

THE EFFECT OF CULPABLE HOMICIDE
ON RIGHTS OF SUCCESSION

REPORT OF THE PROPERTY LAW AND EQUITY REFORM COMMITTEE

Presented to the Honourable the Minister
of Justice in October 1976

NEW ZEALAND

THE EFFECT OF CULPABLE HOMICIDE
ON RIGHTS OF SUCCESSION

To: The Minister of Justice

Terms of Reference

1. The Committee has been asked to consider the law regarding the effect of culpable homicide on rights of succession, and to advise whether any change is desirable in regard thereto.

General Background

2. It is a well established principle that a person who is guilty of the murder of another cannot profit from his crime, and is not entitled to any property that he would otherwise have acquired as a result of the death. The principle has been applied in cases involving manslaughter, but the limits of the principle and the consequences of its application are ill-defined.

3. When the Administration Act 1969 was being drafted, the Public Trustee pointed to the difficulties that he was experiencing in this area of the law, and requested that the position be fully dealt with by legislation. The group of officials who worked on the drafting of that Act prepared a suggested clause on the subject, and this was included in the draft of that Act that was referred to our Committee for comment. The clause was held over for further study at the request of our Committee. We were concerned with the implications of the rule in Hollington v. Hewthorn [1943] K.B. 587, which decides that

a conviction recorded in a criminal Court is not admissible in subsequent civil proceedings as evidence of the facts upon which the conviction was founded; also with related procedural matters, and with the awkwardness of a situation in which the circumstances of homicide may have to be examined by the Court at different times and with different standards of proof in its criminal and civil jurisdictions. Since the matter was referred to our Committee, a report on the said rule by the Torts and General Law Reform Committee of New Zealand was presented to the Minister of Justice in July 1972, but there has been no legislation arising out of that report.

Working Paper

4. In 1973 our Committee set out the results of the work that it and the group of officials had done up to that stage in a working paper that was circulated to interested parties. The working paper asked recipients to comment by 31 July 1974. It drew attention to recent interest in the problems in the area of the law to which the working paper related, and pointed to relevant recent articles cases, and New Zealand legislation. Annexed to the working paper were the latest version of the New Zealand draft clause on the subject and a copy of a suggested draft statute on the subject set out in an article by Professor Wade published in 1936 in 49 Harvard Law Review, p.715. Comments were received from the Canterbury District Law Society, the Wellington District Law Society, the Hamilton District Law Society, and the Public Trustee. The Committee expresses its thanks to them, and has given careful consideration to their comments.

Action Subsequent to Working Paper

5. Since the circulation of the working paper the

Committee has caused inquiries to be made in the United States of America regarding legislation inspired by Professor Wade's article and enacted in various States there. The Committee has now received from the Attorney-General of the State of North Carolina the Act passed by the legislature of that State in 1961 (Chapter 31A of the General Statutes of North Carolina), together with a special report made by the General Statutes Commission of that State to the General Assembly of that State at the time when the Act was being considered, and a copy of a very informative newspaper article on that Act. The special report mentions that, at the date thereof, 26 States in the United States of America had legislated in various ways in relation to the subject; also that the form of the American legislation had been coloured by the need to avoid the taint of unconstitutionality on the ground of forfeiture for crime.

6. The Committee has now completed all studies that it can usefully make on the subject, except that it is still left in doubt as to whether the recommendations of the Torts and General Law Reform Committee regarding the said rule in Hollington v. Hewthorn will be dealt with by general legislation or need to be covered in the special context of culpable homicide. The Committee is in general agreement with the recommendations of the Torts and General Law Reform Committee regarding the rule, but notes that their recommendations are silent as to the effect of an acquittal where subsequent civil proceedings are brought. This aspect came before the Australian Courts in Helton v. Allen 63 C.L.R. 691 where the residuary beneficiary under a will was acquitted on trial upon indictment for the murder of the deceased. Subsequently civil proceedings were brought in the Supreme Court of Queensland for the purpose of determining that the residuary beneficiary had unlawfully killed the deceased and was consequentially disqualified from taking under his

will. The jury found that the residuary beneficiary had unlawfully killed the deceased. There was an appeal against this decision to the High Court of Australia. In the course of their judgment on this appeal, Dixon, Evatt, and McTiernan JJ., in dealing with the aspect now under consideration, joined in stating at page 710:

"The only ground upon which the acquittal of Helton could exclude the operation of the rule is that, the rule being one of public justice, it ought not on grounds of public justice to be extended to a case where the claimant has been absolved in the criminal jurisdiction from the material crime. In other words it may be said that to retry as a civil issue the guilt of a man who has been acquitted on a criminal inquest is so against policy that a rule drawn from public policy ought not to authorise it. There is however no trace of any such conception in the history of the principle that by committing a crime no man could obtain a lawful benefit for himself. To qualify the rule in the manner suggested would, we think, amount to judicial legislation. It is much more than the application of settled principle to an instance hitherto unforeseen or not adverted to in the general formulation of the rule. We are therefore of opinion that the appellant Helton is not entitled as a matter of law to a verdict and judgment in his favour."

The refusal of the Court to qualify the rule by judicial legislation is not the whole answer to the question whether it should be qualified by Act of Parliament. The legislation arising out of the report on the rule in Hollington v. Hewthorn should state explicitly whether or not acquittal in criminal proceedings shall be a bar to subsequent civil proceedings; also whether or not a determination in civil proceedings shall be a bar to subsequent criminal proceedings.

RECOMMENDATIONS

Necessity for Legislation

7. The Wellington District Law Society has suggested that the relevant rules of law are of very infrequent

application in practice, and cases in which any difficulty arises must be extremely rare. Our Committee leans against legislation in areas where practical difficulties are not arising. On balance, however, we are in favour of the enactment of legislation on the lines indicated in the draft set out in the appendix to this report. In reaching this conclusion we are influenced by the matters mentioned in paragraphs 8 to 12 of this report and by the extent to which State Legislatures in the United States of America have seen fit to deal with the position by legislation as mentioned in paragraph 5 of this report.

8. The Public Trustee has pointed to 8 cases within his experience in which problems related to the effect of culpable homicide on rights of succession arose between 1959 and 1974. These problems were resolved by agreement, by decision of the Court (Re Pechar (deceased) [1969] NZLR 574), and by decision of the Public Trustee taken either because the law was sufficiently clear in relation to the immediate problem or because the amount involved was too small to warrant reference to the Court.

In his letter dated 4 December 1974 reporting on the 8 cases mentioned, the Public Trustee summarised his views as follows:

"The experience of the Public Trustee is that all of these estates present difficulties in administration but that the difficulties can usually be resolved under the existing law. It seems, however, that there are two main areas in which the law could be clarified by statutory provision. The first is the question of who takes the interest to which the killer would, apart from the slaying, have been entitled. Williams on Wills, 3rd Edition at page 44, states that 'The gift goes as if the donee had died immediately before the testator'. The authority for this is said to be In the Estate of Crippen (1911) P.108, but it is doubtful whether Crippen's case provides such authority. Other text book writers do not go as far as Williams and are usually content to assert that the murderer does not share in the estate. The draft legislation annexed to Working Paper

No. 1 provided that an interest which devolves under a will or on intestacy would devolve as if the killer had died immediately before the person killed leaving only such issue (if any) as he would have left if he had died immediately before the person killed. The Public Trustee supports this approach. The second aspect is the devolution of jointly owned property where the killer and the victim were joint tenants. In Re Pechar, Hardie Boys J. decided that the killer became entitled to the legal title to the property by survivorship but held one-half of the jointly owned property as constructive trustee for the victim. This does preserve the rights of the victim, and the successors to the victim, but practical difficulties can arise as to the disposal of the property if the killer is unwilling to agree to a sale of the property and the division of the proceeds. It is also not entirely clear that Re Pechar applies where the jointly owned property is a joint family home and either the killer or the victim was the sole settlor of the property. The proposal in Working Paper No. 1 that the joint tenancy be converted into a tenancy in common in equal shares would appear to offer a more practicable solution than that reached by Hardie Boys J. but legislation will be necessary. The Joint Family Homes Amendment Act 1974 provides that, on the cancellation of a settlement while the husband and wife are both alive, the property or the proceeds of sale vest in the husband and wife in equal shares. There are exceptions to this, but in view of this primary principle, it seems reasonable that a joint family home should vest in the killer and victim as tenants in common in equal shares even in a situation where the victim was the original settlor."

9. In the working paper that was circulated the Committee advanced as a reason for legislation its concern that there might be an increasing problem where death occurs through the reckless or dangerous driving of a motor vehicle. The Public Trustee advises that he has not yet administered the estate of a person killed in a motor vehicle accident where the driver of the motor vehicle was charged with manslaughter. He makes no mention of cases involving killing in circumstances creating an offence against the Transport Act 1962. The Western Australian Law Reform Committee's report dated

11 August 1970 on their project No. 17 in relation to manslaughter or dangerous driving causing death shows that in that State the great majority of convictions were for dangerous driving, not manslaughter. Interesting reference to this aspect of the subject is made in an article published in the Modern Law Review of September 1974, page 481, where it is stated at pages 493 and 494 -

"In South Africa, where Cleaver is followed, it was cautiously stated as long ago as 1954 that: Death in road accidents is frequent at the present day, and the extension of the rule to death negligently caused may be obsolete. (Lee and Honore, The South African Law of Property, Family Relations and Succession.) This was however expressed to be subject to the view of Blackwells in Erasmus v. Caldwell, viz., if he be convicted either of this charge (murder) or even a lesser charge of culpable homicide, or possibly even of having caused the death by negligence it is clear that he cannot be allowed to inherit."

10. The Committee considers that any uncertainty that may arise because of the opinion expressed in Erasmus v. Caldwell should be removed by legislation; also that it would be unjust if culpable homicide in the negligent driving cases operated in accordance with the general rule so as to deprive the guilty party of his rights of succession in relation to the person killed. An exception on these lines is provided for in the special case dealt with in the proviso to s.138(1) of the Accident Compensation Act 1972.

11. Legislation is favoured by T.G. Youdan and Professor Wade in their articles mentioned in our working paper. It is also favoured by the Canterbury District Law Society, the Hamilton District Law Society, and the Public Trustee. We consider that it is unsatisfactory for the Courts, in the guise of interpretation and by invoking a principle of public policy, to be left to do justice by overriding plain words in statutes and wills.

12. The relatively recent appearances of legislation dealing with the matter under consideration is linked with the fact that cases raising the issue first began to appear within the last century. The special report on the South Carolina legislation states that the first American case on the precise question was Owens v. Owens, 100 N.C. 240 (1888). We are not aware of any earlier United Kingdom, Australian or New Zealand cases. William J. McGovern Jr., in an article in the Michigan Law Review of November 1969, mentions that a possible explanation for the lack of reported earlier decisions may be the old rules providing for the forfeiture of a felon's property.

Form of Proposed Legislation

13. The provisions in our draft are based on the earlier New Zealand draft annexed to our working paper. The earlier draft has been revised so as to incorporate ideas derived from Professor Wade's draft, the North Carolina Act, and the Simultaneous Deaths Act 1958 (N.Z.). Our present draft differs from the earlier New Zealand draft in the following material respects:

- (a) The proposed ss. 68A(1)(a) and 68I(a) are expanded so as to follow the North Carolina Act and Professor Wade's draft, and take into account that the killing may prevent the victim from reaching a specified age relevant to a condition governing the vesting or divesting of an interest in property.
- (b) The proposed ss. 68A(1)(a) and 68I(a) are extended, in line with the North Carolina Act and Professor Wade's draft, so as to cover an appointment made by the will of the person killed. The case needs to be covered expressly because the donee takes under the trusts relating to the head estate rather than under the will of the person killed.

- (c) The provisions in the proposed s.68A(1)(b) relating to joint tenancies are expanded so as to include express reference to the Joint Family Homes Act 1964, and to provide that the property held jointly shall devolve as if the killer had died immediately before the person killed. The earlier New Zealand draft provided that the property that was held in joint tenancy immediately before the killing by persons including the killer and the person killed is thereafter deemed to be held by those persons as tenants in common in equal shares. Both the Wellington District Law Society and the Public Trustee expressly approved the provision in the earlier draft creating a tenancy in common, but did not have the alternative now favoured before them. After careful consideration the Committee rejected the approach in the earlier draft on the ground that it did not take sufficient account of rights of survivorship, especially where there are more than two joint tenants.
- (d) The proposed s.68A(1)(d) takes account of what is done in the North Carolina legislation and Professor Wade's draft, and makes express provision designed (where relevant) to prevent the killer from deriving a benefit from his crime where he has an interest in property that is liable to be divested by the exercise by the person killed of a power of revocation or a power of appointment.
- (e) The proposed ss. 68A(1)(e) and (f) and 68E(3) take account of what is done in the North Carolina Act and Professor Wade's draft, and make provision for certain insurance matters that are directly related to the general approach of our proposed legislation.
- (f) The proposed s.68B provides for exceptions in the case of manslaughter where the killer "did not

intend to kill or cause grievous bodily injury to the deceased person". The earlier New Zealand draft added the words "or any other person". In so doing it followed the proviso to s.138 of the Accident Compensation Act 1972, which section had been influenced by s.167 of the Crimes Act 1961. In the context of both these sections some such additional words are needed, but they are not apt in the provision now contemplated.

- (g) The proposed s.68C clarifies the effect of wills, etc., made in the interval between wounding and death. It provides that these shall have effect as if the death were due to natural causes and not culpable homicide. The interval may be an extended one, and the view has been taken that, if the injured person is prepared to forgive, the law should not prevent him from doing so. Where the interval is short the ordinary rules as to strict proof in suspicious circumstances would cast a special burden of proof on a person seeking to uphold an instrument made during the interval.
- (h) The proposed s.68H(1) takes account of s.4 of Professor Wade's draft, and deals expressly with the relationship between the proposed section and the following sections, namely, s.33 of the Wills Act 1837, and s.16 of the Wills Amendment Act 1955 (as added by s.3 of the Wills Amendment Act 1955).
- (i) The proposed s.68H(2) takes account of what is done in the North Carolina Act, and provides that in the event of any conflict between any of the provisions of the proposed legislation and any of the provisions of the Simultaneous Deaths Act 1958, the provisions of the proposed legislation shall prevail. The Committee notes that cases can arise

that would come within the circumstances contemplated in both Acts, and has taken care when framing the proposed legislation to remove conflict wherever possible. The proviso to the proposed s.68A(1)(c) invalidating certain appointments in favour of a killer is however necessarily different from the general provisions in the Simultaneous Deaths Act 1958 regarding powers of appointment.

- (j) A definition of the term "property" has been included in the draft. This term is defined as including any real and personal property, and any estate or interest in any property, and any debt, and any thing in action, and any other right or interest. The draft nevertheless retains references to an interest in property for the reason that 2 interests in property are frequently contemplated, e.g. the trustee's interest as lessee, and the life tenant's beneficial interest in that leasehold property.
- (k) The draft has been altered so as to refer in most places to culpable homicide instead of murder and manslaughter, and the term "culpable homicide" is defined as taking its normal meaning of murder and manslaughter and also extending to causing the death of any person by the counselling, etc. of suicide, and to causing the death of an unborn child by criminal abortion.

14. The Committee adheres to the view that conviction for culpable homicide should not be made a prerequisite to disqualification from rights of succession. We note with interest that the special report on the North Carolina Act mentions that 16 or the 26 American States that had legislated on the subject took the opposite view, while 10 did not specify conviction and therefore do not

make it a prerequisite. North Carolina took an intermediate course and provided for either conviction (or something equivalent), or a decision in civil proceedings commenced within one year of the death.

There are problems in making conviction the sole prerequisite to disqualification. Questions involving rights of succession arise even though conviction is not possible. This happens most commonly because of the death of the killer, perhaps by suicide, or by violence at the hands of the victim or some other person, or natural causes. In the case of Re Pechar (deceased) [1969] NZLR 574 conviction was impossible because the alleged killer had become unfit to plead though he may have had sufficient capacity to be responsible for his actions at the time of the killing.

We have given special consideration to the North Carolina precedent of prescribing a period of limitation for the civil proceedings. It is consistent with normal practice to have a limitation period for civil proceedings, but we do not favour any such limitation in the circumstances contemplated. The contemplated forfeiture of any property would seem to be part of the penalty for the crime, and there is no limitation period in criminal proceedings for culpable homicide. Facts disclosing murder may not emerge until long after the death.

We have no information as to why a one year period of limitation was chosen in North Carolina. It may well be related to the executor's year and designed to assist the administrator. Our proposed s.68E gives protection to the administrator whether or not he had any suspicions when he distributed the estate. Section 49 of the Administration Act 1969 makes provision for following assets in such cases, and s.51 of that Act gives protection to a person who has received assets in good faith from the killer, or where for any reason the Court considers it inequitable to permit the following of the assets.

15. The Committee adheres to the view that no attempt should be made to legislate in respect of the special case of a person responsible for the "mercy killing" of a victim of a painful terminal illness.

16. The scheme of the proposed legislation is as follows:

- (a) The suggested s.2 of the proposed amendment Act amends s.2 of the principal Act so as to define terms that are being used in the proposed Part 1A.
- (b) The suggested s.3 of the proposed amendment Act inserts a new Part 1A in the principal Act, which Part includes ss. 68A to 68J.
- (c) Proposed s.68A(1): This spells out in detail the general rule that a person who has committed culpable homicide (as being defined) is not allowed to profit from his crime. The application of the rule is expressly covered in relation to interests under a will or on intestacy, interests under an appointment made by will, the exercise of powers of appointment, interests under any nomination or donatio mortis causa made by the person killed, interests where vesting or divesting is conditional on the killer surviving the person killed or on the person killed being born alive or satisfying any condition that he might possibly have satisfied if he had continued to live, joint tenancies arising under the Joint Family Homes Act 1964 and otherwise, interests that are liable to be divested by the exercise by the person killed of a power of revocation or appointment, certain cases where the effect of the death in normal circumstances would be to cause the killer to take the proceeds of a policy of insurance on his own life or on the life

of the person killed, and cases where the effect of the death in normal circumstances would be to accelerate or enlarge the killer's interest in property.

The general rule that is expressed to apply in most of these cases is that the property in question is to devolve as if the killer had died immediately before the person killed leaving only such issue as he would have left if he had so died. The limitation of the class of issue was in the earlier New Zealand draft and has been endorsed by the Committee after careful consideration. It is favoured on grounds of convenience having regard to the hiatus that could otherwise occur, especially where the killer had no children at the date of the killing.

In the case of joint tenancies, whether arising by virtue of the Joint Family Homes Act 1964 or otherwise, the property that was held in joint tenancy immediately before the killing by persons including the killer and the person killed devolves as if the killer had died immediately before the person killed.

Section 68A(1)(d) provides how property in which the killer's interest could have been divested by the exercise by the person killed of a power of revocation or appointment is to devolve.

Section 68A(1)(g) gives the Court a discretion to protect persons who suffer in consequence of the killing in cases where the effect of the killing is to accelerate or enlarge the killer's enjoyment of an interest in property.

Section 68A(2) gives effect to an order made by the Court under s.68A(1)(g).

- (d) The proposed section 68B provides that the general rules as to the effect of culpable homicide on rights of succession do not apply where a person has committed the manslaughter (as being defined) of another person, but the killer did not mean to kill or cause grievous bodily injury to the deceased person at the time of the killing, and the killing did not come within the provisions of paragraphs (d) and (e) of s.160(2) of the Crimes Act 1961. The provision has evolved from the proviso to s.138(1) of the Accident Compensation Act 1972.
- (e) The proposed section 68C provides that, where any person suffers personal injury from which he subsequently dies, if after he suffers the injury he makes or confirms in the manner required by law any devise, bequest, etc. in favour of the person who caused the injury, the devise, bequest, etc. shall have effect as if the death were due to natural causes and not culpable homicide.
- (f) The proposed section 68D provides that, subject to the provisions of the proposed Part 1A, nothing in any rule of law shall prevent a person who has not been a party to committing the culpable homicide from taking any interest in property by reason only that he claims through or under a person who has committed the culpable homicide of another person.
- (g) The proposed section 68E contains machinery provisions designed for the protection of administrators, insurance companies, District Land Registrars, etc. in connection with problems of distribution.
- (h) The proposed section 68F: Express provision may

be necessary at this point of the new Part 1A in connection with the rule in Hollington v. Hewthorn, but drafting must await clarification of the intention as to general legislation regarding this rule.

- (i) The proposed section 68G deals with special defences in relation to culpable homicide, and cases where the homicide occurred outside New Zealand.

Subsection (1) declares that a person shall be deemed not to have committed the culpable homicide of any person whom he has killed if at the time of the killing the killer is not liable to be convicted of culpable homicide in respect of the killing by reason of any justification or excuse or defence available to him under Part III of the Crimes Act 1961 or under any enactment or rule of law, or that would be available to him if he were proceeded against or tried in New Zealand.

Subsection (2) declares that, in determining whether or not a person has committed the culpable homicide of any person, it shall be immaterial for the purposes of the new Part 1A whether or not he may be proceeded against or tried in New Zealand.

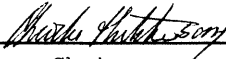
- (j) The proposed section 68H clarifies the relationship between the new Part 1A and the following enactments, namely, s.33 of the Wills Act 1837 (U.K.), s.16 of the Wills Amendment Act 1955 (as added by s.3 of the Wills Amendment Act 1958, and the Simultaneous Deaths Act 1958.

- (k) The proposed section 68I declares that the new Part 1A shall have effect in place of specified rules of common law.

- (1) The proposed section 68J provides that the new Part 1A shall not apply in any case where the death occurred before the commencement of that Part.

DATED this 8th day of October 1976

For the Committee


Chairman

Members:

Mr C.P. Hutchinson, M.B.E., Q.C. (Chairman)
Dr G.P. Barton
Mr R.G.F. Barker
Mr G. Cain
Mr J.G. Hamilton
Professor G.W. Hinde
Mr L.H. McClelland
Mr K.U. McKay
Professor P.B.A. Sim
Mr W.M. Taylor
Mr N.N. Nawalowalo (Secretary)

APPENDIX

DRAFT PROVISIONS FOR INCLUSION IN AN
ADMINISTRATION AMENDMENT ACT

(Note: As a matter of clarity of presentation, the proposed interpretation section should be placed next to the section inserting the proposed new Part 1A, perhaps by including them in a separate Part of the Amendment Act.)

2. Interpretation - Section 2 of the principal Act is hereby amended by inserting in subsection (1), in their appropriate alphabetical order, the following definitions:

- "'Culpable homicide', subject to section 68G of this Act, -
 - "(a) Means murder and manslaughter (as defined in this section, as amended by section 2 of the Administration Amendment Act 197-):
 - "(b) Includes causing the death of any person by inciting, counselling, or procuring the person to commit suicide, or by aiding or abetting the person in the commission of suicide, or by entering into a suicide pact with the person, in circumstances that amount to a crime against section 179 or section 180 of the Crimes Act 1961:
 - "(c) Includes causing the death of any child that has not become a human being in circumstances that amount to a crime against any of the provisions of sections 182 to 185 of the Crimes Act 1961:
- "'Killer', in the case of culpable homicide, includes any person who, in accordance with the Crimes

Act 1961 or any other Act, is a party to the offence:

"'Manslaughter', means manslaughter within the meaning of the Crimes Act 1961; and includes any killing of a human being that is not murder but is an offence against the Transport Act 1962, or the Crimes Act 1961, or any other Act:

"'Murder', means murder within the meaning of the Crimes Act 1961:

"'Property', includes any real and personal property, and any estate or interest in any property, and any debt, and any thing in action, and any other right or interest:".

3. New Part 1A inserted - The principal Act is hereby amended by inserting, after section 68, the following new Part:

"Part 1A

"Effect of Culpable Homicide on Rights of Succession

"68A. General rules - (1) Notwithstanding any rule of law but subject to the provisions of this Part of this Act, where a person has committed the culpable homicide (as defined in section 2 of this Act, as amended by section 2 of the Administration Amendment Act 197-) of another person, -

"(a) The killer shall not be entitled to take any interest in property under the will or on the intestacy of the person killed, or under any appointment made by the will of the person

killed, or under any nomination or donatio mortis causa made by the person killed, or any interest in property that is conditional upon the killer surviving the person killed or upon the person killed not being born alive or upon the person killed satisfying any condition that he might possibly have satisfied subsequent to the date of the killing if he had lived (whether the condition relates to attaining a specified age or marrying or anything else, and whether or not the interest is also conditional on any other event); and the killer shall not be entitled to take or retain any interest in property that is liable to be divested or extinguished if he fails to survive the person killed or if the person killed is born alive or satisfies any condition that he might possibly have satisfied subsequent to the date of the killing if he had continued to live; and any such interest that the killer would have taken or retained in any property if the death had been due to natural causes and not culpable homicide shall devolve -

"(i) As if the killer had died immediately before the person killed leaving only such issue (if any) as he would have left if he had died immediately before the person killed; and

"(ii) In any case where the interest in the property of the killer is liable to be divested if the person killed had been born alive or satisfied any other condition that he might possibly have satisfied subsequent to the date of the killing if he had continued to live, as if he had been born alive and satisfied that condition:

"(b) Any interest in property of which the killer and the person killed were joint tenants beneficially immediately before the death, whether, by virtue of the Joint Family Homes Act 1964 or otherwise and whether or not there were other joint tenants of the interest in property, shall (notwithstanding that Act or any other enactment or rule of law) devolve as if the killer had died immediately before the person killed:

"(c) No exercise of a power of appointment by the killer shall be invalidated by the culpable homicide:

 "Provided that, if an exercise of the power would not have come into operation while the person killed remained alive, that exercise shall be void and of no effect to the extent only that the exercise is for the benefit of the killer, but not further or otherwise:

"(d) Where the killer has any interest in property (either present or in remainder) that is liable to be divested by the exercise by the person killed of -

 "(i) A power of revocation of a trust or of the exercise of a power of appointment, the power of revocation shall be deemed to have been exercised immediately before the time of the killing so far as is necessary to exclude the killer from the persons or class of persons entitled to take under the trust or appointment if it had not been revoked; and subsequent to the time of the killing the killer's share in that interest in property shall devolve as if he had died before he could become entitled to any interest in the property under the trust or

appointment, or by reason of the failure of the trust, or in default of the exercise of the power of appointment:

"(ii) A general power of appointment, that interest shall (by virtue of this paragraph) vest in the administrator of the estate of the person killed:

"(iii) A power of appointment to a particular person or persons or to a class of persons, that interest shall (by virtue of this paragraph) vest in that particular person or persons or class of persons and if more than one in equal shares:

"Provided that the killer shall be excluded from the persons or class of persons in whom that interest shall vest by virtue of this paragraph:

"(e) Where the life of the person killed is insured under any policy of life or accident insurance and the killer would be entitled, in terms of the policy or by assignment or otherwise, to the proceeds or any part thereof if he survived the person killed, or where the lives of the killer and the person killed are insured under a joint life policy, the foregoing paragraphs of this subsection shall not apply, and the proceeds of the policy or the part thereof shall devolve as if the killer had died immediately before the person killed:

"(f) Where the life of the killer is insured under any policy of life or accident insurance, and the person killed is the beneficiary or assignee of the proceeds of the policy or any part thereof, those proceeds or the part thereof shall be paid to the administrator of the estate

of the person killed upon the death of the killer, unless the policy names some person other than the killer or the administrator of his estate as the alternative beneficiary:

"(g) Where the killer is not disentitled to an interest in any property under the foregoing provisions of this subsection, but the effect of the killing is to accelerate or enlarge the killer's enjoyment of an interest in that property, the Court may, on the application of the administrator of the estate of the person killed, or of any person who was dependent on the person killed or would have been likely to benefit from his bounty had he not been killed, make an order conferring on any such person who was dependent or would have been likely to benefit such interest in or charge upon the killer's interest in the property as it thinks fit, being a benefit no greater than that which the person in whose favour the order is made could reasonably be expected to have received from the person killed if that person had continued to live for the period of his expectation of life determined according to the Tables set out in the Second Schedule to the Estate and Gift Duties Act 1968, or for such longer or shorter period as the Court thinks fit:

"Provided that the administrator shall be under no obligation to apply for any such order.

"(2) Every order made by the Court under paragraph (g) of subsection (1) of this section shall have effect according to its tenor.

"(3) This Part of this Act shall apply in relation to causing the death of any child that has not become a human being in circumstances that amount to a crime against any of the provisions of sections 182 to 185 of the Crimes Act 1961 as if that child had been born alive and thereupon killed by the person who caused the death.

"68B. Exceptions in case of manslaughter - Notwithstanding section 68A of this Act or any rule of law, where a person has committed the manslaughter (as defined in section 2 of this Act, as amended by section 2 of the Administration Amendment Act 197-) of another person, but the person did not intend to kill or cause grievous bodily injury to the deceased person at the time when he killed the deceased person, and the killing did not come within the provisions of paragraphs (d) and (e) of section 160(2) of the Crimes Act 1961, -

"(a) The killer shall not by reason of the killing be deprived of any interest in property under the will or on the intestacy of the person killed, or under any appointment made by the will of the person killed, or under any nomination or donatio mortis causa made by the person killed, or any interest in the proceeds of any policy of life or accident insurance, or any interest in property that is conditional upon any event or that is liable to be divested in any event, whether or not the effect of the killing is to accelerate or enlarge the enjoyment by the killer of the interest or to prevent the killer from being deprived of any interest in the property or proceeds by the exercise of any power of revocation or appointment by the person killed:

"(b) Any interest in property of which the killer and the person killed were joint tenants

beneficially immediately before the death, whether by virtue of the Joint Family Homes Act 1964 or otherwise and whether or not there were other joint tenants of the interest in property, shall pass in accordance with that Act or by survivorship, as the case may be, as if the death had been due to natural causes and not manslaughter:

"(c) The exercise of a power of appointment by the killer shall not be invalidated by reason of the killing.

"68C. Wills, etc. made between injury and death - Where any person suffers personal injury from which he subsequently dies, if after he suffers the injury he makes or confirms in the manner required by law any devise, bequest, appointment, nomination, donatio mortis causa, or other disposition of property in favour of the person who caused the injury, the devise, bequest, appointment, nomination, donatio mortis causa, or disposition shall have effect as if the death were due to natural causes and not culpable homicide.

"68D. Rights of person claiming through killer - Subject to the provisions of this Part of this Act, nothing in any rule of law shall prevent a person who has not been a party within the meaning of the Crimes Act 1961 to committing the culpable homicide from taking any interest in property by reason only that he claims through or under a person who has committed the culpable homicide of another person.

"68E. Protection of administrators, insurance companies, District Land Registrars, etc. - (1) No administrator, trustee, insurance company, District Land Registrar, or other person shall be concerned to inquire if

the provisions of this Part of this Act apply -

"(a) In relation to the death of any person if he had no reason to suspect that the death of the person was due to culpable homicide; or

"(b) In relation to any person whom he has no reason to suspect of the culpable homicide of a deceased person, notwithstanding that he has reason to suspect that the death was due to culpable homicide.

"(2) Where an administrator or trustee has reason to suspect that the death of any person was due to culpable homicide and has reason to suspect any person of the culpable homicide, -

"(a) After the expiration of 6 months after the date of the grant of administration in the estate of the person killed, in any case where such a grant has been made; or

"(b) After the expiration of 6 months from the date of the death of the person killed, in any case where no such grant has been made, -

"if the person suspected has not been convicted of the culpable homicide and is not then awaiting the determination of proceedings already commenced that could lead to his conviction of the culpable homicide, the administrator may pay any money or transfer any property to the person whom he has reason to suspect of the culpable homicide, unless the Court otherwise orders on the application of the administrator or trustee or of any person who would be beneficially interested if it were proved that the suspected person committed the culpable homicide:

"Provided that the administrator or trustee shall be under no obligation to apply for any such order.

"(3) Without restricting the provisions of subsection (2) of this section, an administrator or trustee may, unless the Court otherwise orders, make any payment to any person whom he has reason to suspect may be precluded from receiving it by reason of the provisions of this Part of this Act, or permit any such person to use any property, if the payment is made or the permission is given for the purpose of providing for the maintenance, support, or education of the person.

"(4) Any insurance company making payment according to the terms of its policy or any assignment thereof shall not be subject to additional liability by the provisions of this Part of this Act if the payment is made without notice of circumstances tending to bring it within the provisions of this Part of this Act.

"(5) Section 47 of this Act shall apply to applications and orders under this section.

"68F. Admissibility of conviction and effect of acquittal in subsequent civil proceedings -

(It will be necessary for this Part of the Act to make provision in this connection on the lines recommended in the report of the Torts and General Law Reform Committee on the rule in Hollington v. Hewthorn and in paragraph 6 of the report to which this draft is annexed, if the position is not covered adequately by general legislation.)

"68G. Special defences and homicide outside New Zealand - (1) For the purposes of this Part of this Act a person shall be deemed not to have committed the culpable homicide of any person whom he has killed if at the time of the killing the killer is not liable to be convicted of culpable homicide in respect of the killing by reason of any justification or excuse or defence available to him under Part III of the Crimes Act 1961 or under any other enactment or rule of law, or that would be available to him

if he were proceeded against or tried in New Zealand.

"(2) In determining whether or not a person has committed the culpable homicide of any person it shall be immaterial for the purposes of this Part of this Act whether or not he may be proceeded against or tried in New Zealand.

"68H. Relationship between Part 1A and other enactments - (1) In any case where section 68A of this Act operates so as to cause any interest in property to devolve as if the killer had died immediately before the person killed -

"(a) Section 33 of the Wills Act 1837 (U.K.) shall not apply; and

"(b) Section 16 of the Wills Amendment Act 1955 (as added by section 3 of the Wills Amendment Act 1958) shall apply as if the killer had so died.

(2) In the event of any conflict between any of the provisions of this Part of this Act and any of the provisions of the Simultaneous Deaths Act 1958, the provisions of this Part of this Act shall prevail.

"68I. Rules of common law superseded - The provisions of this Part of this Act shall have effect in place of the rules of the common law as to -

"(a) The right of a person who has committed the culpable homicide of another person to take any interest in property under the will or on the intestacy of the person killed, or under an appointment made by the will of the person killed, or under any nomination or donatio mortis causa made by the person killed, or any interest in property that is conditional upon the person surviving the person killed,

or that is conditional upon the person killed not being born alive or upon the person killed satisfying any condition that he might possibly have satisfied subsequent to the date of the killing if he had lived, or any interest in property that is liable to be divested or extinguished if the person killed is born alive or satisfies any condition that he might possibly have satisfied subsequent to the date of the killing if he had continued to live;

- "(b) Rights of survivorship in respect of any interest in property of which the killer and the person killed, and other persons (if any), were joint tenants beneficially immediately before the death, whether by virtue of the Joint Family Homes Act 1964 or otherwise;
- "(c) The extent to which the exercise of a power of appointment is invalidated by culpable homicide; and
- "(d) The extent to which a person who has committed the culpable homicide of another person may benefit from the acceleration or enlargement of his interest or the prevention of the killer from being deprived of any interest in property by the exercise of any power of revocation or appointment by the person killed.

"68J. Part 1A not retrospective - This Part of this Act -

- "(a) Shall apply in any case where the death occurred after the commencement of this Part of this Act, whether or not any event connected with the killing occurred before the commencement of this Part of this Act:

"(b) Shall not apply in any case where the death occurred before the commencement of this Part of this Act."