

#L-625

7/6/82

Fifth Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--  
Effect of Homicide §§ 113.010-113.070)

Attached are the provisions of the recommended legislation relating to the rights of a person who kills another to take from the person killed. The pertinent part of the preliminary portion of the tentative recommendation also is attached.

Respectfully submitted,

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Executive Secretary

## Effect of Homicide

California by statute disqualifies one who commits an intentional homicide from taking the victim's property by will or intestate succession.<sup>1</sup> By case law, California also disqualifies the killer from taking benefits from the victim through life insurance, joint tenancy, family allowance, and retirement and survivor benefits.<sup>2</sup> The proposed law deals comprehensively with these matters by disqualifying the killer from taking from the victim by will, intestate succession, joint tenancy, joint bank account, life insurance, bond, other contractual arrangement, or any other means.<sup>3</sup>

The proposed law makes three significant substantive changes in existing California law:

(1) The proposed law applies the civil burden of proof (preponderance of the evidence) in the civil proceeding to disqualify the killer, in place of the existing criminal burden of proof (beyond a reasonable doubt).<sup>4</sup> Different policies apply in civil and criminal proceedings; the extraordinary burden of proof attached to a criminal penalty is not appropriate where civil matters and the competing interests of heirs are concerned.

(2) Existing law gives conclusive effect in the civil proceeding to an acquittal of the killer in a prior criminal proceeding. The proposed law does not give such an acquittal any effect in a later civil proceeding. The acquittal establishes only that the extraordinary burden of proof beyond a reasonable doubt was not met; it does not establish a lack of evidence to satisfy the civil standard of proof.<sup>5</sup>

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1. Prob. Code § 258.

2. See French & Fletcher, A Comparison of the Uniform Probate Code and California Law With Respect to the Law of Wills, in Comparative Probate Law Studies 367 n.105 (1976).

3. These provisions are drawn in part from Uniform Probate Code § 2-803.

4. Estate of McGowan, 35 Cal. App.3d 611, 619, 111 Cal. Rptr. 39 (1973).

5. This is analogous to tax law, where a taxpayer acquitted of tax fraud in a criminal proceeding may be found to have committed fraud in a civil proceeding. See Comment to Uniform Probate Code (1977) § 2-803.

(3) Existing law disqualifies the killer from taking from one who is killed accidentally during the commission of specified felonies.<sup>6</sup> The proposed law disqualifies the killer only if the killing was intentional. The accidental killing aspect of existing rule is of extremely limited application<sup>7</sup> and does not promote the purpose of eliminating any financial incentive for the killing.

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6. The felonies are arson, rape, robbery, burglary, mayhem, or any act punishable under Section 288 of the Penal Code. These are the felonies included within the felony murder rule. See Penal Code § 189; 1 B. Witkin, California Crimes Crimes Against the Person § 311, at 283-84 (1963).

7. Wild, The Felonious Heir in California, 49 Cal. St. B.J. 528, 532 (1974).

CHAPTER 5. EFFECT OF HOMICIDE

§ 113.010. Wills and intestate succession

113.010. A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under the will of the decedent, including any general or special power of appointment conferred by the will on the killer and any nomination by the will of the killer as executor, trustee, or guardian.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent's quasi-community property the killer would otherwise acquire under Section 110.020 upon the death of the decedent.

(4) Any property of the decedent under Part 3 (commencing with Section 250.010) or Part 4 (commencing with Section 260.010) of Division 2.

(b) In the cases covered by subdivision (a):

(1) The estate of the decedent passes as if the killer had predeceased the decedent and Section 204.320 does not apply.

(2) Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent and Section 1389.4 of the Civil Code does not apply.

(3) Provisions of the will of the decedent nominating the killer as executor, trustee, or guardian shall be interpreted as if the killer had predeceased the decedent.

Comment. This chapter--Sections 113.010-113.070--supersedes former Section 258. This chapter is the same in substance as Section 2-803 of the Uniform Probate Code except that language is added to Section 113.010 so that the anti-lapse statutes will not substitute the killer's issue for the disqualified killer. This chapter makes three substantive changes in prior law:

(1) Under this chapter, the killer is disqualified from taking from the victim only if the killing is felonious and intentional. Under former Section 258, the killer was disqualified if the killing was accidental but was one within the felony murder rule.

(2) Under Section 113.050, the civil standard of proof (preponderance of the evidence) is used in the civil proceeding to disqualify the killer from taking from the victim. Under prior law, the criminal burden of proof (beyond a reasonable doubt) was used in the civil proceeding. Estate of McGowan, 35 Cal. App.3d 611, 619, 111 Cal. Rptr. 39 (1973).

(3) Under Section 113.050, an acquittal after a criminal trial has no effect in a subsequent civil proceeding. Under former Section 258, an acquittal was given conclusive effect in the later civil proceeding.

§ 113.020 Joint assets

113.020. A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This section applies to joint tenancies in real and personal property, joint and multiple-party accounts in financial institutions, and any other form of co-ownership with survivorship incidents.

Comment. See the Comment to Section 113.010.

38899

§ 113.030. Life insurance and beneficiary designations

113.030. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

Comment. Under Section 113.030, if the killer is treated as having predeceased the decedent for the purpose of life insurance or other contractual benefits, the killer's heirs are similarly disqualified. *Meyer v. Johnson*, 115 Cal. App. 646, 2 P.2d 456 (1931). See also *Estate of Jeffers*, \_\_\_ Cal. App.3d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1982) (killer may not designate alternate beneficiary of insurance proceeds). See also the Comment to Section 113.010.

39276

§ 113.040. Other cases

113.040. In any case not described in Section 113.010, 113.020, or 113.030 in which one person feloniously and intentionally kills another, any acquisition of property, interest, or benefit by the killer as a result of the killing of the decedent shall be treated in accordance with the principles of this chapter.

Comment. Section 113.040 makes clear that any other acquisition by the killer is treated in accordance with the principles of this chapter.

§ 113.050. Determination of whether killing was felonious and intentional

113.050. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this chapter. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this chapter.

Comment. See the Comment to Section 113.010.

90864

113.060. Good faith purchasers

113.060. This chapter does not affect the rights of any person who, before rights under this chapter have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this chapter, but the killer is liable for the amount of the proceeds or the value of the property.

Comment. See the Comment to Section 113.010.

90866

§ 113.070. Protection of obligors

113.070. An insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this chapter unless prior to payment it has received at its home office or principal address written notice of a claim under this chapter.

Comment. See the Comment to Section 113.010.