this power. Furthermore, since the decedent had a general power of appointment, it will also be assumed that he would have appointed to

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76. RESTATEMENT OF RESTITUTION § 188, comment c (1937).

77. WADE Statute, § 10 at 739; 20 PA. CONST. STAT. ANN. § 8810 (Purdon 1975); N.C. GEN. STAT. § 31A-10 (Repl. Vol. 1976). The UPC does not expressly provide for this situation.

78. Wade, *supra* note 12, at 740.

himself. For both of these reasons, the property will go to the decedent's estate. The second half of subsection (b) covers cases in which the decedent held a power of appointment either to a particular person or to a class of persons. Professor Wade favored the assumption that the decedent would have exercised this power in favor of every person except the slayer.<sup>79</sup>

SECTION 11. PROCEEDS OF INSURANCE AND BONA FIDE PAYMENT BY INSURANCE COMPANY OR OBLIGOR. (a) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance or bond or other contractual agreement on the life of the decedent or as the survivor of a joint life policy shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the slayer as alternative beneficiary to him.

(b) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as alternative beneficiary, or unless the slayer, by naming a new beneficiary or by assigning the policy, performs an act which would have deprived the decedent of his interest in the policy if he had been living.

(c) No insurance company shall be subject to liability on any policy on the life of the decedent procured and maintained by the slayer or on which all the premiums were paid by him.

(d) Any insurer making payment according to the terms of its policy or contract or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this section if such payment or performance is made without notice of circumstances bringing it within the provisions of this section.<sup>80</sup>

Professor Wade indicated that subsection (a) was merely inserted as a codification of the common law.<sup>81</sup> This same conclusion was reached by the

79. Wade, *supra* note 12, at 741, n.84.

80. WADE Statute, § 11 at 741; 20 PA. CONST. STAT. ANN. §§ 8811, 8812 (Purdon 1975); N. C. GEN. STAT. § 31A-11 (Repl. Vol. 1976); VA. CODE ANN. § 64.1-18 (Repl. Vol. 1973); UPC § 2-803(c) and (f). The RESTATEMENT OF RESTITUTION position is as follows:

(1) If the beneficiary of a life insurance policy murders the insured, he holds his interest under the policy upon a constructive trust for the estate of the insured.

(2) If the beneficiary of a life insurance policy in which the insured has not reserved power to change the beneficiary is murdered by the insured, the latter holds his interest under the policy upon a constructive trust for the estate of the beneficiary.

RESTATEMENT OF RESTITUTION § 189.

81. Wade, *supra* note 12, at 742.

United States District Court for the Eastern District of Virginia in *Life Insurance Company of Virginia v. Cashatt*<sup>82</sup> in which the court stated:

There can be no doubt that the general rule, followed probably universally, is that a beneficiary of an insurance policy who kills the insured by murder or voluntary manslaughter cannot take the proceeds of the policy. This is because of the ancient common law doctrine that no man shall be allowed to profit by his own wrong.<sup>83</sup>

It has been suggested that "the single most important asset involved in intrafamilial homicide is life insurance."<sup>84</sup> Because of the strength of the common law, "many courts which have held that, in the absence of a statute, a murderer must be allowed to inherit, have nonetheless held that a murderer cannot collect insurance proceeds."<sup>85</sup> The present Virginia statute, section 64.1-18, is responsive to most of the questions arising in the life insurance situation, and the proposed statute is made intentionally broad to cover any possible situations which may not be clarified under section 64.1-18, and it also removes the requirement of conviction of murder which presently exists. Section 3, discussed earlier, provides a solution to the situation which might occur when the slayer is the sole or chief heir of the estate of the decedent. That section provides that no slayer will be allowed to inherit from the victim's estate.

The situation occurring when the insured kills the beneficiary is provided for in subsection (b). Since this would cause the insured's estate to profit, this result is prohibited.

Professor Wade acknowledged the fact that subsection (c) was optional, as most courts would declare the policy to be void even in the absence of this provision.<sup>86</sup> This section also would prohibit the slayer from being entitled to the cash surrender value of the policy or a return of the premiums.

Subsection (d) is taken basically from the last sentence of the current section 64.1-18. This writer has suggested the addition of the words "or any bank or other person performing an obligation for the slayer as one of several joint obligees" and the words "or performance." The words were taken from Section 12 of the Wade Statute and were added to this section for the sake of brevity and conciseness. It is interesting to note that section

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82. 206 F. Supp. 410 (E.D. Va. 1962).

83. *Id.* at 411.

84. McGovern, *supra* note 11, at 78.

85. *Id.*

86. Wade, *supra* note 12, at 748.

12 of the Wade Statute, with the exception of these noted words, reads almost exactly like the last sentence of section 64.1-18.

· SECTION 12. PERSONS ACQUIRING FROM SLAYER PROTECTED. The provisions of this Chapter shall not affect the right of any person who, before the interests of the slayer have been adjudicated, acquires from the slayer for adequate consideration property or an interest therein which the slayer would have received except for the terms of this Chapter, provided the same is acquired without notice of circumstances tending to bring it within the provisions of this Chapter; but all consideration received by the slayer shall be held by him in trust for the persons entitled to the property under the provisions of this Chapter, and the slayer shall also be liable both for any portion of such consideration which he may have dissipated, and for any difference between the actual value of the property and the amount of such consideration.<sup>87</sup>

Generally in this section, the innocent acquirer of the slayer's ill-gotten bounty is protected. The Wade Statute, the Pennsylvania Statute, and the UPC<sup>88</sup> all use the words "purchases [from the slayer] for value and without notice." In the opinion of this writer, use of the words "acquires . . . for adequate consideration" and "without notice" will cover a broader number of situations and thus should prove more satisfactory.

SECTION 13. RECORD DETERMINING SLAYER ADMISSIBLE IN EVIDENCE. The record of the judicial proceeding in which the slayer was determined to be such, pursuant to Section 1 of this Chapter, shall be admissible in evidence for or against a claimant of property in any civil action arising under this Chapter. A conviction shall be conclusive evidence of the guilt of the alleged slayer.<sup>89</sup>

Professor Wade noted that this section was optional. This section merely provides for evidentiary certainty in any subsequent civil proceedings. The UPC advocates the position that a conviction shall be conclusive evidence of the guilt of the slayer.

SECTION 14. BROAD CONSTRUCTION. This Chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this Commonwealth that no person shall be allowed to profit by his own wrong, wherever committed.<sup>90</sup>

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87. N. C. GEN. STAT. § 31A-12 (Repl. Vol. 1976).

88. WADE Statute, § 13 at 749; 20 PA. CONST. STAT. ANN. § 8813 (Purdon 1975); UPC § 2-803(f).

89. N.C. GEN. STAT. § 31A-13 (Repl. Vol. 1976); UPC § 2-803(e).

90. WADE Statute, § 15 at 750; 20 PA. CONST. STAT. ANN. § 8815 (Purdon 1975). The words "wherever committed" are not found in the WADE Statute, but are in the Pennsylvania Statute.

There is a great need for this section in the proposed statute. Experience in Virginia has shown us that courts have regarded section 64.1-18 and its predecessor, section 64-18, as a penal statute, and thus it has been strictly and narrowly construed. "The reason the son is allowed the benefit of the shortened life estate is because the statute does not prohibit it. Code, section 64-18 is a *penal law*, divesting a person of rights otherwise accorded him under the law, and it must be *strictly construed*."<sup>91</sup> Professor Wade emphasized the fact that "this Act is not really penal, since nothing that the slayer has is taken away from him; he is merely prevented from *acquiring* property as a result of his having killed the decedent—this in pursuit of a principle equitable in its nature rather than penal."<sup>92</sup>

SECTION 15. UNIFORM SIMULTANEOUS DEATH ACT NOT APPLICABLE. The Uniform Simultaneous Death Act, sections 64.1-97 to 64.1-104, shall not apply to cases governed by this Chapter.<sup>93</sup>

This section is to prevent any of the presumptions arising under the Uniform Simultaneous Death Act from conflicting with any of the provisions of the proposed statute. Just as it was provided that the Virginia anti-lapse statute, section 64.1-64, would not apply to this statute, so it is provided that the Uniform Simultaneous Death Act shall not apply.

SECTION 16. SEVERABILITY CLAUSE. If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.<sup>94</sup>

This provision is optional, but is inserted merely to serve as a severability clause ensuring the validity of the Chapter if any section is held to be invalid.

### III. CONCLUSION

It is anticipated that this proposed statute will cover any potential situations which might arise in this area of the law. In spite of its length which is necessary to cover such broad ground, it should serve as a workable solution to meet the present inadequacies of section 64.1-18. Perhaps by

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91. *Blanks v. Jiggetts*, 192 Va. 337, 342, 64 S.E.2d 809 (1951) [emphasis added]. The court in *Sykes v. Shelia*, mem. op. (Cir. Ct. of Russell Co., Va. 1975) also stated that the "Code of Virginia must be strictly construed."

92. Wade, *supra* note 12, at 751.

93. N.C. GEN. STAT. § 31A-14 (Repl. Vol. 1976); VA. CODE ANN. §§ 64.1-97 to 104 (Repl. Vol. 1973).

94. WADE Statute, § 16 at 751.

adopting this proposed statute, the General Assembly could offer the courts of Virginia a solution to the problems they face in cases involving homicide and succession. Then no judge in Virginia would be faced with the situation that New York Judge Earl was confronted with in the early case of *Riggs v. Palmer*.<sup>95</sup>

The good judge then proceeded to review the various ancient maxims of the law, including one of the oldest: "No man shall profit by his own wrong." He quoted Blackstone; he quoted Coke; he drew upon the Code Napoleon; he even quoted Aristotle in Latin. One suspects that had Aristotle been a Roman, he would have quoted him in Greek. But the erudite judge was in a bit of a fix. For the plain truth of the matter was that the floundering Judge Earl had very little exact precedent to go on. This strange case was a new kettle of fish. Yet it is clear from his opinion that the judge was revolted . . . by the notion that a murderer could inherit under the will of the man he had murdered; he was struggling to deny him if he could, even if he had to quote from the old cookbook.<sup>96</sup>

No longer should the judges of Virginia have to resort to a statute which does not totally reflect the public policy of the Commonwealth, namely, that no man shall profit by his wrongful act.

*Sandra Gross Schneider*

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95. 115 N.Y. 506, 22 N.E. 118 (1889). The court, in this case, found it necessary to read a judge-made exception into the Statute of Wills of New York to prevent a murderer from receiving benefits under his murdered uncle's will. Comment, *Decedent's Estates—Forfeitures of Property Rights by Slayers*, 12 WAKE FOREST L. REV. 448, 465 (1976).

96. R. TRAVER, *THE JEALOUS MISTRESS* 65 (1967).

APPENDIX  
PROPOSED STATUTE  
WILFUL AND UNLAWFUL KILLING OF DECEDENT

**SECTION 1. DEFINITION OF TERMS.** As used in this section:

(1) "Slayer" shall mean any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein.

**SECTION 2. SLAYER NOT TO ACQUIRE PROPERTY AS A RESULT OF SLAYING.** Neither the slayer nor any person claiming through him shall in any way acquire any property or receive any benefits as the result of the death of the decedent, but such property shall pass as provided in the sections following.

**SECTION 3. DESCENT, DISTRIBUTION, DOWER, CURTESY, AND STATUTORY RIGHTS AS SURVIVOR.** The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the estate of the decedent to the slayer under the statutes of descent and distribution or which would have been acquired by dower, by curtesy, or by statutory right as surviving spouse.

**SECTION 4. DEVISE OR LEGACY.** The slayer shall be deemed to have predeceased the decedent as to property which would have passed to the slayer by devise or legacy from the decedent, except that § 64.1-64, preventing lapse of devise or legacies when the person named in the will dies before the testator, shall not apply.

**SECTION 5. (ALTERNATIVE A) TENANCIES BY THE ENTIRETY.** One half of the property held by the slayer and the decedent shall pass upon the death of the decedent to his estate, and the other half shall be held by the slayer during his life subject to pass upon his death to the estate of the decedent.

**SECTION 5. (ALTERNATIVE B) TENANCIES BY THE ENTIRETY.** As to property held by the slayer and the decedent as tenants by the entirety, the resulting death of the decedent caused by the slayer thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the slayer has no rights of survivorship.

**SECTION 5. (ALTERNATIVE C) TENANCIES BY THE ENTIRETY.** As to property held by the slayer and the decedent as tenants by the entirety, the slayer shall be treated as having predeceased the decedent, and the entire property shall pass to the estate of the decedent.

**SECTION 6. (ALTERNATIVE A) JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGEES.**

(a) One half of any property held by the slayer and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(b) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one half of the property shall immediately pass to the estate of the decedent, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(c) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other.

**SECTION 6. (ALTERNATIVE B) JOINT TENANCIES, JOINT OWNERS, AND JOINT OBLIGEES.** As to property held by the slayer and the decedent as joint tenants, joint owners, or joint obligees, the slayer shall be treated as having predeceased the decedent, and the entire property shall pass to the estate of the decedent. As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, the entire property shall pass to the estate of the decedent.

**SECTION 7. REVERSIONS AND VESTED REMAINDERS.** Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of life expectancy of the decedent if he held the particular estate, or if the particular estate is held by a third person and measured by the life of the decedent, it shall remain in the possession of the third person during the period of the life expectancy of the decedent.

**SECTION 8. INTERESTS DEPENDENT ON SURVIVORSHIP OR CONTINUANCE OF LIFE.** Any interest in property, whether vested or not, held by the slayer subject to be divested, diminished in any way or extinguished if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately after the death of the slayer or the reaching of such age.

**SECTION 9. CONTINGENT REMAINDERS AND FUTURE INTERESTS.** As to any contingent remainder or executory or other future interest held by the slayer subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent;

(2) In any case, the interest shall not be vested or increased during the period of the life expectancy of the decedent.

**SECTION 10. POWERS OF APPOINTMENT.**

(a) As to any exercise in the will of the decedent of a power of appointment in favor of the slayer, the slayer shall be deemed to have predeceased the decedent and the appointment to have lapsed.

(b) Property held either presently or in remainder by the slayer subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent; and property so held by the slayer subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons shall pass to such person or persons or in equal shares to the members of such class of persons, exclusive of the slayer.

**SECTION 11. PROCEEDS OF INSURANCE AND BONA FIDE PAYMENT BY INSURANCE COMPANY OR OBLIGOR.**

(a) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance or bond or other contractual agreement on the life of the decedent or as the survivor of a joint life policy shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the slayer as alternative beneficiary to him.

(b) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as alternative beneficiary, or

unless the slayer, by naming a new beneficiary or by assigning the policy, performs an act which would have deprived the decedent of his interest in the policy if he had been living.

(c) No insurance company shall be subject to liability on any policy on the life of the decedent procured and maintained by the slayer or on which all the premiums were paid by him.

(d) Any insurer making payment according to the terms of its policy or contract or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this section if such payment or performance is made without notice of circumstances bringing it within the provisions of this section.

**SECTION 12. PERSONS ACQUIRING FROM SLAYER PROTECTED.** The provisions of this Chapter shall not affect the right of any person who, before the interests of the slayer have been adjudicated, acquires from the slayer for adequate consideration property or an interest therein which the slayer would have received except for the terms of this Chapter, provided the same is acquired without notice of circumstances tending to bring it within the provisions of this Chapter; but all consideration received by the slayer shall be held by him in trust for the persons entitled to the property under the provisions of this Chapter, and the slayer shall also be liable both for any portion of such consideration which he may have dissipated, and for any difference between the actual value of the property and the amount of such consideration.

**SECTION 13. RECORD DETERMINING SLAYER ADMISSIBLE IN EVIDENCE.** The record of the judicial proceeding in which the slayer was determined to be such, pursuant to Section 1 of this Chapter, shall be admissible in evidence for or against a claimant of property in any civil action arising under this Chapter. A conviction shall be conclusive evidence of the guilt of the alleged slayer.

**SECTION 14. BROAD CONSTRUCTION.** This Chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this Commonwealth that no person shall be allowed to profit by his own wrong, wherever committed.

**SECTION 15. UNIFORM SIMULTANEOUS DEATH ACT NOT APPLICABLE.** The Uniform Simultaneous Death Act, §§ 64.1-97 to 64.1-104, shall not apply to cases governed by this Chapter.

**SECTION 16. SEVERABILITY CLAUSE.** If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of

the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

