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MARYLAND IS DYING FOR A SLAYER STATUTE: THE INEFFECTIVENESS OF THE COMMON LAW SLAYER RULE IN MARYLAND

> If, urged by greed profane,
> He grasps at ill-got gain,
> And lays an impious hand on holiest things.
> Who when such deeds are done
> Can hope heaven's bolts to shun?[1]
>
> —*Greek chorus's response to Oedipus's confession to killing his father*

I. INTRODUCTION

In October 1931, Walter J. Martin shot and killed his wife, Della A. Martin, then committed suicide immediately after the shooting.[2] Ordinarily, Della Martin's estate would pass to Walter as her surviving spouse under Maryland's intestacy statute,[3] however, the Court of Appeals of Maryland ruled in *Price v. Hitaffer* that Della's estate could not be distributed to Walter or through his estate due to Walter's criminal act.[4] In this case of first impression, the court reasoned that Maryland's intestacy statute should be read according to common law maxims of equity, and adhered to the literal meaning of the statute as not to unjustly enrich Walter and his heirs.[5]

Over seventy years after *Price*, the Court of Appeals of Maryland was confronted with a similar issue of first impression in *Cook v. Grierson*.[6] After Charles Grierson pled guilty to the second degree murder of his father, Frederick Charles Grierson, Jr., Frederick's widow brought an action to disinherit Charles from Frederick's estate.[7]

By 2004, when *Cook* reached the Court of Appeals, the Court had developed a body of case law on which to base its decision. The Court of Appeals's interpretation of the common law slayer rule, however, has produced differing and at times conflicting decisions concerning the distribution of a victim's assets.[8] Forty-two states have adopted

1. SOPHOCLES, OEDIPUS THE KING 81 (F. Storr trans., Harvard University Press, 1912).
2. Price v. Hitaffer, 164 Md. 505, 165 A. 470 (1933).
3. *See* MD. ANN. CODE art. 93, § 127 (1933) (current version at MD. CODE ANN., EST. & TRUSTS § 3-102 (LexisNexis 2004)).
4. *Price*, 164 Md. at 508, 165 A. at 471.
5. *Price*, 164 Md. at 514-16, 165 A. at 473-74.
6. 380 Md. 502, 505, 845 A.2d 1231, 1232 (2004).
7. *Cook*, 380 Md. at 504, 845 A.2d at 1232.
8. *See infra* Parts III-IV.

slayer statutes that mirror common law, but Maryland has yet to enact such a statute.[9] This comment examines various decisions rendered by the Court of Appeals, and evaluates whether the court's decisions have been consistent in the absence of a slayer statute.[10]

Part II traces the development of the slayer rule in the United States from common law to codification in forty-two states. Part III explores the development of the slayer rule in Maryland, beginning with *Price v. Hitaffer*, and discusses the inconsistencies in the Court of Appeals's decisions since *Price*. Part IV examines *Cook v. Grierson* and explains why Maryland needs a slayer statute. Part V discusses why enacting a slayer statute is more beneficial than continuing to interpret the common law. Lastly, Part VI highlights why Maryland's statutory scheme is inadequate to deal with slayer issues and proposes a slayer statute for Maryland.

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9. *See, e.g.*, ALA. CODE § 43-8-253 (1991) (treating the slayer as having predeceased the victim); ARIZ. REV. STAT. ANN. § 14-2803 (1975) (predeceased); CAL. PROB. CODE §§ 250, 252, 258 (West 2002) (predeceased); COLO. REV. STAT. ANN. § 15-11-803 (West 2005) (treating slayer as having disclaimed his or her share); CONN. GEN. STAT. ANN. § 45a-447 (West 2004) (predeceased); DEL. CODE ANN. tit. 12, § 2322 (2001) (predeceased); D.C. CODE § 19-320 (2001) (predeceased); FLA. STAT. ANN. § 732.802 (West 2005) (predeceased); GA. CODE ANN. § 53-1-5 (1997) (predeceased); HAW. REV. STAT. § 560:2-803 (2004) (disclaimed); IDAHO CODE ANN. § 15-2-803 (2001) (predeceased); 755 ILL. COMP. STAT. ANN. 5/2-6 (West 1992) (predeceased); IND. CODE ANN. § 29-1-2-12.1 (LexisNexis 2000) (predeceased); IOWA CODE ANN. § 633.535 (West 2003) (predeceased); KAN. STAT. ANN. § 59-513 (2004) (treating slayer as having died simultaneously); KY. REV. STAT. ANN. § 381.280 (West 1994) (treating slayer as having forfeited his share); LA. CIV. CODE ANN. art. 946 (Supp. 2005) (predeceased); ME. REV. STAT. ANN. tit. 18-A, § 2-803 (1998) (predeceased); MICH. COMP. LAWS ANN. § 700.2803 (West 2002) (disclaimed); MINN. STAT. ANN. § 524.2-803 (West 2002) (predeceased); MISS. CODE ANN. § 91-1-25 (West 1999) (predeceased); MONT. CODE ANN. § 72-2-813 (2005) (disclaimed); NEB. REV. STAT. § 30-2354 (1995) (predeceased); N.J. STAT. ANN. §§ 3B:7-1.1 to 7-7 (West Supp. 2005) (predeceased); N.M. Stat. Ann. § 45-2-803 (LexisNexis 1995) (disclaimed); N.C. GEN. STAT. §§ 31A-3 to -11 (2003) (predeceased); N.D. CENT. CODE § 30.1-10-03 (1996) (disclaimed); OHIO REV. CODE ANN. § 2105.19 (West 2005) (predeceased); OKLA. STAT. ANN. tit. 84, § 231 (West Supp. 2005) (all benefits are distributed to other heirs of the decedent); OR. REV. STAT. §§ 112.465-.545 (2003) (predeceased); 20 PA. CONS. STAT. ANN. §§ 8801-8815 (West 1975) (predeceased); R.I. GEN. LAWS §§ 33-1.1-1 to -16 (1995) (predeceased); S.C. CODE ANN. § 62-2-803 (Supp. 2004) (predeceased); S.D. CODIFIED LAWS § 29A-2-803 (1997) (disclaimed); TENN. CODE ANN. § 31-1-106 (2001) (forfeiture); UTAH CODE ANN. § 75-2-803 (Supp. 2005) (disclaimed); VT. STAT. ANN. tit. 14, § 551(6) (2002) (forfeiture and estate passed to other heirs of decedent); VA. CODE ANN. §§ 55-401 to -414 (2003) (predeceased); WASH. REV. CODE ANN. §§ 11.84.010-.900 (West 1998) (predeceased); W. VA. CODE ANN. § 42-4-2 (LexisNexis 2004) (predeceased); WIS. STAT. ANN. §§ 852.01, 854.14 (West 2002) (disclaimed); WYO. STAT. ANN. § 2-14-101 (2005) (all benefits are distributed to other heirs of the decedent). *See generally* UNIF. PROBATE CODE § 2-803 (amended 1997), 8 U.L.A. 459 (2005) (predeceased).
10. *See infra* Parts III-IV.

II. DEVELOPMENT OF THE SLAYER RULE IN THE UNITED STATES

Although the slayer rule in the United States has its origin in English common law, American legislatures and courts have dictated its development since the eighteenth century.[11] The abolishment of attainder, forfeiture of estate, and corruption of blood forced the courts to find alternative means to preclude a slayer from taking from his victim's estate.[12] Gradually, legislatures promulgated slayer statutes and judges began the task of interpreting these statutes.

A. *Common Law*

At common law, the doctrines of attainder,[13] forfeiture of estate,[14] and corruption of blood[15] allowed courts to readily adhere to the principle *nullus commondum capere potest de injuria sua propria*, or "[n]o man can take advantage of his own wrong."[16] Under the common law, once a person was sentenced to death or pronounced to be an outlaw, he or she was attained, and part of the felon's punishment was forfeiture of any land or chattels.[17] Thus, a slayer could not profit from his victim's death because, upon conviction, the slayer was forced to forfeit anything he or she may have inherited from the victim.[18] Furthermore, the corruption of blood doctrine ensured that the slayer's heirs could not inherit from the slayer's victim, as the sins of the slayer were visited on his descendents.[19] Once a slayer's conviction triggered forfeiture, "there was no longer any title in the wrong-

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11. *See infra* Part II.A-B.2.
12. *See infra* Part II.A-B.
13. Attainder is "the act of extinguishing a person's civil rights when that person is sentenced to death or declared an outlaw for committing a felony or treason." BLACK'S LAW DICTIONARY 137 (8th ed. 2004).
14. Forfeiture of estate in the context of this comment is the loss of property because of a crime. *Id.* at 677.
15. Corruption of blood occurs "when any one is attainted of felony or treason, then his blood is said to be corrupt; by means whereof neither his children, nor any of his blood, can be heirs to him, or to any other ancestor, for that they ought to claim by him." *Id.* at 371 (quoting LES TERMES DE LA LEY [CERTAIN DIFFICULT AND OBSCURE WORDS AND TERMS OF THE COMMON AND STATUTE LAWS OF ENGLAND, NOW IN USE, EXPOUNDED AND EXPLAINED] 125 (photo. reprint 1993) (J. Johnson 1812)).
16. Julie J. Olenn, Comment, *'Til Death Do Us Part': New York's Slayer Rule and In Re Estates of Covert*, 49 BUFF. L. REV. 1341 (2001); *see* Callie Kramer, Notes and Comments, *Guilty by Association: Inadequacies in the Uniform Probate Code Slayer Statute*, 19 N.Y.L. SCH. J. HUM. RTS. 697, 699 (2003).
17. BLACK'S LAW DICTIONARY 137; Olenn, *supra* note 16, at 1343 n.9.
18. *Cf.* Olenn, *supra* note 16, at 1343 (implying that "forfeiture of all lands and chattels" must include all land and chattels that would have been inherited from the victim).
19. Alison Reppy, *The Slayer's Bounty—History of Problem in Anglo-American Law*, 19 N.Y.U. L. REV. 229, 233 (1942).

doer to pass to his heir."[20] Therefore, the combination of attainder, forfeiture of estate, and corruption of blood denied not only the slayer from benefiting from the distribution of his victim's estate, but also his heirs.[21]

B. The Slayer Rule Reaches the Courts

Once federal and state constitutions abolished the aforementioned common law doctrines, courts began interpreting the slayer rule in a different light.[22] The doctrines of attainder, forfeiture, and corruption of blood no longer excluded the slayer from inheriting. Rather, the common law maxim that no man shall profit from his own wrongdoing prevailed.[23] In the absence of a slayer statute, courts infused state statutes of descent and distribution with this maxim.[24]

1. Abolishment of Common Law Doctrines

When the doctrines of forfeiture of estate and corruption of blood were abolished by our federal constitution[25] and state constitutions or statutes,[26] slayer-beneficiaries used these prohibitions to challenge the constitutionality of the slayer rule.[27] Most courts employed the owned interest rationale to uphold the slayer rule, asserting that the constitutional ban on forfeiture of estate and corruption of blood laws only pertained to property the slayer owned and not property the slayer had in interest.[28] Thus, the slayer was not being forced to forfeit

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20. *Id.* Note that the forfeiture was retroactive to the date the crime was committed. *Id.* (quoting 3 SIR WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 69 (Methuen & Co. 1966)).
21. *See* Kramer, *supra* note 16.
22. *See infra* notes 25-29 and accompanying text.
23. *See infra* notes 49-53 and accompanying text.
24. *See infra* notes 48-51 and accompanying text.
25. U.S. CONST. art. III, § 3, cl. 2 ("[N]o Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.").
26. *See, e.g.*, ARK. CONST. art. 2, § 17 ("No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate."); MD. CONST. DECL. OF RIGHTS., art. 27 (LexisNexis 2003) ("[N]o conviction shall work corruption of blood or forfeiture of estate."); N.Y. CIV. RIGHTS LAW § 79-b (Consol. 1992) ("A conviction of a person for any crime, does not work a forfeiture of any property, real or personal, or any right or interest therein.").
27. Mary Louise Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 IOWA L. REV. 489, 538-39 (1986); *see, e.g.*, Weaver v. Hollis, 22 So. 2d 525, 526-27 (Ala. 1945); Price v. Hitaffer, 164 Md. 505, 506-07, 165 A. 470, 470 (1933); Perry v. Strawbridge, 108 S.W. 641, 648 (Mo. 1908); Box v. Lanier, 79 S.W. 1042, 1047 (Tenn. 1903).
28. Fellows, *supra* note 27, at 540 (citing *Weaver*, 22 So. 2d at 529 (holding that precluding the slayer from taking "does not inflict upon him any greater or other punishment for his crime than the law specifies, and takes no property from him, but simply bars him from acquiring property by his

property he owned, because any inheritance from his victim should be classified as a mere expectancy interest.[29]

The American legal system abolished the forfeiture of estate and corruption of blood doctrines well before the English Parliament did so by statute in 1870.[30] The issue of the slayer's right to inherit in the absence of these doctrines, however, reached American and English courts at roughly the same time.[31]

2. U.S. Supreme Court Interprets the Slayer Rule

New York Mutual Life Insurance Co. v. Armstrong[32] is the first United States Supreme Court case concerning the interest of a murderer in his victim's estate.[33] There, the Mutual Life Insurance Company of New York issued an insurance policy to Armstrong, payable to Hunter.[34] Six weeks after the policy was issued, Armstrong was attacked on the street and died two days later.[35] Hunter was subsequently convicted and sentenced to death for murdering Armstrong, and the insurance company refused to pay the proceeds of the policy to Hunter's estate.[36] The Supreme Court ruled that the slayer's estate could not collect from the life insurance policy, stating:

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crime")); *Box*, 79 S.W. at 1047 (explaining that "title to the policy never vested in the surviving husband, and, therefore, there was nothing for him to forfeit").

29. *See* Fellows, *supra* note 27, at 540.
30. Reppy, *supra* note 19, at 235. The Forfeiture Act of 1870 formally abolished forfeiture for treason and felonies, but this doctrine was first restricted in 1814 by Statute 54 Geo. 3 (Eng.) which stated:

> That no attainder for felony which shall take place after the passing of this Act, save and except in cases of the crime of High Treason, or of the crimes of Petit treason or Murder . . . shall extend to the disinheriting of any Heir, nor to the Prejudice of the right or title of any person or persons . . . .

Id. at 234-35. Interestingly, one year after this statute was enacted, *Amicable Society v. Bolland* established a rule of public policy dictating "neither the insured nor those claiming through or under him could recover for the loss produced solely by his criminal act, death by the hands of the law being so produced." *Id.* at 237. *See* Amicable Soc'y v. Bolland (Fauntleroy's Case) (1830), 4 Bligh (N.S.) 194, 211, 5 Eng. Rep. 70, 76 (Ch.).

31. Jeffrey Sherman, *Mercy Killing and the Right to Inherit*, 61 U. CIN. L. REV. 803, 844-45 (1993). The slayer-beneficiary issue was first reached by the English court in *Cleaver v. Mut. Reserve Fund Life Ass'n*, (1891) 1 Q.B. 147 (Q.B.D.) (Eng.) (ruling that a wife who murdered her husband was unable to collect the benefits of his life insurance policy even though she was designated as beneficiary). *Id.* at 845 n.201. Conversely, the first American case allowed a wife convicted as an accessory before the fact to her husband's murder to take her dower interest. *Id.* (citing Owen v. Owen, 6 S.E. 794 (N.C. 1888)).
32. 117 U.S. 591 (1886).
33. *Id.*
34. *Id.* at 592-93.
35. *Id.* at 593.
36. *Id.* at 592-94.

> [I]ndependently of any proof of the motives of Hunter in obtaining the policy, and even assuming that they were just and proper, he forfeited all rights under it when, to secure its immediate payment, he murdered the assured. It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired.[37]

Although corruption of blood had been abolished by the United States Constitution, the Supreme Court appears to have resurrected this common law doctrine by precluding Hunter's estate, and his potentially innocent heirs, from collecting the insurance proceeds. The Court's decision recognizes that "'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.'"[38] Thus, the Court's decision reflects the equitable justification on which the slayer rule rests.[39]

3. *Riggs v. Palmer*

Three years after the Supreme Court's decision in *New York Mutual Life Insurance Co. v. Armstrong*, the Court of Appeals of New York extended the basis for the slayer rule in *Riggs v. Palmer*[40] by encompassing moral principles to deny slayers a share in their victims' estates.[41] This New York decision became the perennial case for the slayer rule, particularly for non-insurance cases.[42] In *Riggs*, Elmer poisoned his grandfather to prevent him from revoking provisions of his will that were in Elmer's favor.[43] Generally, testators may distribute their property as they see fit with few legislative restraints.[44] The Court of Appeals of New York, however, opined that "it never could have been [lawmakers'] intention that a donee who murdered the testator to

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37. *Id.* at 600.
38. John W. Wade, *Acquisition of Property by Willfully Killing Another-A Statutory Solution*, 49 HARV. L. REV. 715, 715-16 (1936) (quoting BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 43 (Yale Univ. Press 1921)).
39. *See* Olenn, *supra* note 16, at 1349-50.
40. 22 N.E. 188 (N.Y. 1889).
41. *See generally* Olenn, *supra* note 16, at 1349-50.
42. Gregory C. Blackwell, Comment, *Property: Creating a Slayer Statute Oklahomans Can Live With*, 57 OKLA. L. REV. 143, 147 (2004).
43. *Riggs*, 22 N.E. at 189.
44. *Id.* (stating that property distribution statutes are designed "to enable testators to dispose of their estates . . . and to carry into effect their final wishes"); *cf.* Barron v. Janney, 225 Md. 228, 234-35, 170 A.2d 176, 180 (1961) (stating that most decisions throughout the United States agree that "the purpose of the statutes of descent and distribution is to make such a will for an intestate as he would have been most likely to make for himself").

make the will operative should have any benefit under it."[45] Indeed, a strict construction of the statute would give a victim's property to his murderer, allowing a slayer to profit from his crime.[46] Thus, the court of appeals employed "rational interpretation"[47] to New York's statute regulating wills and the transfer of property, and disqualified Elmer from taking under his grandfather's will.[48]

The majority refused to endorse the concept that lawmakers intended to allow slayers to inherit from their victims.[49] Rather, the court held that fundamental maxims of common law, such as no one shall be permitted to profit from his own fraud, take advantage of his own wrong, found any claim upon his own iniquity, or acquire property by his own crime, could "control the effect and nullify the language of wills."[50] According to the court, lawmakers were aware of these fundamental maxims and other civil law when they drafted the pertinent statutes and did not deem it necessary to physically incorporate them into every statute.[51] It is immoral for an undeserving slayer to take advantage of laws that would normally direct inheritance to him.[52] It, therefore, would be an absurd consequence to allow a slayer to take under the will if he willfully murdered his victim for the express purpose of expediting his inheritance.[53]

The dissent adamantly supported a strict adherence to the Statute of Wills and the black letter law of the legislature.[54] The dissent further criticized the majority's "system of remedial justice," which altered the disposition of the legislature by integrating the court's notions of equity and morality into its decision.[55] The dissent noted that the Statute of Wills includes specific ways a will may be altered or

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45. *Riggs*, 22 N.E. at 189.
46. *Id.*
47. *Id.*
48. *Id.* at 189, 191.
49. *Id.* at 190. Judge Earl questioned,

> What could be more unreasonable than to suppose that it was the legislative intention in the general laws passed for the orderly, peaceable and just devolution of property, that they should have operation in favor of one who murdered his ancestor that he might speedily come into the possession of his estate?

Id.
50. *Id.*
51. *Id.* Judge Earl referred to canons of the Napoleonic Code and Roman Civil Law that dictate "one cannot take property by inheritance or will from an ancestor or benefactor whom he has murdered." *Id.*
52. Olenn, *supra* note 16, at 1349.
53. *Riggs*, 22 N.E. at 189-90. Specifically, Judge Earl quoted William Blackstone: "[I]f there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences void." *Id.* at 189 (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *91 (St. George Tucker ed., Augustus M. Kelley 1969)).
54. *Id.* at 191 (Gray, J., dissenting).
55. *Id.* at 191-92. Judge Gray explained, "[T]he matter does not lie within the domain of conscience. We are bound by the rigid rules of law, which have

revoked, and significantly, conviction of a criminal act is not a means through which a will can be altered or revoked.[56] The dissent admonished the majority's judicial lawmaking and objected to its virtual rewriting of the testator's will.[57]

The dissent's rationale for advocating only a plain meaning of the statute in a slayer case was not completely novel.[58] Just one year before the New York decision, the Supreme Court of North Carolina reversed a lower court's ruling that precluded a claimant, Mrs. Owens, who was serving a life sentence for being an accessory before the fact to the murder of her husband, from taking her dower rights.[59] Under the North Carolina statute, the only way a woman could forfeit her dower was by committing adultery, "however heinous [any other criminal activity] may be."[60] The chief justice questioned: "[D]oes anyone, as a consequence of an unlawful taking of human life, become thereby disabled to take a part of the estate left by the deceased, which the law gives him, and gives him subject to no such condition?"[61] The court concluded by reasoning that promulgating grounds to deny dower is the duty of the legislature.[62]

The *Riggs* majority expressly disagreed with the holding in *Owens*,[63] contending that Mrs. Owens assumed the risk of losing the dower when she willfully and intentionally killed her husband to make her-

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been established by the legislature, and within the limits of which the determination of this question is confined." *Id.* at 191.

56. *See id.* at 192 (referring to the statute that states that unless by method specifically mentioned, no will, nor any part of a will, can be revoked or altered). The facts of *Riggs v. Palmer* did not meet any of the cases mentioned; thus, "the will of the testator is unalterable." *Id.*
57. *Id.* at 192-93.
58. *See* Daniel A. Farber, *Courts, Statutes, and Public Policy: The Case of the Murderous Heir*, 53 SMU L. REV. 31, 31 (2000).
59. Owens v. Owens, 6 S.E. 794, 794-95 (N.C. 1888). At common law, a dower right is a "wife's right, upon her husband's death, to a life estate in one-third of the land that he owned in fee." BLACK'S LAW DICTIONARY 507 (8th ed. 2004).
60. *Owens*, 6 S.E. at 794. The exact wording of the statute that bars recovery of a dower is, "if any married woman shall commit adultery, and shall not be living with her husband at his death, she shall thereby lose all right to dower." N.C. CODE § 2102 (1883) (repealed 1959).
61. *Owens*, 6 S.E. at 795.
62. *Id.* The North Carolina legislature took the advice of Chief Justice Smith and amended the dower statute to deny a wife recovery of her dower interest if she murdered her husband. Reppy, *supra* note 19, at 248.
63. Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889). Even though *Owens* was the first American case addressing the emerging slayer rule, the precedent set by *Owens v. Owens* was merely persuasive authority for the *Riggs* court. Farber, *supra* note 58, at 33-34. The *Riggs* court also could have distinguished *Owens* by noting that a dower is not controlled by a husband; a husband cannot dispose of this asset and the intent of the testator that the *Riggs* majority emphasized, was immaterial in *Owens*. *Id.* at 34.

self a widow.[64] It was this artful integration of common law maxims and modern statutes that produced the result in *Riggs*,[65] which has defined the slayer rule for over a century.[66]

III. DEVELOPMENT OF THE SLAYER RULE IN MARYLAND

Maryland's slayer rule emerged in *Price v. Hitaffer*,[67] where a husband killed his wife and immediately thereafter took his own life.[68] This 1933 case set precedent in Maryland for slayer cases over the next seventy odd years. During that period, the Maryland General Assembly has not enacted a formal slayer statute, leaving the courts to undertake the arduous task of formulating a slayer rule. Although the case law since *Price* has extensively developed the slayer rule in Maryland, inconsistencies still remain.[69]

A. Price v. Hitaffer*: The Emergence of the Slayer Rule in Maryland*

In *Price v. Hitaffer*, Maryland's first slayer case, the personal representative of the slayer's estate petitioned the Orphans' Court of Baltimore City, seeking distribution of the estate of his wife and victim.[70] The orphans' court ordered that the slayer's heirs be excluded from the distribution of the victim's estate.[71] The heirs appealed to the Court of Appeals of Maryland as a case of first impression.[72] By the time this case reached the Court of Appeals, nearly forty years of precedent regarding the slayer rule had been developed in other courts in the United States.[73]

In reaching its decision, the *Price* court explored two differing perspectives that had been adopted by other courts.[74] The first line of reasoning interpreted provisions of a will and statutes of descent and

64. *Riggs*, 22 N.E. at 191 (explaining the maxim *volenti non fit injuria*, "to a willing person it is not a wrong," should have guided the Supreme Court of North Carolina to deny Mrs. Owens the benefits of a widowhood that she feloniously created); *cf.* 57B AM. JUR. 2D *Negligence* § 767 (2004) (providing the definition of *volenti non fit injuria*).
65. Farber, *supra* note 58, at 37.
66. *Id.* at 36.
67. 164 Md. 505, 165 A. 470 (1933).
68. *Id.* at 506, 165 A. at 470.
69. *See infra* Part V.B.
70. *Price*, 164 Md. at 506, 165 A. at 470.
71. *Id.*
72. *Id.*
73. *See id.*; *see, e.g.*, Slocum v. Metro. Life Ins. Co., 139 N.E. 816 (Mass. 1923); Perry v. Strawbridge, 108 S.W. 641 (Mo. 1908); Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889); Johnston v. Metro. Life Ins. Co., 100 S.E. 865 (W. Va. 1919).
74. 164 Md. at 506, 165 A. at 470 (explaining that the court is at liberty to follow either approach, both of which have been either investigated or argued by counsel); *see also* Stephen B. Gerald, Comment, *Judgments of Prior Conviction as Substantive Proof in Subsequent Civil Proceedings: A Study of Admissibility and Maryland's Need for Such a Hearsay Exception*, 29 U. BALT. L. REV. 57, 62 (1999).

distribution in light of "universally recognized principles of justice and morality" as founded on the public policy that encompasses the common law maxims of equity.[75] The majority did not confine this rationale to probate law, but rather asserted this method of interpretation for all laws, statutes, and contracts more generally.[76] The second line of reasoning adhered to by the court relied on the strict interpretation of statutes.[77] Under this rationale, common law maxims were abrogated when the legislature enacted a statutory scheme.[78] The public policy represented by the statutes of descent and distribution as well as will execution and effect supplanted the public policy of the common law maxims.[79]

In a decision similar to *Riggs v. Palmer*, the *Price* court ultimately chose to infuse the Maryland statutes of descent and distribution with common law maxims, thereby excluding the slayer's personal representative from taking from his victim's estate.[80] The Court of Appeals first determined that both the Maryland Declaration of Rights and Federal Bill of Rights included the common law.[81] Then, the court referred to other case precedent and legal scholars to establish the importance of the common law in our scheme of statutory laws.[82] Quoting Henry Campbell Black, the court stated, "No statute enters a field which was before entirely unoccupied. . . . Whether the statute affirms the rule of common law upon the same subject, or whether it supplements it, supersedes it, or displaces it, the legislative enactment must be construed with reference to the common law."[83] This quotation emphatically reflects the philosophy of the *Price* court and essentially justifies its construction of Maryland's descent and distribution statutes.

Before selecting a method of interpretation, the court addressed the argument that the order of the orphans' court violated the consti-

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75. *Price,* 164 Md. at 506, 165 A. at 470; *see also supra* notes 49-50 and accompanying text.
76. *Price,* 164 Md. at 506, 165 A. at 470.
77. *Id.* at 506-07, 165 A. at 470.
78. *Id.*
79. *Id.*
80. *Id.* at 515-16, 165 A. at 474.
81. *Id.* at 510, 165 A. at 472. Judge Digges stated:

> It is impossible to conceive that the maxims of the common law now under consideration, and which we are asked to apply, are inconsistent with or repugnant to the spirit and principles of republican institutions whose strength lies in the virtue and integrity of the citizen to correct the morals and protect the reputation, rights, and property of individuals, by denying the right of a murderer to enrich himself by taking any part of his victim's estate.

Id.

82. *See id.* at 511-16, 165 A. at 472-74.
83. *Id.* at 515, 165 A. at 473-74 (quoting HENRY CAMPBELL BLACK, HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS, 360) (West Publishing) (2d ed. 1911) (alteration in original)).

tutional and statutory provisions prohibiting corruption of blood and forfeiture of estate.[84] The court reasoned there could be no forfeiture because the slayer did not have beneficial use or possession of the estate of his victim before the murderous act.[85] Under the common law doctrine, a criminal forfeited any property held at the time of the commission of the crime and not any property he held in interest.[86] Therefore, the slayer did not actually forfeit any property he possessed at the time he killed his wife.[87] Interestingly, the court raised the issue of whether the order of the orphans' court violated corruption of blood, but it did not elaborate further on this topic.[88] The court's holding, which excluded heirs from participating in the victim's estate, did not apply if the descendents also were descendents of the victim.[89] Further, it appears the court allowed the slayer's criminal act to corrupt the slayer and his bloodline.[90]

B. *Maryland Case Law Since*

Since the *Price* decision in 1933, Maryland courts have defined and interpreted the common law slayer rule without the aid of a statute from the legislature.[91] Through a series of cases involving various fact patterns, the courts have relied upon *Price* to create an effective slayer rule in Maryland.[92]

1. *Chase v. Jenifer*

In *Chase v. Jenifer*,[93] for example, a wife stabbed and killed her husband, the latter of whom had a history of abusiveness when he had been drinking.[94] The wife was the named beneficiary on the husband's life insurance policy, but the insurer petitioned to have the

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84. *Id.* at 508, 165 A. at 471.
85. *Id.*
86. *Id.*; *see also* Reppy, *supra* note 19, at 232-33. Under the English common law doctrine of attainder, the land, tenements, goods and chattels of "the attainted [convicted] felon" were surrendered to the King upon pronouncement of conviction. *Id.* Thus, a felon could only forfeit what he or she had at the time of conviction and nothing obtained thereafter. *See Price*, 164 Md. at 508, 165 A. at 471.
87. *Id.*
88. *Id.* at 507-08, 165 A. at 471. It may be inferred that the court chose not to further elaborate on the corruption of blood doctrine because it had established that Mr. Martin had never inherited Mrs. Martin's estate. Therefore, the court was not visiting the sins of Mr. Martin on his heirs since Mr. Martin never had any of Mrs. Martin's estate to pass to them in the first place. *See id.* at 505, 508, 165 A. at 470-71.
89. *See id.* at 505, 508, 165 A. at 470-71.
90. *Id.* at 505, 518, 165 A. at 470, 474.
91. *See infra* Part III.B.1-4.
92. *Id.*
93. 219 Md. 564, 566, 150 A.2d 251, 252 (1959).
94. *Id.* at 566, 150 A.2d 252.

wife disqualified.[95] Although the wife argued that she was trying to protect herself, the fact-finding lower court ruled that she used "excessive means" in defending herself.[96] While the wife conceded that the killing was unlawful and felonious, she argued that it was also unintentional and should not prevent her from collecting from the insurer.[97] The Court of Appeals of Maryland decisively pronounced that "[w]here the killing is both felonious and intentional, we think the beneficiary cannot prevail. . . ."[98] Further, the court found that because the wife committed voluntary manslaughter, she had the specific intent to kill her husband. Thus, the wife could not collect under her husband's life insurance policy.[99] The court, however, did not address the consequences of an unintentional murder.[100]

2. *Schifanelli v. Wallace*

The issue of whether a beneficiary who unintentionally killed his victim could inherit from that victim was answered in the affirmative in *Schifanelli v. Wallace.*[101] In this case, Frank Wallace alleged that he accidentally shot his wife, Marie Wallace, when he was showing her his gun.[102] The killing was ruled as unintentional and the trial court concluded that Mr. Wallace could receive the proceeds from Mrs. Wallace's life insurance policy.[103] The Court of Appeals affirmed the trial court, relying on the intent of the slayer as a basis for determining whether a slayer was entitled to proceeds.[104] Because the issue was not fully resolved in *Chase v. Jenifer,*[105] the court first referred to the case law of other jurisdictions, a majority of which allowed a similarly situated slayer to collect.[106] Next, the court cited the public policy be-

95. *Id.* at 565, 150 A.2d 252.
96. *Id.* at 566, 150 A.2d at 252-53.
97. *Id.* at 569, 150 A.2d at 254.
98. *Id.* at 570, 150 A.2d at 255.
99. *Id.* at 569-70, 150 A.2d at 254-55.
100. *Id.*; *see also* Stephen J. Karina, Ford v. Ford: *A Maryland Slayer's Statute is Long Overdue,* 46 MD. L. REV. 501, 504 (1987).
101. 271 Md. 177, 189, 315 A.2d 513, 520 (1974).
102. *Id.* at 181, 315 A.2d at 515.
103. *Id.* at 182, 315 A.2d at 516.
104. *Id.* at 188-89, 315 A.2d at 519 (citing Commercial Travelers Mut. Accident Ass'n v. Witte, 406 S.W.2d 145, 149 (Ky. 1966); Jackson v. Prudential Ins. Co. of Am., 254 A.2d 141, 147 (N.J. 1969)); *see also* Karina, *supra* note 100, at 504.
105. 219 Md. 564, 569, 150 A.2d 251, 254 (1959).
106. *Schifanelli,* 271 Md. at 188, 315 A.2d at 519 (citing Tippens v. Metro. Life Ins. Co., 99 F.2d 671, 675 (5th Cir. 1938) (holding that a slayer rule cannot be applied to circumstances where the record does not decisively indicate whether the deceased died from natural causes, an accidental fall, or a quarrel that ended with an unintentional blow to the deceased); Throop v. W. Indem. Co., 193 P. 263, 323-35 (Cal. 1920) (finding that grossly negligent discharge of the gun led to the unintentional killing of the deceased and the slayer could inherit); Schreiner v. High Court of Ill. Catholic Order of Foresters, 35 Ill. App. 576, 580 (1890) (holding that insurance contracts

hind the slayer rule.[107] The purpose of the slayer rule is to prevent one who *intentionally* killed his victim from inheriting. Thus, the slayer rule should not be applied when the killing is neither intentional nor careless.[108] A synthesis of *Chase* and *Schifanelli* produces a coherent precedent concerning the requisite intention of slayers.[109] A slayer must act intentionally or feloniously to be barred from taking as a beneficiary under the victim's life insurance policy or will.[110]

3. The *Price, Chase, Schifanelli* Trifecta Examined in *Ford v. Ford*

Twelve years later, the rulings of *Price, Chase,* and *Schifanelli* were examined by the Court of Appeals of Maryland in *Ford v. Ford.*[111] This case involved a slayer who was insane at the time of the crime.[112] Specifically, Pearl Ford was found not criminally responsible, due to insanity, for the murder of her mother.[113] This case is extremely important to the development of the common law slayer rule in Maryland because the Court of Appeals lays out the slayer rule in statutory format after evaluating Maryland case precedent.[114] Generally, under the court's quasi-statute, the slayer should be precluded from sharing

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"assume[ ] the risk of all carelessness[,]" and a killing that is the result of carelessness should not preclude the killer from taking under the contract); Stacker v. Mack, 130 N.E.2d 484, 487-88 (Ind. 1955) (allowing the slayer to inherit because the record, which indicated the slayer was trying to free herself from the victim, "fail[ed] to establish that the [slayer] willfully, unlawfully, and intentionally killed" her victim); Beene v. Gibralter Indus. Life Ins. Co., 63 N.E.2d 299, 300 (Ind. 1945) (finding that even though the slayer had been criminally convicted of manslaughter, there was a "total absence of evidence that the killing was intentional"); Commercial Travelers Mut. Accident Ass'n v. Witte, 406 S.W.2d 145, 149 (Ky. 1966) (finding no evidence in the policy of law that a slayer rule applies to unintentional homicide); Jackson v. Prudential Ins. Co. of Am., 254 A.2d 141, 147 (N.J. 1969) (explaining the "true test is whether the beneficiary intentionally took the life of the insured")).

107. *Schifanelli,* 271 Md. at 188, 315 A.2d at 519.
108. *Id.* at 188-89, 315 A.2d at 519 (citing *Commercial Travelers Mut. Accident Ass'n,* 406 S.W.2d at 149; *Jackson,* 254 A.2d at 147).
109. *See supra* note 106 and accompanying text.
110. *See supra* notes 98, 108 and accompanying text.
111. 307 Md. 105, 107-08, 512 A.2d 389, 390 (1986).
112. *Id.* at 113, 512 A.2d at 393.
113. *Id.* at 107, 113, 512 A.2d at 390, 393.
114. *Id.* at 111-12, 512 A.2d at 392-93. The statute laid out by the court states:
    1) A person who kills another
    a) *may not* share in the distribution of the decedent's estate as an heir by way of statutes of descent and distribution, or as a devisee or legatee under the decedent's will, nor may he collect the proceeds as a beneficiary under a policy of insurance on the decedent's life when the homicide is *felonious and intentional;*
    b) *may* share in the distribution of the decedent's estate as an heir by way of statutes of descent and distribution, or as a devisee or legatee under the decedent's will and *may* collect the proceeds as a beneficiary under a policy of insurance on the decedent's life when the homicide is unintentional even though it is the result of

in the victim's estate because the slayer "felonious[ly] and intentional[ly]" killed the victim.[115] The court, however, also had to address the effect of the slayer's insanity on her right to inherit.[116] To determine the slayer's rights with respect to her inheritance in the absence of a comprehensive slayer statute, the court referred to the statutory definition of criminal responsibility.[117] Allowing the slayer to inherit, the court articulated its rationale:

> The trier of fact must determine whether, at the time the claimant killed the decedent, he lacked substantial capacity to appreciate the criminality of that conduct, or to conform that conduct to the requirements of law, because of a mental disorder or mental retardation. If the claimant were in that

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> such gross negligence as would render the killer criminally guilty of involuntary manslaughter.
> 2) These principles apply not only to the killer but those claiming through or under him.
> 3) The disposition of a criminal cause is not conclusive of the character of the homicide or of the criminal agency of the putative killer in a civil proceeding concerning entitlement to assets of the decedent.
> a) It is not dispositive that no criminal prosecution was brought against the alleged killer, or that charges against him were dismissed on constitutional, statutory or procedural grounds or otherwise, or that, upon a criminal trial he was found not guilty for whatever reason, or was convicted of murder in the first or second degree or of manslaughter.
> b) In the determination of who is entitled to the assets of the decedent, whether the alleged killer was the criminal agent and whether the homicide was intentional and felonious or unintentional is a function within the ambit of the civil proceeding. In short, the lack of or result of a criminal proceeding is not res judicata in a subsequent civil action.

Id.

115. *Id.* at 112-13, 512 A.2d at 392-93.
116. *Id.* at 113, 512 A.2d at 393. The Court of Appeals found Pearl was guilty of murdering her mother, but was found insane. *Id.* at 120 & n.10, 512 A.2d at 397 & n.10. *See generally* Pouncey v. State, 297 Md. 264, 265, 465 A.2d 475, 476 (1983) (holding that a criminal "defendant can be both guilty of a crime and [legally] insane at the time of its commission"). The ruling in *Pouncey* differed from the ruling of the circuit court in *Ford*, the latter of which determined Pearl committed no crime because she was insane at the time of the matricide. *Ford*, 307 Md. at 119-20, 512 A.2d at 396-97.
117. *Ford*, 307 Md. at 114, 123-125, 512 A.2d at 393-94, 398-99 (citing MD. CODE ANN., HEALTH-GEN. § 12-108(a) (1982 & Supp. 1985) (current version at MD. CODE ANN., CRIM. PROC. § 3-109 (LexisNexis 2001)). Section 3-109 states:

> (a) A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to:
> (1) appreciate the criminality of that conduct; or
> (2) conform that conduct to the requirements of law.
> (b) For purposes of this section, "mental disorder" does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct.

> category, he would not be criminally responsible for the killing . . . [and] the slayer's rule is simply not applicable[.][118]

Thus, the *Ford* court added another prong to the common law slayer rule in Maryland: a slayer who is not criminally responsible for his homicide is not disqualified from inheriting from his victim.[119]

4. *Diep v. Rivas*

In 2000, the Court of Appeals was faced with another murder-suicide. This case, however, involved the distribution of the proceeds of the slayer's life insurance policy.[120] In *Diep v. Rivas*, Xuang Ky Tran murdered his wife, Maria Rivas, and then committed suicide.[121] Mr. Tran held a group accidental death and dismemberment benefit policy under which he was the "Insured," and Ms. Rivas was an "Insured Person."[122] The policy contained a successive preference beneficiary provision that dictated the order of classes of persons to be paid if there was no designated beneficiary.[123] If any of the insured family members predeceased the insured, the insured received payment, if living, and the successive preference beneficiaries received payment if the insured was not living.[124] Mr. Tran's siblings argued they were entitled to the proceeds as the successive preference beneficiaries of the policy.[125] In contrast, Dr. Hector Rivas, survivor of Mrs. Rivas, asserted that the successive preference beneficiaries of the policy were Mrs. Rivas' heirs.[126] Dr. Rivas further argued that even if Mr. Tran's siblings were the rightful beneficiaries, they were disqualified by the slayer rule.[127]

The Court of Appeals determined that under the plain meaning of the policy language Mr. Tran's siblings were the successive preference beneficiaries,[128] thereby rejecting Dr. Rivas' argument that they were precluded by the slayer rule.[129] The court also pointed out that a majority of jurisdictions, including Maryland, have allowed "innocent contingent beneficiaries" to collect under a life insurance policy when the primary beneficiary has been "disqualified under the slayer

118. *Ford*, 307 Md. at 122, 512 A.2d at 398.
119. *Id.* at 123, 512 A.2d at 398.
120. Diep v. Rivas, 357 Md. 668, 745 A.2d 1098 (2000).
121. *Id.* at 670, 745 A.2d at 1099.
122. *Id.* at 670, 672, 745 A.2d at 1099, 1100. The master policy defined "Insured Person" to mean the insured, in this case Mr. Tran, and insured family members of the insured.
123. *Id.* at 670-71, 745 A.2d at 1099. The successive preference beneficiaries of the policy were ordered as follows: spouse, children, including legally adopted children, parents, brothers and sisters, estate. *Id.*
124. *Id.* at 671, 745 A.2d at 1099.
125. *Id.*
126. *Id.* at 670-71, 745 A.2d at 1099.
127. *Id.* at 671, 745 A.2d at 1099.
128. *Id.* at 673, 745 A.2d at 1101.
129. *Id.* at 675-80, 684, 745 A.2d at 1101-04, 1106.

rule."[130] This precedent is traceable to the English case of *Cleaver v. Mutual Reserve Fund Life Association*, in which Lord Justice Fry opined that public policy should exclude the criminal, and all persons claiming under the criminal, from benefiting, but should "not . . . exclude alternative or independent rights."[131] In conjunction with this rule, Judge Rodowsky maintained that "to visit the consequences of Tran's crime on his brother and sister conjures up the ghosts of corruption of blood which is prohibited by Article 27 of the Maryland Declaration of Rights."[132]

Thus, *Diep v. Rivas* added yet another facet to the common law slayer rule in Maryland—contingent beneficiaries of the slayer may collect insurance proceeds in a murder-suicide situation, regardless of whether they were selected by the slayer or predetermined by the policy.[133] Though the fact pattern in *Price v. Hitaffer*[134] and *Diep* are very similar, the Court of Appeals in *Diep* distinguished its ruling from *Price* because the insurance policy, not a state statute, dictated the descent and distribution of the insurance proceeds.[135] Mr. Tran's siblings were alternate and independent beneficiaries under the scheme of the insurance policy, whereas the heirs of Mr. Martin, in *Price*, were not.[136] Synthesizing the holdings in *Price* and *Diep*, it appears that the slayer rule in murder-suicide cases allows completely independent heirs, due to their contingency status in an insurance policy, to take through the slayer, while heirs claiming through the state intestacy statute may not.[137] Significantly, the Court of Appeals's 2004 decision in *Cook v. Grierson*[138] obfuscated the slayer rule in Maryland.[139]

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130. *Id.* at 680, 745 A.2d at 1104 (citing Life Ins. Co. v. Cashatt, 206 F. Supp. 410, 413-14 (E.D. Va. 1962)); Spencer v. Floyd, 785 S.W.2d 60, 64 (Ark. Ct. App. 1990); Beck v. W. Coast Life Ins. Co., 241 P.2d 544, 546 (Cal. 1952); Seidlitz v. Eames, 753 P.2d 775, 777 (Colo. Ct. App. 1987); Carter v. Carter, 88 So. 2d 153, 160 (Fla. 1956); Brown v. Life Ins. Co., 249 So. 2d 79, 81 (Fla. Dist. Ct. App. 1971); Metro. Life Ins. Co. v. Wenckus, 244 A.2d 424, 426 (Me. 1968); Lamb v. Nw. Nat'l Life Ins. Co., 56 Md. App. 125, 133-34, 467 A.2d 182, 187 (1983); Lee v. Aylward, 790 S.W.2d 462, 463 (Mo. 1990); Gardner v. Nationwide Life Ins. Co., 206 S.E.2d 818, 821 (N.C. App. 1974); Nat'l Home Life Assurance Co. v. Patterson, 746 P.2d 696, 698 (Okla. Ct. App. 1987); Brooks v. Thompson, 521 S.W.2d 563, 567 (Tenn. 1975)).
131. 1 Q.B. 147, 159, 1891 WL 8835 (1892), *cited with approval in Diep*, 357 Md. at 682-83, 745 A.2d at 1105-06.
132. *Id.* at 677, 745 A.2d at 1103.
133. *Id.* at 682, 745 A.2d at 1105.
134. 164 Md. 505, 165 A. 470 (1933).
135. *Diep*, 357 Md. at 675, 682, 745 A.2d at 1101-02, 1105.
136. *See id.* at 680, 745 A.2d at 1104; *Price*, 164 Md. at 512, 165 A. at 473.
137. *Compare Diep*, 357 Md. at 684, 745 A.2d at 1106, *with Price*, 164 Md. at 506, 518, 165 A. at 470, 475.
138. 380 Md. 502, 845 A.2d 1231 (2004).
139. *See id.* at 505, 509-10, 514, 845 A.2d at 1232, 1235, 1238; *infra* notes 132-33 and accompanying text.

IV. RECENT TREATMENT OF SLAYER RULE CASES IN MARYLAND: *COOK v. GRIERSON*

The Court of Appeals of Maryland took a bold step when it expanded the reach of the slayer rule in *Cook v. Grierson.*[140] Significantly, the *Cook* court ruled that a slayer's innocent children could not inherit from the slayer's victim because they were lineal descendents of a *living* lineal descendent of the victim.[141] Thus, the children were not issue of their grandfather and could not inherit under Maryland's statute of descent and distribution.[142]

In *Cook,* the victim's widow, Deborah Grierson, asserted that Maryland's common law slayer rule, which disqualifies a murderer and anyone claiming through the murderer from taking from the victim's estate, precluded Charles, her husband's son and slayer, from taking his intestate share.[143] Subsequently, the victim's grandchildren, the slayer's children, petitioned the orphans' court to inherit their grandfather's estate, and the court denied their request.[144] The Court of Appeals of Maryland affirmed, holding that based on Maryland's intestate succession statute, Charles's children could not inherit from their grandfather's estate because their father was living issue of their grandfather.[145] Although Charles was precluded from inheriting pursuant to Maryland's slayer rule, the court treated him as living issue with the capacity to inherit.[146] Thus, in the absence of a slayer statute, and under the law of intestate succession, the Court of Appeals precluded innocent lineal descendents from inheriting from the slayer's victim.[147]

In its opinion, the Court of Appeals of Maryland examined *Carter v. Hutchison,*[148] a case from the Tennessee Court of Appeals.[149] In *Carter,* the Tennessee court analyzed Tennessee's slayer statute as a two step process: first, the slayer is disqualified from inheriting from his victim; and second, the victim's estate should be distributed according to Tennessee's intestacy statute.[150] According to the court, under the Tennessee intestacy statute and subsequent interpretive case law, the

140. *Id.* at 513-14, 845 A.2d at 1237-38.
141. *Id.* at 505, 845 A.2d at 1232 (emphasis added).
142. *Id.* at 510, 845 A.2d at 1235. According to the statute, "issue means every living lineal descendant except a lineal descendent of a living lineal descendant." MD. CODE ANN., EST. & TRUSTS § 1-209 (LexisNexis 2001).
143. 380 Md. at 502, 504, 845 A.2d at 1232.
144. *Id.* at 504-05, 845 A.2d at 1232.
145. *Id.* at 505, 845 A.2d at 1232. Prior to the Court of Appeals hearing the case, the Orphan's Court decision was affirmed by the Circuit Court of Anne Arundel County. *Id.*
146. *Id.* at 510, 845 A.2d at 1235.
147. *Id.* at 514, 845 A.2d at 1238.
148. 707 S.W.2d 533 (Tenn. Ct. App. 1985).
149. Cook v Grierson, 380 Md. 502, 512-513, 845 A.2d 1231, 1236-37 (2004) (citing *Carter,* 707 S.W.2d at 538).
150. *Carter,* 707 S.W.2d at 538 (citing TENN. CODE ANN. § 31-1-106 (2004)).

great-grandchildren, who were claiming through their slayer father, were allowed to inherit from their murdered great-grandparents because they were issue under the statutory definition.[151] The court, however, did not treat the slayer as predeceased, because the slayer statute did not require such a determination.[152] Essentially, once the slayer was disqualified and his inheritance lapsed, this triggered Tennessee's antilapse statute.[153] Therefore, the court did not have to declare the slayer as predeceased or as having disclaimed his inheritance.[154]

In *Cook*, the court's approach to its slayer rule was modeled after *Carter*, however, the court neglected to emphasize in *Cook* the fact that the Tennessee slayer statute identified the state's intestate succession statutes as the rules governing the descent and distribution of the slayer's rights.[155] In *Carter*, the Court of Appeals of Tennessee interpreted the state's slayer statute and intestate succession statutes to determine that the slayer's children could inherit from their murdered grandparent's estate.[156] In *Cook*, the Court of Appeals of Maryland

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151. *Id.* at 538-39 (defining the "issue of the decedent" as "unless otherwise limited, all the direct, lineal descendents of the deceased" (citing Burdick v. Gilpin, 325 S.W.2d 547, 554 (1959)); Third Nat'l Bank in Nashville v. Noel, 192 S.W.2d 825, 828 (1946); White v. Kane, 159 S.W.2d 92, 94-95 (1942)). The relevant portion of the Tennessee intestacy statute is found at TENN. CODE ANN. § 31-2-104 (2004).
152. *Carter*, 707 S.W.2d at 539 (citing TENN. CODE ANN. § 31-1-106).
153. *Id.* at 538-39 (citing TENN. CODE ANN. § 31-2-104(b)(1)).
154. *Id.* at 539.
155. Cook v Grierson, 380 Md. 502, 502, 512, 514, 845 A.2d 1231, 1231, 1236, 1238 (2004) (citing *Carter*, 707 S.W.2d 533). The Tennessee slayer statute provides:

> Any person who shall kill, or conspire with another to kill, or procure to be killed, any other person from which the first named person would inherit the property, either real or personal, or any part thereof, belonging to such deceased person at the time of deceased person's death, or who would take the property, or any part thereof, by will, deed, or otherwise, at the death of the deceased, shall forfeit all right therein, and the same shall go as it would have gone under the provisions of § 31-2-104, or by will, deed or other conveyance, as the case may be, provided, that this section shall not apply to any such killing as may be done by accident or in self-defense.

TENN. CODE ANN. § 31-1-106 (2004).

Additionally, the Tennessee intestate succession statute, in pertinent part, provides:

> (b) The part of the intestate estate not passing to the surviving spouse under subsection (a) or the entire intestate estate if there is no surviving spouse, passes as follows:
>
> (1) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation.

TENN. CODE ANN. § 31-2-104 (2004).

156. *Carter*, 707 S.W.2d at 539.

acted without the direction of the legislature, applying the Maryland intestate succession statute.[157] A number of courts originally precluded a slayer from inheriting under intestate succession statutes,[158] but an overwhelming majority of states have enacted slayer statutes that treat the slayer as having predeceased, disclaimed his inheritance, or died with the victim simultaneously.[159] Although Maryland has not chosen any of these approaches, it has yet to create a similarly logical approach.[160] The *Cook* court dismissed the grandchildren's argument for the adoption of the legal fiction that the slayer predeceased the victim, and thus treated the victim's slayer as living.[161] Although this result is congruent with Maryland's intestate succession statute, the

157. 380 Md. at 513-14, 845 A.2d at 1237-38.

158. *See* Weaver v. Hollis, 22 So. 2d 525, 529 (Ala. 1945) (construing the intestate statute according to the intent of the legislature to preclude a slayer); Wright v. Wright, 449 S.W.2d 952, 953-54 (Ark. 1970) (upholding a previous finding that the slayer statute was not limited to dower and curtsey); Dutill v. Dana, 113 A.2d 499, 501-02 (Me. 1952) (slayer's inheritance is treated as a constructive trust); Budwit v. Herr, 63 N.W.2d 841, 844 (Mich. 1954) (recognizing that the principles set forth in *Slocum v. Metropolitan Life Ins. Co.*, 139 N.E. 816, 818 (1923), preclude a slayer from taking under an insurance policy and from taking under the statutes of descent and distribution); Perry v. Strawbridge, 108 S.W. 641, 644-45 (Mo. 1908) (holding that the "common law doctrine of succession" does not apply to a slayer or to any person claiming property "through or under the slayer"); Sikora v. Sikora, 499 P.2d 808, 811 (Mont. 1972) (imposing a constructive trust on the inheritance a slayer would have received by intestate succession); Kelley v. State, 196 A.2d 68, 70 (N.H. 1963) (dictum) (recognizing the imposition of a constructive trust when a slayer has been unjustly enriched by his criminal act); *In re* Estate of Kalfus, 195 A.2d 903, 906 (N.J. Super. Ct. Ch. Div. 1963) (stating "[e]ven in the absence of a specific statute, it has been held that a murderer cannot inherit from his victim under the statute of descent and distribution"); Ovalle v. Ovalle, 604 S.W.2d 526, 528-29 (Tex. Civ. App. 1980) (finding that a wife that used unjustified deadly force against her husband should not be awarded life insurance benefits); *In re* Estate of Mahoney, 220 A.2d 475, 478 (Vt. 1966) (citing *Kelley*, 196 A.2d at 69-70) (common law maxims dictate a constructive trust should be imposed). *See also, e.g.*, *Slocum*, 139 N.E. 816, 816, 818 (Mass. 1923) (finding that a slayer would be denied life insurance proceeds on his wife's life, and that the indicated proceeds remaining after wife's estate claims were satisfied, would not go to the slayer); DeZotell v. Mut. Life Ins. Co., 245 N.W. 58, 64-65 (S.D. 1932) (holding that a slayer is barred from taking property from the deceased by descent or succession); Johnston v. Metro. Life Ins. Co., 100 S.E. 865, 866-67 (W. Va. 1919) (holding that a personal representative of the victim of a murder may initiate a suit in order to recover the amount of the policy for the benefit of the estate, as long as he or she is not the murderer); RESTATEMENT (FIRST) OF RESTITUTION § 187(2)(1937) ("Where a person is murdered by his heir or next of kin, and dies intestate, the heir or next of kin holds the property thus acquired . . . upon a constructive trust for the person or persons who would have been heirs or next of kin if he had predeceased the estate.").

159. *See supra* note 9.

160. *See supra* text accompanying notes 67-142.

161. 380 Md. at 510, 513, 845 A.2d at 1236, 1237.

court failed to address what the slayer's actual role is in the statutory scheme of descent and distribution.[162]

Under Maryland law, the slayer is not treated as predeceasing the victim, disclaiming his inheritance, or dying simultaneously with the victim. Absent a specific declaration as to the status of the slayer,[163] the unanswered question is what role does a slayer have under Maryland law. In *Cook*, the slayer is alive; however, if the slayer kills himself, the slayer's children become issue under the intestacy statute.[164] If such a situation were to come before the Court of Appeals of Maryland, the court would once again have to add another facet to the common law slayer rule. To eliminate this uncertainty and establish uniformity, the slayer rule in Maryland must be codified.

V. STATE STATUTES

It is the duty of a legislature to provide a uniform body of laws so that not only state courts, but a state's citizens, are aware of the laws and can reasonably comprehend and interpret them.[165] When a legislature remains inactive on an issue for too long, the judiciary may be compelled to develop law on that particular issue.[166] Specifically, the Maryland General Assembly has not enacted a slayer statute, which has caused conflicting and unpredictable analyses of the common law slayer rule.[167] Moreover, these analyses have frequently left unanswered questions that courts are likely to encounter in the future.[168]

A. *Why a Statute?*

Under the separation of powers doctrine, each branch of the government has its own duties and responsibilities dictated under the U.S. Constitution.[169] The legislature promulgates the laws,[170] the executive branch executes these laws,[171] and the judiciary interprets them.[172] The judiciary is traditionally deferential to the legislature, but judicial interpretation of a statutory scheme can sometimes result in inconsistent and questioned outcomes.[173] The problem is further

162. *See id.* at 513, 845 A.2d at 1237.
163. *See supra* notes 151-52 and accompanying text.
164. MD. CODE ANN., EST. & TRUSTS § 1-204 (Lexis Nexis 2001).
165. *See* Martha J. Dragich, *Will the Federal Courts of Appeals Perish If They Publish? Or Does the Declining Use of Opinions to Explain and Justify Judicial Decisions Pose a Greater Threat?*, 44 AM. U. L. REV. 757, 779-80 (1995) (stating that "[i]f the law is in a constant state of flux, it cannot induce people to behave in ways deemed beneficial to society").
166. *See generally id.* at 768-70.
167. *See supra* text accompanying notes 67-142.
168. *See* Olenn, *supra* note 16, at 1342.
169. *See, e.g.*, Hampton v. United States, 276 U.S. 394, 406 (1928).
170. U.S. CONST. art. I.
171. U.S. CONST. art. II.
172. U.S. CONST. art. III.
173. *See* Fellows, *supra* note 27, at 546-47.

exacerbated when there is no specific legislation for the judiciary to interpret.[174] In such a circumstance, courts may be forced to play a quasi-legislative role, creating a body of law through their decisions.[175] When the legislative branch of government chooses not to act on an issue, it essentially acquiesces its lawmaking power to the judicial branch, if and when that issue comes before the courts.[176] On the one hand, this acquiescence is necessary to our system of lawmaking because our legislatures would be substantially burdened if they had to consider all ambiguities in the common law.[177] Indeed, the judicial branch does not overstep its boundaries when rendering such decisions, but there comes a time when the legislature should take affirmative steps in order to create a uniform system of laws.

B. Why a Statute in Maryland?

The issue of whether and under what circumstances slayers should be allowed to inherit from their victims is precisely the type of issue that should be addressed by the legislature rather than the courts. Unlike forty-two other states in this country, Maryland has not codified the common law slayer rule.[178] Consequently, over the past seventy-two years, Maryland courts have interpreted the common law slayer rule in light of the common law maxims of equity in an attempt to form a steadfast rule.[179] A steadfast rule, however, has not been the result of the courts' common law interpretations.[180] Rather, Maryland courts have developed an inconsistent and arguably incoherent body of law.[181] Despite the inconsistencies and confusion created by the common law development of the slayer rule since *Price*, the Maryland legislature has remained inactive, giving the courts carte blanche to develop this area of law.[182]

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174. *See* Fellows, *supra* note 27, at 547.
175. Caleb Nelson, *Stare Decisis and Demonstrably Erroneous Precedents*, 87 VA. L. REV. 1, 22 (2001) (noting that early commentators of American law believed "common-law decisionmaking amounted to 'judicial legislation'"); *see, e.g.*, Cook v. Grierson, 380 Md. 502, 512-13, 845 A.2d 1231, 1237 (2004) (interpreting Maryland's intestate succession statute to preclude the slayer and his heirs from inheriting from the slayer's victim); Perry v. Strawbridge, 108 S.W. 641, 644-45 (Mo. 1908) (construing the Missouri statute of descents and distributions to preclude any heir that "willfully takes the life of his ancestor"); Ovalle v. Ovalle, 604 S.W.2d 526, 528 (1980) (citing *In re* Estate of Laspy, 409 S.W.2d 725, 730 (Mo. Ct. App. 1966) (stating that a widow can only be classified as such if she has become a widow "by the ordinary and usual vicissitudes of life and not by her own felonious act")).
176. *See* G. Edward White, *Recovering the World of the Marshall Court*, 33 J. MARSHALL L. REV. 781, 791-92 (2000).
177. *See* Fellows, *supra* note 27, at 547.
178. *See* statutes cited *supra* note 9.
179. *See supra* Part III.A.
180. *See supra* Parts III-IV.
181. *See supra* Part III.
182. *See supra* Parts III-IV.

Although Maryland courts have spent over seventy years formulating and re-formulating the common law slayer statute,[183] their work is far from finished. In *Cook*, the Court of Appeals of Maryland summarized the current state of the slayer rule in Maryland,[184] but this summary is not enough to properly guide future courts. Other factual scenarios have yet to reach the courts, and Maryland courts will frequently have to deal with inconsistent case law to resolve these cases.[185] For instance, murder-suicide in slayer cases presents an interesting fact pattern for courts to resolve.[186] In such cases, the slayer has not physically predeceased his victim or disclaimed his inheritance before ending his life, typically moments after killing his victim.[187] If the slayer had committed suicide just after killing his father or mother, his children would no longer be lineal descendants of a living lineal descendant of the decedent; therefore, they would be able to take under the laws of intestacy.[188] It logically follows that under this murder-suicide scenario, Maryland courts would have no choice but to allow the children to inherit.[189] The possibility of various types of slayer scenarios begs the Maryland General Assembly to enact a statute to guide the courts.[190]

VI. PROPOSED STATUTE FOR MARYLAND

Further judicial interpretation of Maryland's common law and current statutory scheme will not clarify or make uniform the slayer rule

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183. *See* discussion *supra* Part III.B.4.

184. 380 Md. at 508-09, 845 A.2d at 1235.

> [A] person who intentionally and feloniously kills another may not share in the distribution of the decedent's estate as an heir by way of statutes of descent and distribution, or as a devisee or legatee under the decedent's will, nor may the slayer collect proceeds as a beneficiary under a policy of insurance on the decedent's life. These principles also apply to anyone claiming through or under the slayer.

Id.

185. *See supra* notes 160-61 and accompanying text.

186. Olenn, *supra* note 16, at 1342 ("[B]ecause the innocent distributes of the slayer may generally make a derivative claim to the slayer's property through the victim's estate, now as rightful beneficiaries of the victim in place of the deceased slayer.").

187. *See, e.g.*, Pannone v. McLaughlin, 37 Md. App. 395, 377 A.2d 597 (1977).

188. *See generally* MD. CODE ANN., EST. & TRUSTS §§ 1-209 to -210, 3-101, 3-103 (LexisNexis 2001).

189. *See infra* note 195 and accompanying text. The result in an intestate murder-suicide situation may be unclear, but in *Pannone* the Court of Special Appeals of Maryland determined how property should be transferred in a murder-suicide if the property is held as tenants by the entirety. 37 Md. App. 395, 377 A.2d 597. The *Pannone* court ruled that George Cousins severed his interest as a tenant by the entirety when he killed his wife, Kathleen Cousins. *Id.* at 407, 377 A.2d at 604. Therefore, his murderous act rendered his survivorship interest "inoperative." *Id.*

190. *See supra* notes 160-63 and accompanying text.

in Maryland. The courts' analyses of the current descent and distribution statutes have proven to be ineffective and overly burdensome for the courts.[191] A comprehensive slayer statute will remedy the lack of uniformity in slayer rule interpretation and provide courts with a concrete guideline.[192]

A. *Inadequate Alternatives to Enacting a Slayer Statute*

Two seemingly viable solutions to avoid the harsh result in *Cook* are (1) redefining the statutory definition of "issue" to include living descendants of a living lineal descendant who is a slayer;[193] and (2) adding a provision to the antilapse statute that would allow a slayer's inheritance to lapse to his blood relatives.[194] While these solutions may provide guidance to courts, they do not completely resolve the problems associated with not having a slayer statute. Indeed, redefining "issue" and changing the antilapse statute may provide temporary results, but a permanent solution should be in place to deal with new slayer-victim-heirs scenarios in the future.

1. Redefining "Issue"

In *Cook*, the Court of Appeals asserted that if the General Assembly is dissatisfied with its decision, it should change the statutes of descent and distribution.[195] The court essentially suggested that the General Assembly change the statutory definition of "issue" so that it would not exclude lineal descendants of living lineal descendants;[196] however, this statutory change must be strictly qualified to apply only to slayer cases. If it is not clearly qualified, any and all living issue at the time of the intestate's death, including a death by natural causes, would be able to take.[197] This situation directly defeats the legislative intent of preserving the most natural form of descent and distribution, that of parents inheriting before their children.[198] Redefining "issue" in Ma-

191. *See generally* discussion *supra* Parts III-IV; Julie Waller Hampton, *The Need for a New Slayer Statute in North Carolina*, 24 CAMPBELL L. REV. 295, 315 (2002) (discussing adoption of a comprehensive slayer statute as a means to "relieve the pressure on the courts").

192. *See also* Hampton, *supra* note 191, at 315 (discussing the Uniform Probate Code provision as a comprehensive slayer statute that would guide courts and promote uniformity).

193. *See* MD. CODE ANN., EST. & TRUSTS § 1-209 (2001).

194. *See id.* § 4-403.

195. 380 Md. at 514, 845 A.2d at 1238.

196. *See id.* at 512-14, 845 A.2d at 1237-38 (citing Carter v. Hutchinson, 707 S.W.2d 533, 538 (Tenn. Ct. App. 1985) (citing TENN. CODE ANN., §§ 31-1-106, 31-2-104 (2001 & Supp. 2004))).

197. *See* MD. CODE ANN., EST. & TRUSTS §§ 1-209, 3-103. For example, if the statute was not qualified, then the child and the grandchild of the intestate decedent would both participate in the distribution of the decedent's estate.

198. *See generally* Barron v. Janney, 225 Md. 228, 170 A.2d 176 (1961).

ryland would create unnecessary confusion and unpredictable results.[199] Therefore, the General Assembly should not change the statutory definition of "issue" as the *Cook* court suggests,[200] but rather should enact a slayer statute that would complement existing legislation and supplement case law.

2. Changing the Antilapse Statute

Additionally, Maryland's antilapse statute is inadequate to properly guide courts in slayer cases. Technically, if the slayer's victim has a valid will, the slayer's inheritance will lapse and become part of the victim's residuary estate.[201] But an antilapse statute prevents triggering the lapse into the residuary estate and allows a "void or inoperative" bequest to go to the legatee, or legatees, who would have taken if the slayer had not existed.[202]

Maryland's antilapse statute falls within the minority of jurisdictions that do not require the legatee to be related to the testator for the gift to pass to the legatee's estate.[203] Thus, a devise to a non-blood relative will pass through that person's estate in favor of blood relatives of the testator.[204] Enacting an additional section to the antilapse statute treating the slayer's bequest as lapsing seems, at first glance, to resolve the problem of not allowing innocent issue to inherit while preserving the intent of the testator, but what if the slayer is not a blood relative of his victim? If the bequest to the non-blood relative slayer was treated as lapsing, then the slayer's children, who were in no way related to the testator, albeit innocent, would inherit.[205] This patently runs against the intent to pattern statutory descent and distribution after a testator's wishes.[206] To allow the non-blood relative slayer to control his victim's estate in such a way violates common law maxims of equity.[207] In other words, while the slayer cannot take from the

199. *Compare Cook*, 380 Md. 502, 845 A.2d 1231 (suggesting that "issue" should include lineal descendants of living lineal descendants, which could lead to parents and children inheriting contemporaneously), *with Barron*, 225 Md. 228, 170 A.2d 176 (emphasizing the importance of parents inheriting before their children).

200. 380 Md. at 514, 845 A.2d at 1238.

201. *See, e.g.*, Misenheimer v. Misenheimer, 325 S.E.2d 195, 197 (N.C. 1985) (slayer's share is void and is divided among residuary beneficiaries).

202. *See, e.g.*, MD. CODE ANN., EST. & TRUSTS §§ 4-403 to -404 (LexisNexis2001).

203. *See id.*

204. *See id.*

205. *See id.* § 4-403(b).

206. *See* Barron v. Janney, 225 Md. at 234-35, 170 A.2d at 180 (1961) ("[T]he purpose of the statutes of descent and distribution is to make such a will for an intestate as he would have been most likely to make for himself . . . .").

207. *See supra* notes 48-51 and accompanying text.

estate after killing the victim, he continues to dictate how the estate will be distributed.[208]

A viable solution to this would be to add a provision to the antilapse statute that prevents it from being triggered when the slayer is a non-blood relative.[209] This achieves the common law purpose of lapse;[210] however, it makes the presumption that a testator favors blood relatives over non-relatives.[211] While this presumption may seem harsh in instances where a testator is particularly close with his non-relatives, it would more likely further the average testator's intent.[212]

Although redefining the statutory definition of "issue" and changing the antilapse statute may help Maryland courts to frame the common law slayer rule, a clear and concise slayer statute would be more effective.[213] The key to the slayer rule is that the killing must have obstructed the testator's power to distribute his or her estate; therefore, a slayer statute must neutralize the effect of the killing.[214]

B. *Proposed Slayer Statute for Maryland*

The following is a proposed slayer statute for Maryland that will eliminate the ambiguities currently existing in Maryland case law.

Effect of Felonious and Intentional Killing on Descent and Distribution of Victim's Estate.

(A) A slayer who feloniously and intentionally kills the decedent shall be treated as disclaiming all benefits with respect to the decedent's estate. These benefits include: the slayer's intestate share under § 3-102 and § 3-103, bequest under the decedent's

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208. Fellows, *supra* note 27, at 530 n.112 (discussing MD. CODE ANN., EST. & TRUSTS § 4-403(b) (Supp. 2004)).
209. *See infra* note 210 and accompanying text.
210. A devise in a will lapses when the beneficiary of the devise dies after the execution but before the administration of a testator's will. *See* Gallaudet Univ. v. Nat'l Soc'y of the Daughters of the Am. Rev., 117 Md. App. 171, 187, 699 A.2d 531, 538 (1997) (citing Bartlett v. Ligon, 135 Md. 620, 623, 109 A.2d 473, 475 (1920)). This common law rule presumes that the testator would not want the devise to go to anyone but the specific beneficiary. *See generally* Livingston v. Safe Deposit & Trust Co., 157 Md. 492, 502, 146 A. 432, 471 (1929) (quoting 2 JOHN E. ALEXANDER, COMMENTARIES ON THE LAW OF WILLS § 771 (Bender-Moss Co. 1918)). Legislation has abandoned this presumption in favor of avoiding intestacy. *Galludet Univ.*, 117 Md. App. At 187, 699 A.2d at 538. Specifically, antilapse statutes substitute the heirs of the beneficiary in place of the beneficiary himself to avoid intestacy. *Id.* at 187-88, 699 A.2d at 538-39.
211. *See, e.g.*, Wilson v. Hendrie, 92 N.W.2d 282, 387-88 (1958) (remanding case for further trial court fact-finding after determining that there was insufficient evidence indicating that the victim would have wanted her slayer-husband's children by a prior marriage to inherit over her designated beneficiaries).
212. *See Barron*, 225 Md. at 235, 170 A.2d at 180 (citing W.W. THORNTON, A TREATISE ON THE LAW RELATIVE TO GIFTS AND ADVANCEMENTS § 524 (1893)).
213. *See* Hampton, *supra* note 191.
214. Sherman, *supra* note 31, at 861.

will, elective share, pretermitted heir share, family allowance, beneficiary designations, and any other distributions under an insurance policy or trust. The slayer severs his or her interest in any property held as tenants by the entirety with the decedent, therefore transforming the property to tenants in common by virtue of his or her act.

(B) The felonious and intentional killing of the decedent revokes any revocable (1) disposition or appointment of property made by the decedent to the slayer in a governing instrument, (2) provision in a governing instrument conferring a general or nongeneral power of appointment on the slayer, and (3) nomination of the slayer in a governing instrument, nominating or appointing the slayer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.

(C) Subsection (A) will have no effect on the rights of lineal descendants of the slayer or lineal descendents of the slayer's victim. These lineal descendants are entitled only to the share the slayer has forfeited.

(D) A wrongful acquisition of decedent's property by the slayer not covered by subsections (A) and (B) shall be treated in accordance with the principal that a slayer cannot profit from his or her own wrong.

(E) Definitions. For the purposes of this section:

(1) "Governing instrument" means any governing instrument executed by the decedent.

(2) "Revocable" with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of, or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the slayer, whether or not the decedent was then empowered to designate himself in the place of his slayer and/or the decedent then had capacity to exercise the power.[215]

VII. CONCLUSION

In *Cook*, based on the plain meaning of Maryland's intestacy statute, the Court of Appeals of Maryland excluded the innocent children of a slayer from inheriting from their grandfather.[216] Yet, it is not only this harsh result of *Cook* that should spur the Maryland legislature to enact a slayer statute, but also the realization that other situations will arise that will further complicate and create inconsistencies in Maryland

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215. *See generally* UNIF. PROBATE CODE §§ 2-803(a)(2)-(3), (b), (c), (f) (amended 1993).
216. 380 Md. 502, 513, 845 A.2d 1231, 1237.

case law.[217] For example, should the slayer rule be applied to mercy killings or assisted suicides? And if so, how? The core of the slayer rule is to disqualify a slayer from inheriting from his crime, not to disqualify innocent family members who never intended to profit from the killing. Maryland case law has defined a slayer as one who "intentional[ly] and felonious[ly]" kills and is criminally responsible for the death of a victim.[218] The *Cook* decision has extended this definition to the children of the slayer.[219] The Court of Appeals may have had no choice but to exclude these children, but the General Assembly must take notice of this decision and adopt a slayer statute to promote fairness and uniformity in the courts.

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217. *See* discussion *supra* Part IV.
218. Ford v. Ford, 307 Md. 105, 111-12, 512 A.2d 389, 392 (1986) (citing Schifanelli v. Wallace, 271 Md. 177, 315 A.2d 513 (1974); Chase v. Jenifer, 219 Md. 564, 150 A.2d 251 (1959); and Price v. Hitaffer, 164 Md. 505, 165 A. 470 (1933)).
219. 380 Md. at 513, 845 A.2d at 1237.

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