

# SUMMARY

- S1. There is a well-established common law rule, often referred to as the “forfeiture rule”, which states that a person cannot inherit property from someone whom he or she has unlawfully killed. For example, when a person dies without making a will, leaving no spouse but an only child, the law normally provides that that child should inherit. If however the child has unlawfully killed the dead person, the forfeiture rule overrides the normal law and the child is excluded.<sup>1</sup>
- S2. The question is what should happen to the inheritance in these circumstances. The three possibilities are that it should go:
- (a) to the killer’s children (the dead person’s grandchildren);
  - (b) to other relatives, such as the dead person’s brothers and sisters; or
  - (c) to the State.

## A RECENT CASE

- S3. This problem came to light as a result of a case decided by the Court of Appeal in 2000.<sup>2</sup> Two grandparents were murdered by their only son, who was sent to prison for life. The grandparents had not left a will and so their property had to be distributed under the intestacy rules. It was agreed that the son himself could not inherit because, as he had murdered his parents, the forfeiture rule prevented it.
- S4. The question was who would receive the property. Had the son already died, the property would have gone to the grandparents’ only grandchild, who was also the son’s only child. However, the son was not dead, but merely disqualified from inheriting. The relevant provision of the intestacy rules (contained in the Administration of Estates Act 1925) provides that the grandchild will inherit only if the son or daughter has already died. The court accordingly decided that the law did not allow the grandson to take the property. Rather, the property would have to go to the dead grandfather’s sister (or her estate).
- S5. Thus, in this situation, not only is the killer disqualified from inheriting but so also are all the killer’s direct descendants. The Court of Appeal seems to have regarded this as an unintended and unforeseen consequence of the present intestacy rules. The property is arbitrarily diverted away from those who would normally be next in line to receive it.

<sup>1</sup> There is a discretionary power to waive this rule in cases where the killing does not amount to murder.

<sup>2</sup> *Re DWS (deceased)* [2001] Ch 568 (CA).

## **PROBLEMS WITH THE CURRENT LAW**

- S6. The Law Commission sees three principal problems with the present rule:
- (a) It has the effect of punishing innocent grandchildren by permanently cutting them out of the scheme of inheritance because of their parents' wrongdoing. This seems inherently unfair.
  - (b) The intestacy rules set down a specific order in which the dead person's relatives are to receive the property. In that order, grandchildren come before brothers and sisters. It seems odd that, where the deceased's son or daughter is disqualified rather than dead, the brothers and sisters should be preferred and the grandchildren excluded from the list altogether.
  - (c) The intestacy rules are generally designed to reflect the presumed wishes of the dead person; that is, to replicate the will that the dead person might have made for themselves. Were they told that their children would be disqualified from inheriting they would presumably expect the property to go their grandchildren in the usual way rather than to remoter relatives.

## **OUR PROVISIONAL PROPOSALS**

- S7. We provisionally propose that in situations where a potential heir is disqualified, the property should be distributed as if that person had died. This would allow the property to be distributed in the normal way and better reflect the likely wishes of the dead person. This rule would apply whether the dead person was killed by a son or daughter or by some other relative, for example a brother or sister.
- S8. The Law Commission's main proposal concerns the case where the dead person has died intestate, and the potential heir is excluded because he or she has killed the dead person. However, we also suggest similar solutions for analogous cases, where a potential heir refuses a benefit to which he or she is entitled under the intestacy laws, or the killer has been left property by will.