

Memorandum 88-63

Subject: Study L-950 - Effect of Homicide

At the last meeting, the Commission reviewed the rule disqualifying one who "feloniously and intentionally" kills from inheriting or otherwise taking the victim's property. Prob. Code §§ 250-254. Since the killing must be felonious and intentional, the statute does not disqualify the killer from inheriting in the case of accidental manslaughter (Comment to UPC § 2-803), justifiable homicide (1 Uniform Probate Code Practice Manual, at 76 (2d ed. 1977)), or if the killer is insane (*id.*; *In re Estate of Brumage*, 460 So.2d 989 (Fla. App. 1984)). The Commission thought these three exclusions from the statute are desirable ones, and did not want to disturb the law in these respects.

However, the Commission was concerned about a statement in a law review article that a killing by a juvenile "could not be felonious and the juvenile could not be precluded from inheriting." Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 Iowa L. Rev. 489, 496 n.26 (1986). The article went on to say that 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)." *Id.*

The Commission was concerned that the California statute might be construed to allow a juvenile killer to inherit, and asked the staff to draft language to preclude such a result. The staff has researched the law relating to criminal culpability of minors, and concludes that present law is satisfactory.

Criminal Culpability of Minors

In California, a minor over 14 may commit a felony. *Shortridge v. Municipal Court*, 151 Cal. App. 3d 611, 613, 198 Cal. Rptr. 749 (1984). If the minor is convicted of a crime punishable only as a felony, and not as an alternate felony-misdemeanor, commitment of the minor to the Youth Authority does not render the conviction a misdemeanor. *People*

v. Lewis, 74 Cal. App. 3d 633, 639 n.2, 141 Cal. Rptr. 614 (1977); 4 Ops. Atty. Gen. 25.

In California, first and second degree murder and nonvehicular manslaughter are punishable only as felonies, not as alternate felony-misdemeanors. Penal Code §§ 190, 190.1, 193; 1 B. Witkin, California Crimes *Crimes Against the Person* § 295(3), at 271 (1963). (In California, an accidental killing is excusable homicide, not manslaughter. Penal Code § 195; 1 B. Witkin, *supra* § 331(2), at 303.) So under Probate Code Sections 250-257, a minor over 14 who kills to get the victim's property is disqualified from inheriting or otherwise taking the property.

To convict a minor under 14, there must be clear proof that at the time of commission the minor knew its wrongfulness. Penal Code § 26. There is a rebuttable presumption that a minor under 14 does not know the wrongfulness of his or her acts, and is therefore incapable of committing a crime. *People v. Olsen*, 36 Cal. 3d 638, 647, 685 P.2d 52, 205 Cal. Rptr. 492 (1984). However, although knowledge of wrongfulness may not be inferred from mere commission of the act, it may be inferred from the circumstances, such as preparation, method of commission, or concealment. *In re Tony C.*, 21 Cal. 3d 888, 900, 697 P.2d 311, 212 Cal. Rptr. 570 (1978). Thus a civil court proceeding under Probate Code Sections 250-257 may find that a juvenile killer under 14 knew the wrongful nature of the killing, that the killing was therefore felonious, and disqualify the juvenile from inheriting or taking property from the victim.

The *Josephsons* case discussed in the law review article above is consistent with this conclusion. Unlike the article, the *Josephsons* case did not suggest that a killing by a juvenile could not be felonious. On the contrary, the case affirmed the judgment of the court below, which "determined by a preponderance of the evidence that Michael had feloniously and intentionally killed his parents" and barred him from inheriting from his parents. 297 N.W.2d at 446, 449, 450.

Technical Revision

Attached to this Memorandum is a technical revision to Probate Code Section 254 approved by the Commission at the last meeting. We

propose to include this revision in our 1989 probate cleanup bill. The proposed Comment to Section 254 includes language to make clear that a juvenile killer may be found to have feloniously and intentionally killed the decedent.

Respectfully submitted,

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Probate Code § 254 (technical amendment). Determination of whether killing was felonious and intentional

SEC. _____. Section 254 of the Probate Code is amended to read:

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

(b) 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. The burden of proof is on the party seeking to establish that the killing was felonious and intentional for the purposes of this part.

Comment. Section 254 is amended to add the words "a final judgment of" in subdivision (b). This makes clear that the civil court may determine the issue by the civil standard of proof during the pendency of an appeal from a criminal conviction of felonious and intentional killing.

Since the civil court may determine whether the killing was felonious and intentional notwithstanding the absence of a criminal conviction, a juvenile may be disqualified under this part from receiving property of the decedent. See *In re Estates of Josephsons*, 297 N.W.2d 444, 448 (N.D. 1980).