

Unjust Enrichment: Another Unfortunate Effect of Suicide in the United States?

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INTRODUCTION

In 2017, suicide was the tenth leading cause of death in the United States.¹ That same year, there were 1.4 million adults throughout the country who attempted suicide and 10.6 million adults who had serious thoughts about committing suicide.² As suicide continues to devastate millions of families across the nation each year, the focus must shift to ensuring that suicide is properly addressed under the laws of each state. One growing area of discussion focuses on how the law should respond when a person coerces another person into committing suicide. As shown by the involuntary manslaughter conviction that Michelle Carter received for inducing her boyfriend to commit suicide, behavior that constitutes causing the suicide of another person can subject a person to criminal liability.³ Generally, the law has been hesitant to subject a person to civil liability for causing another person's suicide in tort actions, as suicide is seen as an intervening cause that negates the liability of the defendant.⁴ However, in some jurisdictions, where the suicide was committed "in response to an uncontrollable impulse," the plaintiff may recover damages "if the mental state of the deceased was caused by the defendant's wrongful act."⁵ Left to determine is the impact that causing a decedent to commit suicide has on the disposition of the decedent's estate upon death. If a beneficiary of a decedent's estate is the one who caused the death of the decedent, should that beneficiary be allowed to profit from his or her actions?

In most jurisdictions, the slayer rule prevents anyone who causes the death of a decedent from inheriting from the decedent's estate, but the exact language of the statute or doctrine that creates this bar to succession may not explicitly address whether the rule applies where a person coerces the decedent into committing suicide. In a country where the suicide rate is over twice that of the homicide rate, the legal system must adapt to ensure that those who are causing these suicides are not profiting as a result.⁶ The most readily apparent remedies for a court to apply in

this scenario include: a) applying a constructive trust to ensure that the equitable claimant is the one who receives the decedent's property and b) preventing the transfer of property altogether under a slayer theory.

In an effort to ensure that the assets making up a decedent's estate are distributed in accordance with the decedent's wishes, the law seeks to honor what it presumes to be the intent of a typical decedent as to the distribution of property upon death. The intent of a typical decedent might be easy to establish in a situation where the decedent is murdered by an heir or devisee, but it is more difficult to establish where the decedent is coerced into committing suicide by an heir or devisee. The person who caused the decedent's suicide might be the decedent's close friend or confidant. Concerns arise regarding the decedent's presumed intent when the property of a decedent is transferred to a person who coerced the decedent into committing suicide.

I. UNJUST ENRICHMENT

Unjust enrichment occurs when a party wrongfully secures or passively receives a benefit that would be unconscionable for that party to retain.⁷ The intention of the parties is not relevant, as the focus is on whether the enrichment would result in injustice if recovery is denied.⁸ In order to warrant remedial action by the courts in this context, the act of coercing or causing another person to commit suicide must be established as wrongful. This may be accomplished by establishing that a person breached a duty that they owed to a decedent resulting in the death of the decedent. This may also be accomplished by establishing that the person caused the death of the decedent and, as a result, is barred by the slayer rule from inheriting from the decedent's estate.

A. Breach of Duty

One way of establishing that a person has been unjustly enriched is by establishing that the person obtained a benefit in breach of a duty.⁹ The Restatement provides: “A person who obtains a benefit: a) in breach of a fiduciary duty, b) in breach of an equivalent duty imposed by a relation of trust and confidence, or c) in consequence of another’s breach of such a duty, is liable in restitution to the person to whom the duty is owed.”¹⁰ If a benefit is obtained in breach of a duty, remedial action is warranted to prevent unjust enrichment.

The existence of a special relationship may impose a duty “to aid or protect another person, even when one has not acted to cause that person’s plight.”¹¹ Whether a special relationship exists is decided on a case-by-case basis, however courts have recognized a few occasions that typically give rise to special relationships including innkeeper-guest, therapist-patient, and other relationships with an element of dependence.¹² The policy rationale that supports the creation of a special relationship is the existence of an element of dependence of one person on another, thus a special relationship can also be formed when someone, having no duty to do so, takes charge of a helpless person for the purpose of rendering aid.¹³

Even in the absence of a special relationship, courts have been known to hold people liable for the wanton and reckless conduct that results in the death of another person, even when the cause of death is suicide. Such an outcome was seen following the suicide of Conrad Roy, a depressed eighteen-year-old who was coerced into taking his own life by his then girlfriend, Michelle Carter.¹⁴ When Michelle first met Conrad, he was extremely depressed and contemplating suicide, having already attempted suicide several times before.¹⁵ Carter initially urged him to seek professional help for his mental illness, and even suggested that the two seek treatment together, as she herself was suffering from an eating disorder.¹⁶ When Conrad ultimately

declined to seek help in any form, Carter began helping him research for effective ways to commit suicide.¹⁷ Carter continuously downplayed all the concerns that Conrad had regarding killing himself.¹⁸ She actively coerced Roy to follow through with killing himself and even helped him come up with a plan.¹⁹ Carter berated Conrad for his delay and indecision about committing suicide in text messages that she sent to him on multiple occasions leading up to his suicide.²⁰ After promising Carter that he would commit suicide, Conrad Roy gave in to the demands of his girlfriend and ended his life.²¹ Carter was charged with involuntary manslaughter for her role in Roy's suicide.²² The court reasoned that Carter's coercion, at a time when Roy was in a compromised mental state, amounted to wanton and reckless conduct.²³ Specifically, the court held that when Carter urged Roy to get back into a truck that she knew contained toxic amounts of carbon monoxide, her conduct became the but-for cause of his death, and due to his weakened mental state, his decision to comply with her request was not an intervening cause.²⁴ Avoiding the discussion of the existence of a special relationship, the court held that a duty was imposed upon Carter, as a result of her conduct in convincing Roy to get back into the truck and then failing to come to his aid.²⁵ This leaves open the possibility that she may have avoided liability, had she later attempted to rescue Conrad from the situation that she helped contrive.²⁶

The duty that Carter had created for herself is similar to the creation of a special relationship, and thus, similar to a duty that may arise in the context of marital or other intimate relationship. Michelle Carter's conduct in causing a vulnerable person with mental illness to commit suicide, with knowledge that her actions would likely result in death or serious bodily harm, created a duty, and her failure to come to his aid afterwards was a breach of that duty²⁷. Carter's coercive conduct unfolded over the course of a few weeks, which leaves the question of how long this conduct must occur before a duty will be established unanswered.

B. Slayer Rule

The applicability of any given jurisdiction's slayer rule depends on the language used in the slayer statute, if one exists, and the interpretation of the rule that has been created by the courts. The model language used in both the Uniform Probate Code and the Restatement require a felonious and intentional killing for the slayer rule to have effect.^{28,29} While the Uniform Probate Code provides for a bar to succession to apply in the event of a felonious and intentional killing of a decedent, it also provides that the rule applies to killings that may fall outside the definition of the rule, where the killing violates the policy rationale that the rule is in place to support.³⁰ Specifically, the Uniform Probate Code includes a broad provision that is intended to prohibit any "wrongful acquisition of property or interest by a killer not covered by this section" that would violate the underlying principle that a killer should not be able to profit from his or her wrongful act.³¹ Due to the principle underlying the slayer rule, the act of causing a person to commit suicide must first be established as a wrongful act.

The Model Penal Code provides that the act of causing another person to commit suicide is felonious, if the person caused the suicide by force, duress, or deception or if the person aided or solicited another person to commit suicide.³² For purposes of the slayer statute, multiple courts have held that when determining whether the killing was intentional, the court must not consider criminal intent, but must rather consider civil intent.³³ Civil intent requires only that a person's actions were intended, not that the person had knowledge that the actions were wrongful.³⁴ The Restatement provides that a criminal conviction for the felonious and intentional killing of a decedent can be used as conclusive proof in a civil proceeding to establish a beneficiary of the decedent's estate as a slayer.³⁵ Absent a criminal conviction, the showing that a person feloniously and intentionally killed the decedent can be made in civil court by a preponderance of the

evidence.³⁶ As the act of causing another person to commit suicide is addressed under a variety of legal theories across the country, the language used by each state's slayer statute determines how effectively the judiciary can respond to prevent unjust enrichment.

As shown by Michelle Carter's involuntary manslaughter conviction, coercing another person into committing suicide can subject a person to criminal liability.³⁷ The court based Carter's conviction on the fact that she knew her conduct would likely result in death or serious bodily harm.³⁸ Additionally, Carter had imposed a duty to act upon herself as a result of her initial coercion, which overpowered the free will of a vulnerable and depressed Conrad Roy and caused him to get back into a vehicle that was filled with poisonous concentrations of carbon monoxide.³⁹

In *Persampieri v. Commonwealth*, Persampieri was convicted of Manslaughter for aiding and abetting the suicide of his wife.⁴⁰ After consuming some alcohol, Persampieri informed his wife that he wanted a divorce, after which, his wife indicated that she wanted to commit suicide.⁴¹ Persampieri commented on the fact that she had unsuccessfully attempted suicide twice before and began to taunt her.⁴² His wife complied with his instructions to get a rifle from the kitchen, and when she asked for help upon not being able to figure out how to properly load the rifle, he loaded it for her.⁴³ Persampieri continued to help his wife adjust the rifle to a position where she could discharge the firearm with her toe while aiming the barrel at herself.⁴⁴ Even in such a dangerous situation, Persampieri continued to berate and taunt his wife until she ultimately shot herself.⁴⁵ The court addressed Persampieri's criminal liability by suggesting that he was an accessory before the fact as a result of aiding his wife to commit suicide.⁴⁶ The court concluded that the Persampieri showed a reckless disregard for his wife's safety, consistent with the charge of manslaughter he received.⁴⁷ The court held the defendant was liable for aiding in the commission of a felony as an accessory to the murder of his wife's self.⁴⁸ Criminalizing suicide raises concerns about the

potential liability for those who unsuccessfully attempt suicide; would these people then be exposed to criminal liability for attempting to murder themselves?

In *Persampieri*, the court noted that a person who urges his or her spouse to commit suicide could be subject to criminal liability as an accessory before the fact when that person has knowledge that his or her spouse is suicidal.⁴⁹ While definitions vary between jurisdictions, an accessory before the fact is a person “who, being absent at the time and place of the crime, procures, counsels, commands, incites, assists or abets another person to commit the crime.”⁵⁰ Regardless of the particular language used by each jurisdiction, the law typically provides that an accessory before the fact shall be punished “as if he or she were the principal in the first degree.”⁵¹

When someone attempts to hire a person to kill his or her spouse, it is common for that person to be charged under a theory of accessory before the fact. In *Ashcraft v. State of Tennessee*, a husband who hired someone to kill his wife was charged in the same manner as the murderer himself because he was an accessory before the fact.⁵² As the majority of jurisdictions require a felonious and intentional killing for the slayer statute to apply, some homicide convictions will not automatically trigger application of the slayer statute.⁵³ Being that an accessory will be charged “as if he or she were the principal in [the] first degree,” in jurisdictions where suicide remains criminalized, a person could be charged for feloniously and intentionally killing another person when they coerce that person into committing suicide.⁵⁴ If a person that is in a special relationship with a decedent were to coerce the decedent into committing suicide, knowing that the decedent is in a vulnerable mental state, that person would have ultimately counseled, commanded, incited, and assisted the decedent in the act of suicide. However, with suicide no longer being criminalized in most jurisdictions, a problem exists as to finding criminal liability under an accessory theory for

the act of causing another person to commit suicide. The *Persampieri* court did not address this issue, and instead referred to suicide as a murder of one's self.⁵⁵

Modern statutes have begun to codify this issue by making it illegal to aid another person in the commission of his or her own suicide. The Model Penal Code contemplates such an occurrence and states that a "person may be convicted of criminal homicide for causing another to commit suicide."⁵⁶ Accordingly, decriminalizing suicide and criminalizing this type of conduct instead has provided another way of holding someone accountable for causing a person to commit suicide. While the Model Penal Code establishes this conduct as felonious, the requirement of many state's slayer statutes is that the killing be both intentional and felonious.⁵⁷

In *Carter*, the court held that Carter's actions "constituted, each and all, wanton and reckless conduct" that caused Conrad's death, while also showing a disregard for his wellbeing.⁵⁸ Even though the court did not have an applicable manslaughter statute that addressed this type of conduct, Carter was nonetheless found guilty of the common law crime of involuntary manslaughter and sentenced to fifteen months in prison, of which she served eleven.⁵⁹ Furthermore, the court held that involuntary manslaughter is an unintentionally caused, unlawful homicide.⁶⁰

Causing another person to commit suicide demonstrates an extreme disregard for human life, and as the *Carter* court notes, coercing a mentally ill or otherwise vulnerable person into committing suicide, and then failing to come to that person's aid with the knowledge that death or serious bodily harm is likely to occur, constitutes reckless conduct.⁶¹ As establishing this type of conduct as second-degree murder or manslaughter can be difficult when the victim is the one who performed the act that resulted in death, it is important that the law expressly provide that the act

of causing another person to commit suicide is wrongful. Once this type of conduct is established as wrongful, the judiciary can more readily respond to prevent unjust enrichment.

II. POTENTIAL REMEDIES

The appropriate remedy for a court to apply in this type of situation will need to be flexible enough to allow for a case-by-case analysis, as the facts and circumstances surrounding the suicide of the decedent need to be closely examined to ensure that the law reaches a just outcome. Notably, the idea behind having a slayer statute comes from the idea that society is not okay with a person profiting from his or her wrongful act, especially when that act causes the death of another person. To that end, traditional laws have prohibited the distribution of property to a beneficiary who is found to have feloniously and intentionally killed the decedent. However, with the sheer amount of suicides that occur every year, it is important to strengthen the civil protections that are afforded to people who are in a vulnerable state, in an effort to dissuade future conduct of a similar nature where the motivation is the accelerated receipt of the decedent's property upon death.

Absent legislative guidance to the contrary, courts could take a hands-off approach and allow the property from the decedent's estate to go to the person who coerced the decedent into committing suicide. While this approach avoids potentially exceeding the bounds of judicial authority, as to not write law from the bench, the strict application of the requirement that the person feloniously and intentionally killed the decedent may result in unjust enrichment in some situations. As the affirmative act of intentionally causing another person to commit suicide is wrongful, the *Carter* court extended the language of the common law doctrine of "involuntary manslaughter" to achieve what the court believed to be an equitable result.⁶² Where a person coerced a decedent into committing suicide, it would be unjust to allow that person to inherit from the estate of the decedent.

A. Constructive Trust

Where there is no specific statutory provision that addresses the effect that causing a decedent to commit suicide has on the distribution of the property, courts could apply common law principles or other equitable remedies to prevent unjust enrichment. Whenever title to property is obtained through circumstances which render it unconscionable for the recipient to retain the beneficial interest, equity imposes a constructive trust on the property.⁶³ Upon a finding that a person has been unjustly enriched, that person may be declared the constructive trustee of the property for the benefit of the rightful claimant.⁶⁴ Before the slayer statutes were enacted by the states, constructive trusts were imposed to prevent a slayer from profiting from his or her wrongdoing.⁶⁵ Where statutory regimes fail to prevent this type of unjust enrichment, courts can rely on the equitable remedy of imposing a constructive trust on the property. As contemplated by the Restatement, where there is no statutory framework, courts will have to determine who the most equitable recipient of the property is, after the constructive trust has been imposed.⁶⁶ If the property in question has no alternative beneficiary designation in lieu of the constructive trustee, the property will “pass to the person who succeeds to legal ownership on elimination of the [constructive trustee’s] interest.”⁶⁷ This person, so identified, will be the restitution claimant.⁶⁸

Indiana law mandates a constructive trust as the remedy to impose when necessary to prevent unjust enrichment in a situation where one has been found guilty of causing the death of the decedent, but the law has limited applicability, absent a criminal conviction.⁶⁹ The law provides that:

A person is a constructive trustee of any property that is acquired by the person or that the person is otherwise entitled to receive as a result of an individual’s death, including property from a trust, if that person has been found guilty, or guilty but

mentally ill, of murder, causing suicide, or voluntary manslaughter, because of the individual's death.⁷⁰

While this language explicitly includes “causing suicide” as a triggering factor of a statutory bar to succession, the applicability of this rule absent a criminal conviction is somewhat limited. The statute provides that a civil proceeding may be initiated to have a person declared a constructive trustee, but only if the person has been charged with causing suicide because of the decedent's death *and* has been found not responsible by reason of insanity.⁷¹ The cause of action that is provided for by the legislature in Indiana is a narrow step towards equitably applying the slayer rule to prevent those who may have been found not guilty under a criminal standard, but nonetheless would be unjustly enriched upon receipt of the property, due to his or her involvement in the death of the decedent. However, this language would not allow a civil proceeding to be initiated to declare a person who caused another to commit suicide as the constructive trustee, absent a criminal conviction or a finding of not guilty by reason of insanity, which opens up the door to potential unjust enrichment. In *Turner v. Estate of Turner*, a son who killed both of his parents was allowed to receive their property after the court denied imposing a constructive trust.⁷² The court held that the son committed no legal wrong because he lacked wrongful intent as a result of his acquittal by reason of insanity.⁷³ Following this case, the Indiana legislature amended the slayer statute to provide that a person may be declared a constructive trustee of a decedent's property when that person was charged with causing the death of the decedent but was found not guilty by reason of insanity.^{74,75}

In Indiana, this remedy would apply to prevent unjust enrichment by imposing a constructive trust upon property that would otherwise go outright to the recipient when that recipient is criminally convicted of causing the decedent to commit suicide. The law states that “a

person who intentionally causes another human being, by force, duress, or deception, to commit suicide commits causing suicide, a Level 3 felony.”⁷⁶ The statutory framework in Indiana does not allow a civil proceeding to be initiated to declare a person the constructive trustee of the decedent’s property, in lieu of a finding of not guilty by reason of insanity. However, the state does explicitly address this type of conduct by criminalizing the act of intentionally causing another person to commit suicide, whereas other jurisdictions address this type of conduct by more expansively interpreting the language of other homicide theories.

When a defendant has been unjustly enriched by acquiring title to identifiable property at the expense of a claimant, the court may impose a constructive trust and require the trustee-defendant to hold the property for the benefit of the claimant.⁷⁷ As the constructive trust is a remedy and not a cause of action, the plaintiff-claimant must still establish that the identifiable property was “acquired in a transaction that makes the defendant liable in restitution.”⁷⁸ In Vermont for example, the probate court is without jurisdiction to impose a constructive trust; therefore, someone with an interest in the property of the estate must make an equitable claim to invoke the jurisdiction of the court of chancery before the person responsible for the decedent’s death may be declared a constructive trustee.⁷⁹ The constructive trust remedy does not prevent the transfer of legal title from the decedent to the constructive trustee, but rather compels the constructive trustee to convey the property to the rightful claimant.⁸⁰ This remedy “avoids a judicial engrafting on the statutory laws of descent and distribution,” as judicial decisions that create an outright bar to the transfer of legal title in these situations have been criticized as “unwarranted judicial legislation.”⁸¹

B. Slayer Statute

A “slayer statute” is a statute that prevents someone who caused the death of a decedent from inheriting from that decedent’s estate.⁸² While slayer statutes differ across jurisdictions, a

typical provision causes the slayer to forfeit any gift or devise by a governing instrument, power of appointment, and any fiduciary or personal representative appointment, as well as any intestate share of the decedent's estate.⁸³ Fundamental to the slayer rule is the principle that a killer cannot profit from the wrong that he or she has committed.⁸⁴ The slayer rule helps to promote fairness in the division of property upon death, prevent unjust enrichment, and deter those who wish to expedite their inheritance by committing wrongful acts.

While the slayer rules across different jurisdictions go towards the same goal of preventing killers from profiting from their heinous acts, the language used in each jurisdiction can impact the scope and applicability of the slayer rule altogether. The Restatement provides that “a slayer is a person who kills another, or who participates in killing another, by an act that is felonious, intentional, and without legal excuse or justification.”⁸⁵ The Uniform Probate Code's model slayer rule prevents “an individual who feloniously and intentionally kills the decedent” from receiving benefits from the decedent's estate.⁸⁶ This model rule provides that a “conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's [slayer].”⁸⁷ Without a conviction, the court may determine that an individual is a slayer by a preponderance of the evidence if “the individual would be found criminally accountable for the felonious and intentional killing of the decedent.”⁸⁸ Although the language of the Uniform Probate Code defines a slayer as a person who kills the decedent, a comment to the section explains that the phrase “criminal accountability” includes “not only criminal accountability as an actor or direct perpetrator, but also as an accomplice or co-conspirator.”⁸⁹

Minnesota uses language similar to that of the Restatement in the state's codification of the slayer rule by providing that a “surviving spouse, heir or devisee who feloniously and intentionally

kills the decedent is not entitled to any benefits under the will or under this article... and the estate of decedent passes as if the killer had predeceased the decedent.”⁹⁰ Either a conviction or a determination by a preponderance of the evidence that the killing was felonious and intentional will trigger the bar to succession under the slayer statute.⁹¹

The slayer statute in Arizona defines a slayer as “a person who feloniously and intentionally kills the decedent.”⁹² Using similar language to the model rules, Arizona provides that a conviction for the felonious and intentional killing of the decedent conclusively establishes the guilty party as the slayer, but the court may still establish a person as a slayer by establishing that the person would be criminally accountable for the felonious and intentional killing of the decedent by a preponderance of the evidence.⁹³ The statute goes on to define “felonious and intentional” as meaning “a conviction or a finding of guilty” for first degree murder, second degree murder, or manslaughter under Arizona law.⁹⁴ Once it is determined that a person has feloniously and intentionally killed the decedent, the property passes as if the killer disclaimed his or her share.⁹⁵ Over the years, Arizona has grappled with the task of determining what “felonious and intentional” means. In 1984, a woman fatally shot her husband and was found guilty of manslaughter.⁹⁶ In a proceeding dealing with the disposition of the husband’s estate, the court ultimately decided that Arizona’s slayer statute required that the killing of the decedent be intentional and remanded for consideration on that issue because the criminal conviction that the woman received only required a showing of recklessness.⁹⁷ As triggering the slayer rule’s applicability in Arizona required a showing of a felonious and intentional killing at the time, a criminal conviction for reckless conduct resulting in death did not satisfy the requirements of the rule.⁹⁸ In 2012, Arizona passed an amendment to the slayer statute in response to the narrow definition created by the courts.⁹⁹ The amended language provides that “individuals convicted of

first-degree murder, second-degree murder, or manslaughter” are “slayers for purposes of legal disinheritance.”¹⁰⁰

California’s slayer statute, similar to Arizona’s, also requires that a person feloniously and intentionally kill a decedent before the statute will apply to prevent them from inheriting from the decedent’s estate, and the statute provides that any person who qualifies as a slayer is deemed to have predeceased the decedent for purposes of inheritance.¹⁰¹ Furthermore, while a criminal conviction for a felonious and intentional killing will conclusively establish a person as a slayer, the court may declare a person a slayer, if they find that person to have feloniously and intentionally killed the decedent by a preponderance of evidence.¹⁰²

The slayer statute in Wisconsin provides that a beneficiary who unlawfully and intentionally kills a decedent cannot inherit from the decedent’s estate.¹⁰³ The statute states that “a wrongful acquisition of property by a killer not covered by this section shall be treated in accordance with the principle that a killer cannot profit from his or her wrongdoing.”¹⁰⁴ In Wisconsin, the slayer statute states that the rule does not apply when the decedent expressly provides in his or her will that the rule should not apply.¹⁰⁵ The statute also states that the rule does not apply when “the court finds that, under the factual situation created by the killing, the decedent’s wishes would best be carried out by means of another disposition of the property.”¹⁰⁶

The application of Wisconsin’s slayer statute as it relates to the act of assisting another person in committing suicide was brought to the test following the death of Edward Schunk, a terminally ill man with non-Hodgkin’s lymphoma.¹⁰⁷ Edward Schunk lived with his wife, Linda, and their daughter, Megan, and he had six other children who had no relation to Linda. Leading up to his death, Edward Schunk was hospitalized, but ended up receiving a pass to go home and

see his dogs one last time.¹⁰⁸ Instead of returning to the hospital following his visit home, Schunk made it to his cabin, where he died of a self-inflicted gunshot wound.¹⁰⁹ Five of Schunk's six other children objected to Linda and Megan inheriting from the estate, as they allege the two assisted in their father's suicide.¹¹⁰ The Wisconsin Court of Appeals held that the slayer rule did not apply to the act of assisting another in committing suicide, as the rule requires that the killing be unlawful and intentional.¹¹¹ The court noted that a testator can provide in his or her will that the slayer rule should not apply as to the disposition of his or her property.¹¹² This helps prevent the law from frustrating the intent of a testator who may not want the slayer rule to bar the transfer of property to a person who caused his or her death, which the court noted may be true in cases of mercy killings or voluntary euthanasia where the decedent is suffering and terminally ill.

Prior to 1983, the slayer statute in Illinois provided that any person who was "convicted" of murder shall not inherit from the estate of the murdered person.¹¹³ In 1983, the statute was amended to prevent a person who "intentionally and unjustifiably causes the death of another" from inheriting from the estate of the decedent.¹¹⁴ The 7th Circuit reasoned that when analyzing intent for purposes of the slayer statute, criminal intent is irrelevant.¹¹⁵ Rather, the court focuses on civil intent which requires only "a showing that a person intended his or her actions; there is no requirement that the person have knowledge that his or her actions were wrongful."¹¹⁶ The killing must also be unjustifiable in order for the amended slayer statute to have effect.¹¹⁷ Therefore, a self-defense argument could provide the justification necessary to overcome the language of the statute, but an excuse defense, like insanity, could not.¹¹⁸ This language is significantly more expansive than that of the Restatement.

Other states, such as Florida, have likewise included language in their slayer statutes that is significantly more expansive than the language used in the Restatement. In Florida, "a surviving

person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent.”¹¹⁹

The slayer statute that has been adopted in Alaska omits the intentionality requirement that is included in the Restatement and the Uniform Probate Code and instead prevents anyone who feloniously kills a decedent from receiving any property from the decedent’s estate.¹²⁰ Similar to other jurisdictions, Alaska allows an interested party to petition the court to determine whether a person would be found criminally accountable for the death of the decedent by the preponderance of the evidence.¹²¹ However, the statute creates an exception to the rule that allows a court to set aside the application of the statute in the case of an unintentional felonious killing, if the court finds that applying the rule would result in a manifest injustice.¹²² In application, Alaska’s slayer statute “has a much broader reach” than the majority of jurisdictions, as the language of the slayer statute applies not only to intentional homicides but to all types of unjustified homicides.¹²³ This creates the issue, in Alaska, of establishing that the act of causing another person to commit suicide violates one of Alaska’s unjustified killing laws. As intentionally aiding another person to commit suicide rises to the level of manslaughter in Alaska, there is potential for Alaska’s slayer statute to be applied to prevent this type of unjust enrichment.¹²⁴ Accordingly, a court in Alaska would have a more direct path than courts in other states for preventing the distribution of property to a person that has betrayed the trust of a vulnerable individual by coercing them into taking their own life.

Alaska is not alone in omitting the requirement for an intentional homicide to trigger the application of the slayer rule; Colorado, the District of Columbia, Indiana, Oklahoma, Kansas, Kentucky, West Virginia, and Wyoming all have slayer statutes which allow for those who have committed unintentional homicides to be classified as a slayer for purposes of the statute.¹²⁵ With

the act of causing another person to commit suicide being addressed under unintentional homicide theories in many parts of the country, a slayer statute that does not limit its application to only intentional homicides is required to prevent this type of unjust enrichment. However, without proper legislative action, discerning between intentional and unintentional homicides for purposes of the slayer rule will be just one concern out of many when analyzing whether unjust enrichment will occur if someone inherits from the estate of a person that he or she caused to commit suicide.

III. SPECIAL CONCERNS

There are additional concerns that must be addressed when determining whether remedial action can be taken to prevent someone from inheriting property as a result of causing another person to commit suicide. To start, concerns with the Employee Retirement Income Security Act (ERISA) arise any time the circumstances involve a married couple with a qualified retirement plan. Additionally, care must be exercised in any situation where a person uses speech to carry out a criminal act, as to not violate the fundamental protections of the freedom of speech. At this stage, it is important to keep in mind that a paramount interest of the law surrounding the division of property upon death is honoring what the law presumes to be the intent of a typical decedent.¹²⁶

A. ERISA

To comply with federal law, courts applying remedies to prevent this type of unjust enrichment should exercise an abundance of caution in the marital context. The Employee Retirement Income Security Act (ERISA) is a law that was put in place to impose standards of conduct on retirement plan managers to ensure that plan participants received their benefits.¹²⁷ Under ERISA, retirement plan administrators are required to distribute benefits to the spouse of the plan holder, which is a provision that may preempt any conflicting state law.¹²⁸ In *Laborers' Pension Fund v. Miscevic*, the 7th Circuit was the first Federal Court of Appeals to answer the

question of whether ERISA preempts state slayer statutes.¹²⁹ The court held that to demonstrate preemption, a party bears a “considerable burden” and must overcome the presumption that Congress did not intent to supplant a “traditional area of state regulation.”¹³⁰ The Supreme Court gave further guidance on the issue of slayer statutes and preemption by holding that “the principle underlying” the slayer rule is well established and long predates the Employee Retirement Income Security Act.¹³¹ The principle underlying the slayer rule’s expansion into the context of causing the suicide of another is the same as the principle underlying the slayer rule: to prevent a person from benefitting as a result of his or her wrongful act. Therefore, the argument should follow that the extension of the slayer rule into the context of causing another’s suicide is not preempted by ERISA, as the principle is well established and long predates ERISA. Whether the courts could apply equitable remedies or statutory bars to prevent the transfer of property from a suicide victim to a spouse that coaxed them into committing suicide, while still complying with the requirements of the Employee Retirement Income Security Act is a legal question that has no definite answer.

B. Free Speech

In the *Carter* case, concerns of a First Amendment violation resulting from holding someone liable for his or her speech were voiced early on, and the American Civil Liberties Union (ACLU) was quick to criticize the *Carter* opinion, noting that holding someone accountable for his or her speech may have adverse consequences.¹³² However, following the example of many courts before it, the *Carter* court noted that the First Amendment does not protect criminal speech:

“From 1791 to the present... the First Amendment has permitted restrictions upon the content of free speech in a few limited areas ... which have never been thought to raise any constitutional problems, including speech integral to criminal conduct ... There is nothing in the prosecution or conviction of the defendant in the instant

case, or the prior involuntary manslaughter cases in the Commonwealth involving verbal criminal conduct, to suggest that the First Amendment has been violated in any way. The only verbal conduct punished as involuntary manslaughter has been the wanton or reckless pressuring of a vulnerable person to commit suicide, overpowering that person's will to live and resulting in that person's death."¹³³

In *Carter*, the court held that it was the course of conduct that Michelle Carter took that resulted in her conviction, as opposed to merely her speech.¹³⁴ The First Amendment does not allow Carter to "escape liability just because she used her words to carry out her illegal act."¹³⁵ Where the freedom of speech argument fails to shield a person from criminal liability for causing another person to commit suicide, it will also likely fail as an argument to prevent the court from taking remedial action in civil matters to prevent unjust enrichment. Michelle Carter's verbal conduct was held to overwhelm the willpower of a depressed, eighteen-year-old Conrad Roy, and her speech was held to be the but-for cause of his suicide, as he would not have gotten back into the truck without her verbal instructions.¹³⁶ This type of speech would not be protected under the First Amendment because the government has a "compelling interest in deterring speech that has a direct, causal link to a specific victim's suicide."¹³⁷

CONCLUSION

As 47,000 American adults committed suicide in 2017 alone, it is worthwhile to amend the laws that govern succession of property across the country to close any existing loopholes that may facilitate a transfer of property from a decedent to the person that caused them to commit suicide.¹³⁸ While slayer statutes have been put in place in 47 states to prevent the inequitable transfers of property to people who directly and unjustifiably cause the death of a decedent, the law may be

ineffective to prevent against unjust enrichment if the definition of a slayer does not include a person who caused the decedent to commit suicide.¹³⁹ Absent an express statutory provision that prevents this type of unjust enrichment, the court should impose a constructive trust when necessary to ensure that a person does not inherit from the estate of a decedent, when they caused the decedent to commit suicide.

As a court would apply this remedy only after an equitable claim has been made by a person with an interest in the decedent's estate, the court would not be exceeding the bounds of its judicial authority by creating a slayer rule as a matter of law. While imposing a constructive trust will reach an equitable outcome, it requires the existence of a valid claim, such as one arising from the breach of a duty. This duty can come about either due to the existence of a special relationship or due to a person's conduct. Therefore, this method is unable to be utilized effectively to prevent unjust enrichment where no cause of action exists, as establishing a valid claim is required before the court can impose the constructive trust. Whereas the slayer statute is an outright bar to the transfer of property to prevent unjust enrichment, the constructive trust is a remedy that can only be applied once the court has a valid claim in front of it.

In order to prevent unjust enrichment, the slayer statute of each state should: a) provide a more expansive definition of a "slayer" that expressly includes a person who causes another person to commit suicide, b) allow for any person with an interest in the decedent's estate to petition the court to have someone declared a slayer if they would be found criminally accountable for the felonious homicide of the decedent by a preponderance of the evidence, c) provide that the court may set aside application of the slayer rule, when applying the slayer rule would result in a manifest injustice, and d) provide that anyone who is declared a slayer is treated as if they disclaimed the share that they otherwise would have received from the decedent's estate. While the current law

in Alaska comes remarkably close to containing all four of these components, the statute does not contain an express provision extending the definition of a “slayer” to include a person who causes or coerces the decedent to commit suicide.¹⁴⁰

One of the most important things to consider when drafting laws governing the succession of property is honoring the presumed intent of the typical decedent. Intent can be hard to determine in these cases, as many people who commit suicide have underlying mental health conditions. The intent of a typical decedent becomes even more difficult to determine when the decedent is coerced into committing suicide by someone who may be a close friend or confidant. The difficulty in determining what a typical decedent would intend under these circumstances increases along with the complexity of the relationship between the decedent and the person who caused them to commit suicide. For instance, in a more traditional slayer case, when a death occurs out of mercy, or as a result of voluntary euthanasia, it may frustrate the intent of the decedent to prohibit the person that ended the decedent’s suffering from benefiting from the estate.

While allowing a testator to opt out of applying the slayer rule by expressly providing so in his or her will is a way to ensure that the testator’s intent is not frustrated, a provision allowing the court to set aside application of the rule when applying the rule results in a manifest injustice will also allow the court to ensure that the decedent’s intent is not frustrated, as well as ensuring that the decedent was not coerced or manipulated into committing suicide by a beneficiary of the estate. This approach would allow the court to set aside application of the rule when the decedent died intestate, as well.

Additionally, marriage provides economic protections such as mandating that a certain amount of the decedent’s estate go to his or her surviving spouse.¹⁴¹ While a law would have to

serve a compelling governmental interest to remove these protections and prevent access to a qualified retirement plan, the potential injustice is mitigated by the ability of the courts to set aside application of the rule. Ultimately, the remedy that most equitable addresses each case is best left for the courts to determine on a case by case basis. Therefore, any concerns of the slayer rule violating the alleged slayer's rights are mitigated by the fact that the court can set aside the application of the rule, if applying the rule would result in a manifest injustice.

Any need for judicial intervention to impose a constructive trust can all be avoided by legislative action in the creation or expansion of a state's slayer rule. Legislative action to extend the slayer statute to cover the act of causing another person to commit suicide is preferable over leaving the courts to impose a constructive trust, as the slayer statute prevents the transfer of legal title in the first place and does not require that a party with an interest in the decedent's estate make an equitable claim in order to invoke the legal mechanisms necessary to prevent unjust enrichment.

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- ¹ Melonie Heron, *Deaths: Leading Causes for 2017*, 68 NAT'L VITAL STAT. REP. 6 (2019).
- ² Jonaki Bose et al., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health*, SAMHSA 43 (Sept. 2018), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf>
- ³ Ariana Brockington, *Michelle Carter Found Guilty of Encouraging Boyfriend's Suicide with Text Messages*, NBC News (Jun. 16, 2017), <https://www.nbcnews.com/news/us-news/michelle-carter-found-guilty-encouraging-boyfriend-s-suicide-text-messages-n773306>.
- ⁴ C.T. Drechsler, Annotation, *Civil liability for death by suicide*, 11 A.L.R.2d 751 §2(a) (1950)
- ⁵ *Cauverien v. De Metz*, 188 N.Y.S.2d 627, 632 (N.Y. App. Div. 1959).
- ⁶ Melonie Heron, *Deaths: Leading Causes for 2017*, 68 NAT'L VITAL STAT. REP. 6 (2019).
- ⁷ *Roman Mosaic and Tile Co., Inc. v. Vollrath*, 313 A.2d 305, 307 (Pa. Super. Ct. 1973).
- ⁸ *Schenck v. K.E. David, Ltd.*, 666 A.2d 327, 328 (Pa. Super. Ct. 1995).
- ⁹ Restatement (Third) of Restitution and Unjust Enrichment § 43 (Am. Law Inst. 2011)
- ¹⁰ *Id.*
- ¹¹ 1 Neil M. Levy, et. al., California Torts, Ch. 1, *Negligence: Duty and Breach*, §1.12 (Matthew Bender, Rev. Ed. 2019).
- ¹² *Seo v. All-Makes Overhead Doors*, 119 Cal. Rptr. 2d 160, 166 (Cal. Ct. App. 2002).
- ¹³ Restatement (Second) of Torts § 324 (Am. Law Inst. 1965).
- ¹⁴ *Commonwealth v. Carter*, 115 N.E.3d 559 (Mass. 2019).
- ¹⁵ *Id.* at 562.
- ¹⁶ *Id.*
- ¹⁷ *Id.* at 563.
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ *Id.*
- ²¹ *Id.*
- ²² *Id.* at 574.
- ²³ *Id.*
- ²⁴ *Id.* at 568.
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ *Id.* at 2:50 through 3:06.
- ²⁸ Unif. Probate Code § 2-803 (Unif. Law Comm'n 2010).
- ²⁹ Restatement (Third) of Restitution and Unjust Enrichment § 45 (Am. Law Inst. 2011).
- ³⁰ Unif. Probate Code § 2-803 (Unif. Law Comm'n 2010).
- ³¹ Unif. Probate Code § 2-803(f) (Unif. Law Comm'n 2010).
- ³² Model Penal Code § 210.5 (Am. Law Inst. 1985).
- ³³ *Osman v. Osman*, 737 S.E.2d 876, 880 (Va. 2013).
- ³⁴ *Id.*; *See also Laborers' Pension Fund v. Miscevic*, 880 F.3d 927 (7th Cir. 2018).
- ³⁵ Restatement (Third) of Restitution and Unjust Enrichment § 45 (Am. Law Inst. 2011).
- ³⁶ *Id.*
- ³⁷ *Commonwealth v. Carter*, 115 N.E.3d 559 (Mass. 2019).
- ³⁸ *Id.* at 573.

³⁹ *Id.*

⁴⁰ *Persampieri v. Commonwealth*, 175 N.E.2d 387 (Mass. 1961).

⁴¹ *Id.* at 389.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 390.

⁴⁸ ALM GL ch. 274 § 2: "Whoever aids in the commission of a felony or is accessory thereto before the fact... shall be punished in the manner provided for the punishment of the principal felon."

⁴⁹ *Persampieri v. Commonwealth*, 175 N.E.2d 387 (Mass. 1961).

⁵⁰ *State v. Hicks*, 725 S.E.2d 569 at 572 (W. Va. 2011)

⁵¹ W. Va. Code § 61-11-6 (2009).

⁵² *Ashcraft v. State of Tenn.*, 322 U.S. 143, 144 (1944)

⁵³ Unif. Probate Code § 2-803 (Unif. Law Comm'n 2010).

⁵⁴ *State v. Hicks*, 725 S.E.2d 569, 572 (W. Va. 2011).

⁵⁵ *Persampieri v. Commonwealth*, 175 N.E.2d 387 (Mass. 1961).

⁵⁶ Model Penal Code § 210.5 (Am. Law Inst. 2020).

⁵⁷ *Id.*

⁵⁸ *Commonwealth v. Carter*, 115 N.E.3d 559 at 565 (Mass. 2019).

⁵⁹ *Id.* at 569.

⁶⁰ *Id.*

⁶¹ *Id.* at 565.

⁶² *Id.* at 562.

⁶³ *Moore v. Crawford*, 130 U.S. 122, 128 (1989).

⁶⁴ John C.P. Goldberg & Robert H. Sitkoff, *Torts and Estates: Remedying Wrongful Interference with Inheritance*, 65 Stan. L. Rev. 335, 350 (2013).

⁶⁵ Restatement (Third) of Restitution and Unjust Enrichment § 45 cmt. c (Am. Law Inst. 2011).

⁶⁶ *Id.* at cmt. d.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Ind. Code Ann. § 29-1-2-12.1 (2005).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Turner v. Estate of Turner*, 454 N.E.2d 1247, 1250 (Ind. Ct. App. 1983).

⁷³ *Id.*

⁷⁴ Stephen J. Karina, Note, *Ford v. Ford: A Maryland Slayer's Statute is Long Overdue*, 46 Md. L. Rev. 501, 510 n.64 (1987).

⁷⁵ Ind. Code Ann. § 29-1-2-12.1 (2005).

⁷⁶ Ind. Code Ann. § 35-42-1-2 (2014).

⁷⁷ Restatement (Third) of Restitution and Unjust Enrichment § 55 (Am. Law Inst. 2011).

⁷⁸ *Id.* cmt. f.

⁷⁹ *In re Estate of Mahoney*, 220 A.2d 475, 479 (Vt. 1966).
⁸⁰ *Id.* at 477.
⁸¹ *Id.*
⁸² Unif. Probate Code § 2-803(Unif. Law Comm’n 2010).
⁸³ *Id.*
⁸⁴ *Id.*
⁸⁵ Restatement (Third) of Restitution and Unjust Enrichment § 45 (Am. Law Inst. 2011).
⁸⁶ Unif. Probate Code § 2-803 (Unif. Law Comm’n 2010).
⁸⁷ *Id.*
⁸⁸ *Id.*
⁸⁹ *Id.*
⁹⁰ Minn. Stat. § 524.2-803 (2013).
⁹¹ *Id.*
⁹² Ariz. Rev. Stat. Ann. § 14-2803 (2012).
⁹³ *Id.*
⁹⁴ *Id.*
⁹⁵ *Id.*
⁹⁶ *In re Estate of Hoover*, 682 P.2d 469, 470 (Ariz. Ct. App. 1984).
⁹⁷ *Id.* at 473.
⁹⁸ *Id.*
⁹⁹ Adam D. Hansen, *Arizona’s Slayer Statute: The Killer of Testator Intent*, 7 Phoenix L. Rev. 755, 768 (2014).
¹⁰⁰ *Id.* at 769.
¹⁰¹ Cal. Prob. Code § 250 (Deering 2016).
¹⁰² Cal. Prob. Code § 254 (Deering 1991).
¹⁰³ Wis. Stat. § 854.14 (2005).
¹⁰⁴ *Id.*
¹⁰⁵ *Id.*
¹⁰⁶ *Id.*
¹⁰⁷ *Lemmer v. Schunk (In re Estate of Schunk)*, 760 N.W.2d 446 (Wis. Ct. App. 2008).
¹⁰⁸ *Id.* at 447.
¹⁰⁹ *Id.*
¹¹⁰ *Id.*
¹¹¹ *Id.* at 449.
¹¹² *Id.* at 450.
¹¹³ *Laborers’ Pension Fund v. Miscevic*, 880 F.3d 927, 935 (7th Cir. 2018).
¹¹⁴ *Id.* at 936.
¹¹⁵ *Id.*
¹¹⁶ *Id.*
¹¹⁷ *Id.*
¹¹⁸ *Id.*
¹¹⁹ Fla. Stat. § 732.802 (2020).
¹²⁰ Alaska Stat. § 13.12.803 (1996).
¹²¹ *Id.* at (f).

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- ¹²² *Id.* at (k).
- ¹²³ *Blodgett v. Blodgett (In re Estate of Blodgett)*, 147 P.3d 702, 706-7 (Alaska 2006).
- ¹²⁴ Alaska Stat. § 11.14.120 (2006).
- ¹²⁵ Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. Cin. L. Rev. 803, 848 n.213 (1993)
- ¹²⁶ SPP § 150:9 *Testator's intent as polestar in construction of will*
- ¹²⁷ *Fact Sheet: What is ERISA* U.S. Department of Labor, <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/what-is-erisa>, (Accessed 4/22/20)
- ¹²⁸ *Effect of Employee Retirement Income Security Act (ERISA)*, 25A N.C. Index 4th Retirement §7
- ¹²⁹ *Laborers' Pension Fund v. Miscevic*, 880 F.3d 927, 932 (7th Cir. 2018)
- ¹³⁰ *Id.* at 933-4
- ¹³¹ *Egelhoff v. Egelhoff*, 532 U.S. 141, 152 (2001).
- ¹³² Nick Degray, *ACLU: Carter conviction violates free speech protections*, WWLP News, (Jun16, 2017), <http://wwlp.com/2017/06/16/aclu-carter-conviction-violates-free-speech-protections/> “Mr. Roy’s death is a terrible tragedy, but it is not a reason to stretch the boundaries of our criminal laws or abandon the protections of our constitution.”
- ¹³³ *Commonwealth v. Carter*, 115 N.E.3d 559, 570 (Mass. 2019)
- ¹³⁴ *Id.*
- ¹³⁵ *Id.*
- ¹³⁶ *Commonwealth v. Carter*, 52 N.E.3d 1054, 1064 (Mass. 2016)
- ¹³⁷ *Id.*
- ¹³⁸ *Suicide Statistics*, American Foundation for Suicide Prevention, <http://www.afsp.org/suicide-statistics/> (Accessed April 25, 2020)
- ¹³⁹ *Expanding Slayer Statutes to Elder Abuse*, The Journal of the American Academy of Psychiatry and the Law, (Sep. 2015), <http://jaapl.org/content/43/3/369> (Accessed April 25, 2020)
- ¹⁴⁰ Alaska Stat. § 13.12.803 (1996)
- ¹⁴¹ Unif. Probate Code § 2-102 (Unif. Law Comm’n 2013).