

Memorandum 88-23

Subject: Study L-950 - Effect of Homicide

In 1984, the Legislature, on Commission recommendation, enacted the substance of the Uniform Probate Code on effect of homicide in Sections 250 to 257 of the Probate Code. These sections are attached as Exhibit 1.

These sections prevent a person who has "feloniously and intentionally" killed the decedent from taking decedent's property, and provide a civil standard of proof (preponderance of evidence) on whether the killing was felonious and intentional. A criminal conviction of felonious and intentional killing conclusively establishes its felonious and intentional nature in the civil proceeding.

Attorney Daniel Crabtree of San Diego has written to suggest revisions in these provisions. A copy of his letter is attached as Exhibit 2.

Meaning of "Felonious and Intentional"

Mr. Crabtree is concerned that the words "felonious and intentional" are not defined in the statute, although he says it is generally accepted that first or second degree murder and voluntary manslaughter are felonious and intentional killings, while an accidental killing or involuntary manslaughter is not felonious and intentional.

The "felonious and intentional" language is from UPC Section 2-803. These words are not defined in the UPC. However, the UPC Comment to Section 2-803 is consistent with Mr. Crabtree's view: "The section is confined to intentional and felonious homicide and excludes the accidental manslaughter killing." The manslaughter cases are also consistent. E.g., *Davis v. Aetna Life Insurance Co.*, 279 F.2d 304, 309 (9th Cir. 1960); *Throop v. Western Indemnity Co.*, 49 Cal. App. 322, 193 P. 263 (1920).

In 1 Uniform Probate Code Practice Manual, at 76 (2d ed. 1977), it is said:

The Code requires a "felonious and intentional" killing (accidental manslaughter, for example, would not come within this concept and hence would not bar the killer from taking). If the killing were justifiable, it would, of course, not be felonious; nor would the killing fall within the Code provision if the killer were found to have been insane at the time of the killing.

Accord, *In re Estate of Brumage*, 460 So.2d 989 (Fla. App. 1984) (insanity as legal excuse).

A recent law review article discusses the juvenile killer:

The term "felonious" could be construed to mean only an act that constitutes a felony as defined by the state criminal statutes. Thus, a killing by a juvenile, for example, could not be felonious and the juvenile could not be precluded from inheriting. The courts have not construed the term felonious in this narrow way, but as synonymous with the term wrongful, that is, without legal excuse or justification. See, e.g., *In re Estates of Josephsons*, 297 N.W.2d 444, 448 (N.D. 1980)  
. . . .

Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 Iowa L. Rev. 489, 496 n.26 (1986).

It would be more consistent with the meaning of "felonious and intentional killing" as construed by cases to refer instead to "an intentional killing without legal excuse or justification." However, "felonious and intentional" is uniform language, enacted in many states and construed in many cases. For this reason, the staff is inclined not to revise these sections to depart from UPC language. However, we are drafting official comments for the new Probate Code. In writing new comments for Sections 250 to 257, we can cite the above authorities to make clear that "felonious" means without legal excuse or justification, and is not construed to permit a juvenile killer to inherit. Is this solution satisfactory to the Commission?

#### Effect of Criminal Conviction

Mr. Crabtree is concerned about the lack of parallelism between subdivisions (a) and (b) of Section 254: Subdivision (a) gives conclusive effect in the civil proceeding to disqualify the killer to a "final judgment of conviction" of felonious and intentional killing, while subdivision (b) authorizes the civil court to decide the issue by

a preponderance of evidence in the absence of "a conviction" of felonious and intentional killing. Mr. Crabtree is concerned that since the word "final" does not appear in subdivision (b), this may have the effect of depriving the civil court of jurisdiction to decide the civil issue while the criminal conviction is on appeal.

The staff does not read the statute this way. Statutes must be given a reasonable and common sense construction -- one that is practical rather than technical, and that will lead to a wise policy rather than mischief or absurdity. *People v. Aston*, 39 Cal. 3d 481, 492, 703 P.2d 111, 216 Cal. Rptr. 771 (1985). The conclusive effect of a criminal conviction under Section 254 is for the convenience of the court and litigants: It simplifies proof and avoids retrying an issue that was litigated and decided adversely to the killer under the stiffer standard of criminal proof. There is no policy reason why the power of the civil court to determine the issue should be suspended while a criminal appeal is pending.

Nonetheless, we could make this clear by amending subdivision (b) of Section 254 as follows: "In the absence of a final judgment of 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 part." Does the Commission want to do this?

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

## Part 7

## EFFECT OF HOMICIDE

**§ 250. Person feloniously and intentionally killing decedent; entitlement to decedent's property; effect on decedent's estate**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

(a) 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 of the killer as executor, trustee, or guardian made by the will.

(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 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(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 6147 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. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 250 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but, pursuant to §§ 241, 6414 of this Code, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of repealed provisions operative until Jan. 1, 1985, see Appendix A, post. For

provisions applicable to estates of decedents who died on or after Jan. 1, 1985, see, now, §§ 240, 6407.

**Cross References**

Homicide, see Penal Code § 187.

Murder, defined, see Penal Code § 187.

Voluntary manslaughter, defined, see Penal Code § 192.

Succession, generally, see § 6400 et seq.

**§ 251. Joint tenants; rights by survivorship**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

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 coownership with survivorship incidents. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 251 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but, pursuant to § 6414 of this Code, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of repealed provisions operative until Jan. 1, 1985, see Appendix A, post.

**§ 252. Named beneficiaries; felonious and intentional killing of decedent**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

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. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 252 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but, pursuant to § 6414 of this Code, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of repealed provisions operative until Jan. 1, 1985, see Appendix A, post.

**§ 253. Acquisition of property, interest, or benefit right by killer as result of killing**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

In any case not described in Section 250, 251, or 252 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 part. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 253 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but, pursuant to § 6414 of this Code, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of repealed provisions operative until Jan. 1, 1985, see Appendix A, post.

**§ 254. Judgment of conviction as conclusive; preponderance of evidence**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

(a) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this part.

(b) 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 part. The burden of proof is on the party seeking to establish that the killing was felonious and intentional for the purposes of this part. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 254 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but, pursuant to § 6414 of this Code, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of repealed provisions operative until Jan. 1, 1985, see Appendix A, post. For provisions applicable to estates of decedents who died on or after Jan. 1, 1985, see, now § 6406.

**§ 255. Persons purchasing property from killer; liability of killer**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

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

proceeds or the value of the property. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 255 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but, pursuant to § 6414 of this Code, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of repealed provisions operative until Jan. 1, 1985, see Appendix A, post. For provisions applicable to estates of decedents who died on or after Jan. 1, 1985, see, now, § 6408.

Original § 255 was repealed by Stats.1975, c. 1244, § 24.

**§ 256. Liability of insurance company, financial institution, or other obligor**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

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 part, unless prior to payment it has received at its home office or principal address written notice of a claim under this part. (Added by Stats.1984, c. 527, § 3.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 256 was repealed by Stats.1975, c. 1244, § 26. See, now, § 6408.

**§ 257. Application of part**

*Applicable to estates of decedents who died on or after Jan. 1, 1985.*

This part applies only where the decedent was killed on or after January 1, 1985; and the law applicable prior to January 1, 1985, continues to apply where the decedent was killed before January 1, 1985. (Added by Stats.1984, c. 892, § 16.5.)

*For provisions applicable to estates of decedents who died prior to Jan. 1, 1985, see Appendix A, post.*

Former § 257 was repealed by Stats.1983, c. 842, § 19, operative Jan. 1, 1985, but pursuant to § 6414, continues to apply to estates of decedents who died before Jan. 1, 1985. For text of the former section, operative until Jan. 1, 1985, see Appendix A, post. For provisions applicable to estates of decedents who died on or after Jan. 1, 1985, see, now, § 6408.

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August 4, 1987

Mr. John DeMouilly  
California Law Revision Commission  
4000 Middlefield Road, #D-2  
Palo Alto, CA 94303-4739

Re: Probate Code 250 et seq. - Effect of Homicide

Dear Mr. DeMouilly:

After having dealt extensively with Probate Code Sections 250 through 257 I would suggest there are some deficiencies specifically in Probate Code Section 254. That Section specifies that a final judgment of conviction is conclusive against the perpetrator of a homicide and that a determination in the absence of a conviction can be made by the Probate Court based on a preponderance of the evidence.

First I would suggest that no place in the Probate Code are the words felonious and intentional killing defined although it has been generally accepted that a conviction of first or second degree murder or voluntarily manslaughter is felonious and intentional while a killing that is accidental or involuntarily manslaughter is not felonious and intentional.

The second problem is that no place in the Probate Code are the words "final judgment of conviction" defined. Is a final judgment one that is entered in the Court records when sentencing occurs or is it one that occurs after all the entire appeal process is completed? I would suggest that final judgment of conviction should be defined as the time that judgment is entered and sentence is announced rather than after the entire appeals process because of the time delay involved in closing an estate. In addition, under Probate Code Section 254(b) the word "final" is conspicuously missing in the first clause that states "in the absence of a conviction of felonious and intentional killing". I would suggest that if the word final means through the entire appellate process the word final should also be included in part (b) so that the Probate Court in the absence of a final conviction of felonious and intentional

August 4, 1987

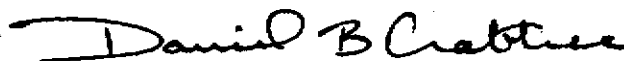
To: Mr. John DeMouilly

From: Daniel B. Crabtree

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killing may use a conviction by the jury to decide by a preponderance of the evidence that the killing was felonious and intentional. As it now stands, the Probate Court could conclude that a final judgment of conviction means the entire appellate process and since Probate Code Section 254(b) says only in the absence of a conviction that the interim between sentencing and the time that the complete appellate process runs, the Probate Court hands are tied and the Probate Court cannot render a decision under Probate Code 254(b). This appears to be an anomaly that should be rectified as soon as possible.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel B. Crabtree".

Daniel B. Crabtree

DBC/tlm