

# Winding-up the “Bloody” estate”

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19 September 2013  
FISA Conference

# Introduction

**Murder: wrongfully (unlawfully) causing the death of another person**

**When a murder is committed the common law slogan that rules a person unworthy to inherit is referred to:**

**“De bloedige hand neemt geen erffenis”**

**The literal interpretation “The Bloody hand” does not inherit**

**When a murder is committed it put in motion:**

**(i) Criminal law**

**(ii) Civil law**

**(iii) Private law**

**(iv) Administrative law**



**+ criminal procedure**

**+ civil procedure**

**+ law of succession**

**+ administration of estates**

## Criminal law applies

Murder → Offence → Punished

## Civil law applies

Murder → Wrongful act → Can't benefit

# Similarities between Civil law ↔ Criminal law

Object: to seek  
redress

- Unlawful  
(Onregmatig)
- Blameworthy
- Acts or omission
- Death
- Unworthy/financial  
benefit
- Balance of possibilities

Object: to seek  
punishment

- Unlawfully  
(Wederregtelik)
- Accountable
- Crime
- Death
- Punished
- Beyond reasonable  
doubt

# Illustration of interaction between Criminal and civil law O.J. Simpson

In 1995, he was acquitted  
of the 1994 murder of

Nicole Brown Simpson and Goldman after a  
lengthy and internationally publicized  
criminal trial, the People v. Simpson.

In 1997, a civil court awarded a judgment  
against Simpson for their wrongful deaths.

Family murder: killed wife



## Focus is on family murder

- Recent tidal wave of family murders
- Implications for Administration of Estates

### WHY ???

- Family slayings differ from general murders
- because offender/wrongdoer
- in a **close relation with victim**

They are normally the **testate and intestate beneficiaries** of one another

## Recent incidents = media

- ❖ Nita Shipalana – child murderer
- ❖ Nothnagel – 2 daughters murderer
- ❖ Martin Brits – father murderer and assault mother
- ❖ Griekwastad – family murderer
- ❖ Modimolle – stepson and assaulted wife
- ❖ Anni Dewani – wife accomplice murderer

In all these cases we have a “**Bloody estate**” with a family member being *accused* of committing the wrongful act

## Categories of murder cases

- Spouse versus spouse = **S v Petersen**
- Parent versus children = **S v Pretorius**
- Children versus parent/s = **S v Lotter**
- Depending on the relation between the **wrongdoer** and the **victim** there might be differences in die **administration process**
- **Conjunctissimi**
- **Matrimonial property regime**
- **Representation**

If you murder one or more people it results in you being

- (i) Guilty of a crime
- (ii) Unworthy to take benefits from estate

***Ex parte Steenkamp and Steenkamp*** – murdered parents-in-law

- ❑ No general unworthiness To inherit from other people
- ❑ No forgiveness

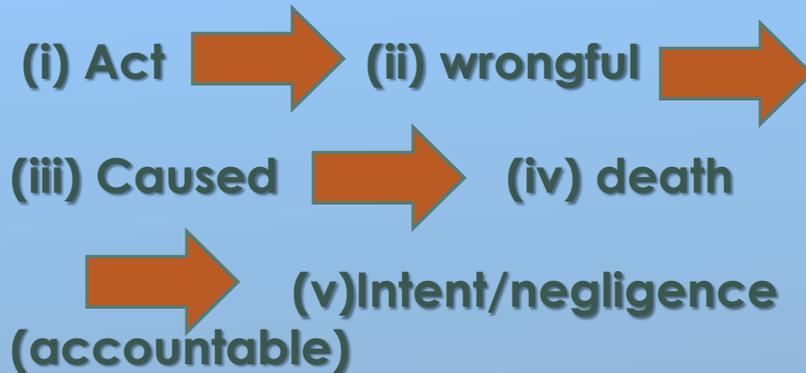


## Recent reported criminal cases

- **S v Lotter** - parents murdered
- **S v Petersen** – (conspiracy) husband murdered
- **S v Laubscher** – family murder + attempted murder
- **S v Viljoen** – wife murdered
- **Director of Public Prosecutions (Transvaal) v Venter** – Children murdered
- **S v Maqubela** – (conspiracy) Husband

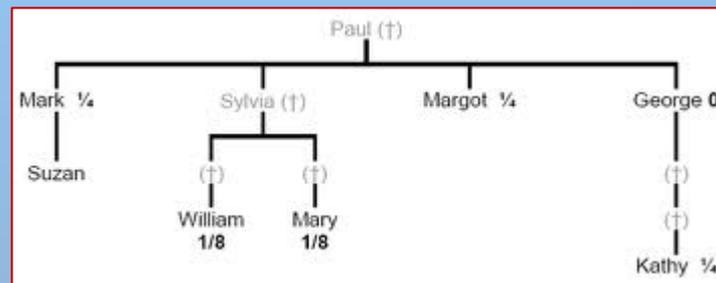
# Similarities ↔ Differences

- ❑ Both - wrongful acts
- ❑ Object + sanctions differ
- ❑ One is not a prerequisite for other
- ❑ Don't need a verdict in criminal case for civil unworthiness
- ❑ Criminal sentence has no impact on unworthiness.
- ❑ There cannot be a ruling regarding the capacity to inherit
- ❑ 5 elements:



# Law of Succession

- The private law principle protects the “victim” by ruling that the unworthy offender is incompetent
  - to inherit (testate or intestate) or
  - to take any other benefit from the estate of the deceased

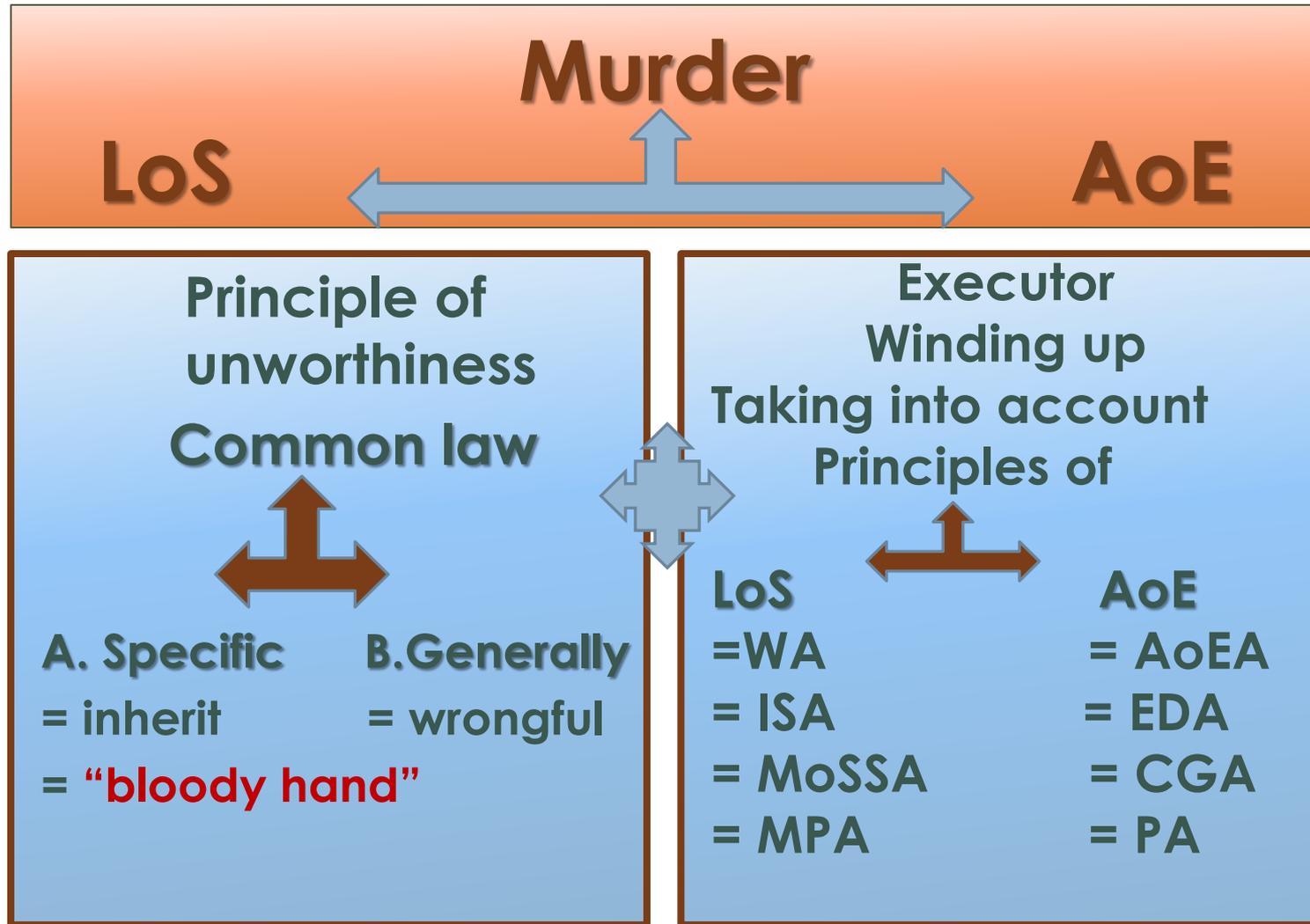


## Underlining principles

- Economic function → Transfer wealth
- Social function → Maintaining and protecting the family as social unit
- Social trends influence LoS → Family slayings

**BUT!!!**

- Family slayings has the opposite result



# Voet on Unworthiness



## Common law: Voet 34.9.6

Heir is *UNWORTHY* in relation to the deceased (for example, he unlawfully caused the deceased's death) or *BECAUSE* he obtained the benefit through fraud, duress or undue influence over the deceased.

## Statutory:

(A legatee or heir may for various reasons be debarred from taking under a will, either because he *signed* as a *witness* or *wrote* or on the testator's behalf *signed* the will)

## A. Specific unworthiness Bloody Hand

Wrongdoers include  
murderer/accomplice/attempted/culpable  
hom/conspiracy

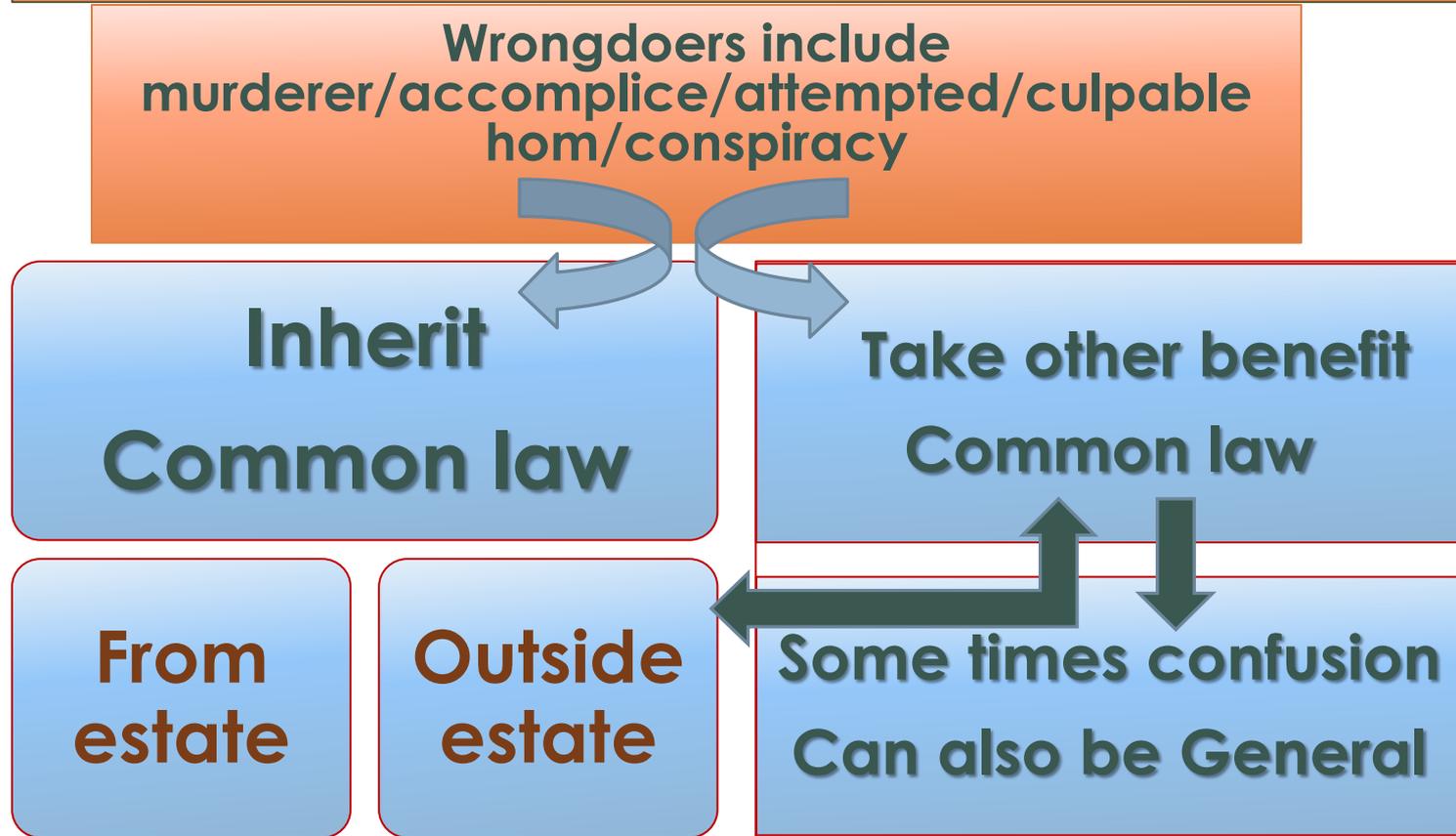
Inherit  
Common law

From  
estate

Outside  
estate

Take other benefit  
Common law

Some times confusion  
Can also be General



## B. General unworthiness

Wrongdoer's conduct and behavior toward deceased= death or not

Bloody hand is a  
genus of general

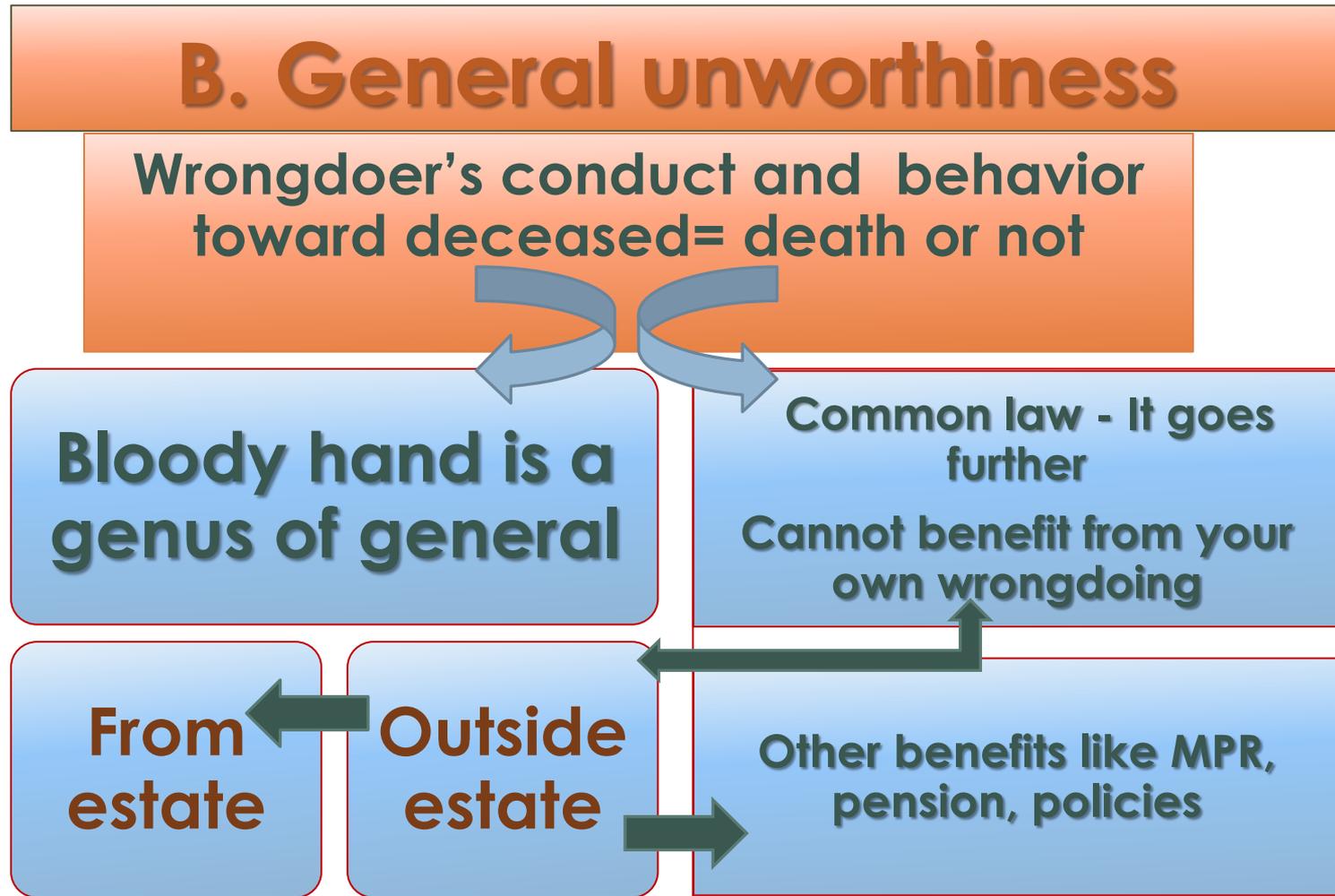
Common law - It goes  
further

Cannot benefit from your  
own wrongdoing

From  
estate

Outside  
estate

Other benefits like MPR,  
pension, policies



# Common law unworthiness has two legs

**Bloody hand  
Incapacity**

**Wrongful act  
Incapacity**



**1. Specific  
unworthiness**  
**Inherit**  
**Testate and intestate**  
**Caused the death**

**2. General  
unworthiness (2)**  
**Behaviour**

**Intentional**

**Negligent**

**Estate  
falls  
open**

**Executor  
Winding  
up**

**Apply  
principles**



Signature  
font@fontbundles.com

**Not necessarily death**  
**Attempted murder**



**Even outside estate**  
**Policies/pension/MPR**

# 1. Specific unworthiness to inherit from deceased

Offender/accused  Death:  
intentionally or negligent is unworthy

- Not allowed to take from the estate any
  - = Inheritance
  - = Legacy
  - = *Donation mortis causa*
  - Or any other benefit

Legal costs and Maintenance?

Benefits = executor/trustee/guardian-Sec 4A(3)

*Marais v Botha, Thomas v Clover, S v Maqubela*

## 1A. Incapacity to “inherit from estate” - case law

**Nell v Nell** = wife murdered husband

**Ex parte Vonzell** = husband murdered wife

**Casey v The Master** = negligent killer

**S v Marais** = conspiracy / **Marais v Botha**

**S v Maqubela** (appointed as executor)

**Thomas v Clover** (executor) sec 4A(3)

**S v Lotter** = no reported civil case (legal costs and maintenance)

## 1B. Incapacity to take other benefits *from* estate

**Nell v Nell** = can MPL

**Ex parte Vonzell** = can MPL

**Casey v The Master** = can MPL

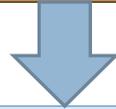
**Leeb v Leeb** = MPL ???

**Marais v Botha** = executor

**Thomas v Clover** = executor -sec 4A(3)

**S v Lotter** = no reported civil case (legal costs and maintenance)

## 2. General unworthiness to take from deceased



- ❑ General principle = To take benefit
- ❑ Crime/wrongful act to receive benefit
- ❑ *Conduct* (murder) but also other acts that are punishable
- ❑ **Two categories:**

2A. Unworthy to take from the estate

2B. Unworthy to take other benefits that don't form part of the estate but part of the L&D account

## 2. Unworthy to take any other benefit

### 2A. Not from estate

- **Danielz v De Wet** – Policies
- **Makhanya** – Pension
- **Leeb v Leeb** – Matrimonial property

### 2B. From estate

**Taylor v Pim** –  
Treated in a reprehensible way  
**Yassen v Yassen** –  
Concealed or destroyed will  
**Pillay v Nagan** –  
Forged a will

These are not “bloody hands”

# Administration of “bloody estate” estate(s)

NB!!

Family murders results in the winding up of estates that are inter related.

- Problems identified:
- Neither the master nor the executor can make decisions regarding the unlawfulness or intention of the potential beneficiary
- *Ferreira v The Master*
- So this means that the executor will normally wait for a ruling in a criminal case
- Need not to rely on a criminal case
- Testate and Intestate
- Time limits in AoEA

# Executor

**NB!!**

Must take all the above aspects into account as well as:

1. (Unworthiness) see above
2. Accountability
3. Conjunctissimi
4. Simultaneous deaths/= Commorientes
5. Representation sections 1(7) ISA and 2C(2) WA
6. Repudiation=sections 2C(2) and 1(6)
7. Paying of claims = sections 32/33/50 of AEA

# Application of principle

## 1. Unworthiness

- Unworthiness (discussed above)
- It automatically comes into force
- No need for a criminal conviction
- Family member, master, executor, co-heir, beneficiaries = **declaratory order**



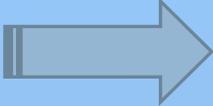
**NB**  
**!**

# Aspects to take into account

## 2. Accountable and wrongful

If not accountable can inherit

= Justifiable homicide

- ❑ Not accountable reflects  on guilt
- ❑ Justifiable reflects  on the act

Sometimes the act is wrongful but the person is not accountable

*S v Nursingh* – temporary insanity

*S v Swart* – battered women

*Ex parte Meier* – insanity

*Gavin v Kavin* - insanity

# Accountability

## Justifiable homicide

See the interaction above between **accountability (intent)** and **unlawfulness (the act)**

De Waal en Zimmermann 2011:180

“Unworthiness is judged with reference to distinctive criteria developed within the context of private law, independent of the rules applicable in criminal trial”

- private defence
- necessity
- consent
- statutory authority

# Aspects to take into account

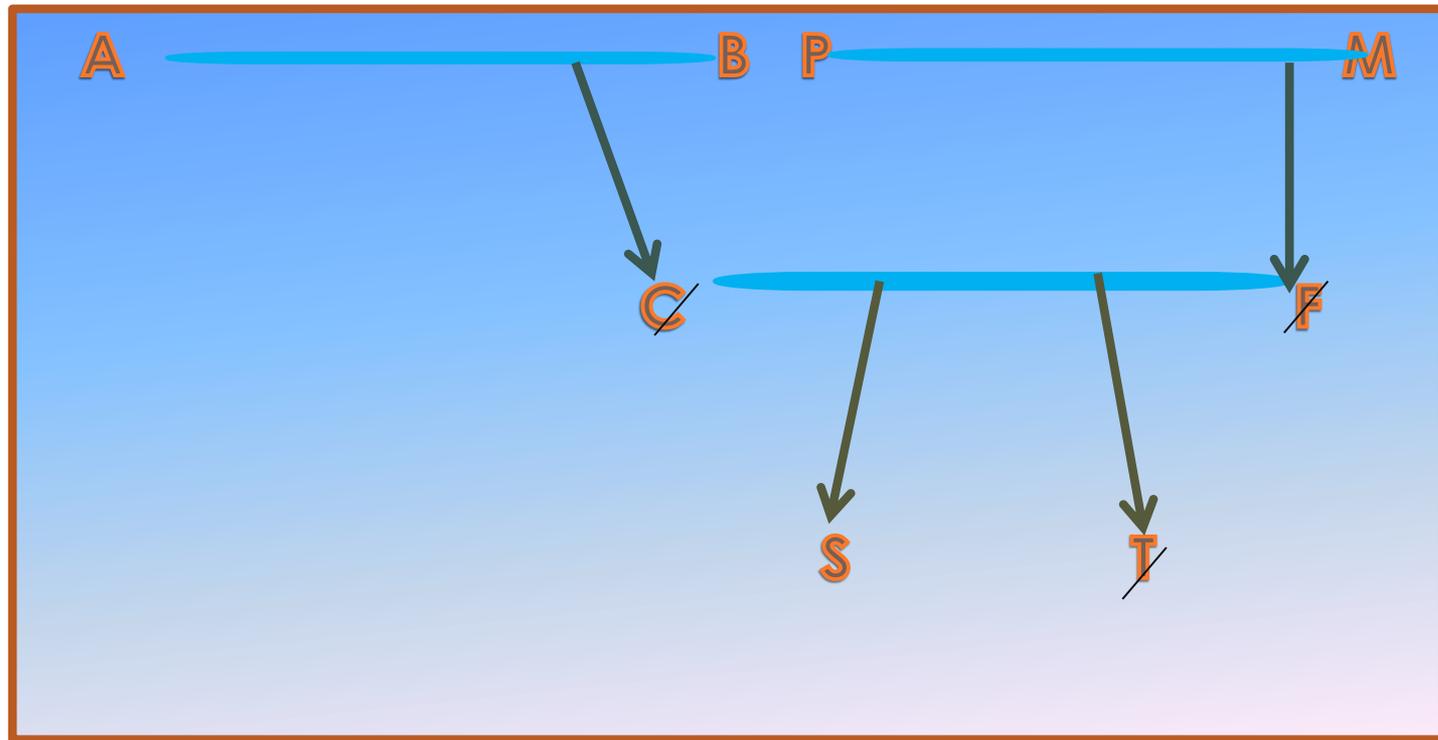
## 3. Conjunctissimi

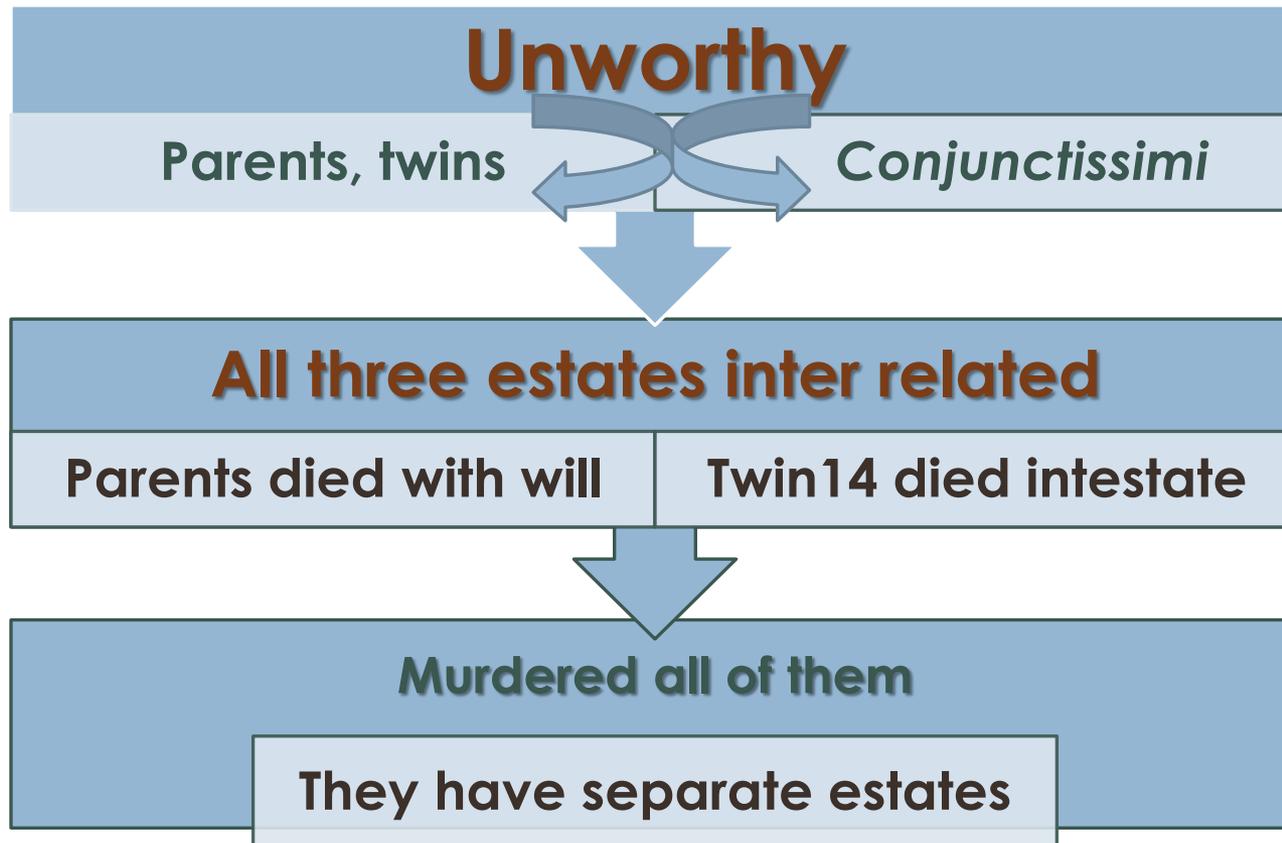
- Murderer cannot inherit from victim

BUT!!

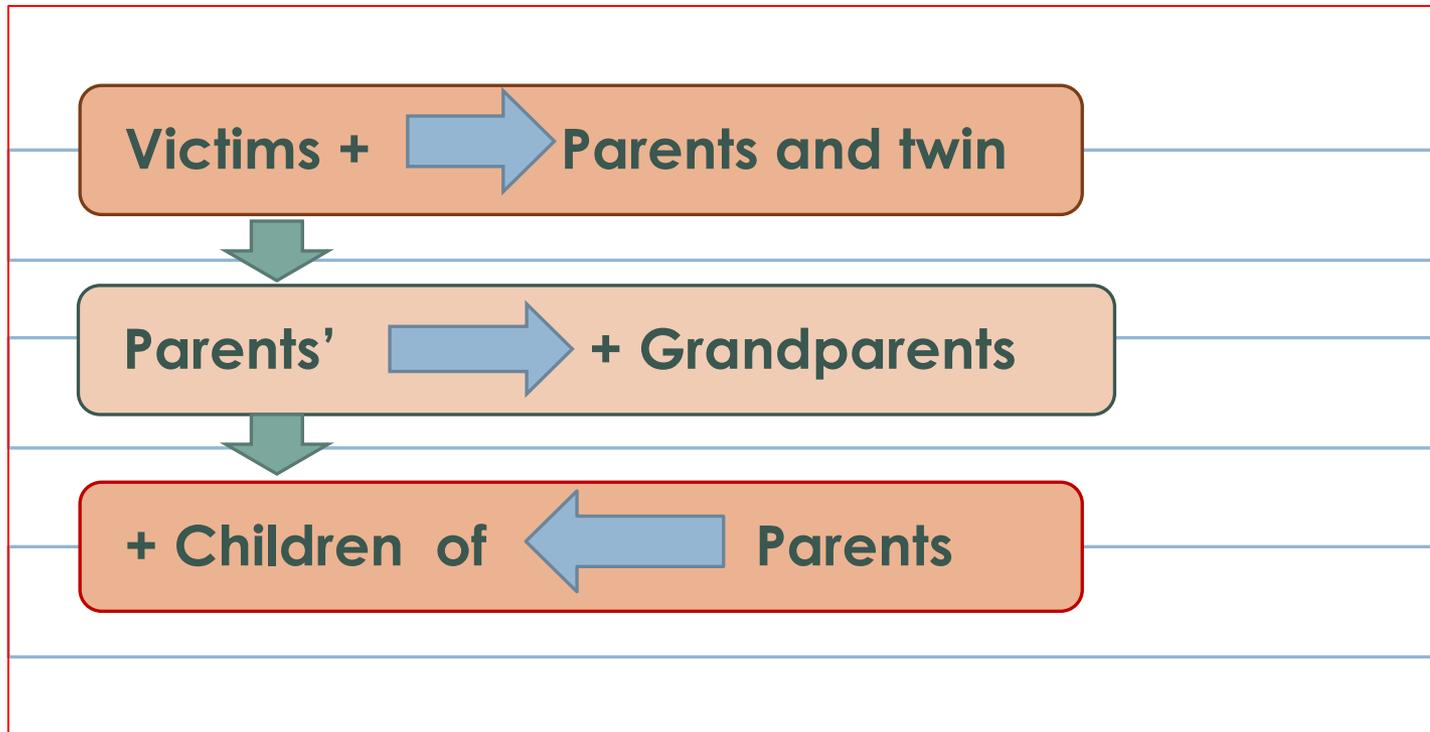
- Murderer cannot inherit from victim's *conjunctissimi*
- **==** Parents, children, spouse of the victim
- *Ex parte Steenkamp and Steenkamp*
- **≠** grandparents, brothers and sisters

S murdered his parents and twin brother





# S is unworthy:



## Real life situation

### Q....?

- My sister was shot and killed by her husband
- He was convicted of murder and served 6 years of a 12 year sentence.
- My sister had two minor children when she died. Aaa (born 1981) and Bee (born 1989).
- My sister died intestate hence her two minor children inherited all according to SA law.
- Since father caused the death, he could (in theory at least) get nothing.
- Money was collected and paid into the Guardian's fund which looks after money of minors.

- When she was entitled to her money (major) she had given her dad a letter to say that she wanted him to have her money
- So to the best of my knowledge, the Master of the Supreme Court paid Aaa's share to her dad, the murderer. Many years later, child Bee turned 21.

#### Question is:

- Why did the master pay Child Aaa's share to the father?
- If my sister died intestate, surely this share should have gone to child Bee?
- The father was not supposed to inherit, he had bloody hands?
- Can child Bee now sue the Master of the Supreme Court for the amount paid on behalf of child Aaa to the father? That's what I want to know.

## Answer: .... is

- Unfortunately not correct.
- What actually happened is that child Aa did receive the money and then donated it to the father.

It can be argued that it was not an inheritance from the wife, but a gift from the child.

My question is...

is this the right answer?



# Aspects to take into account

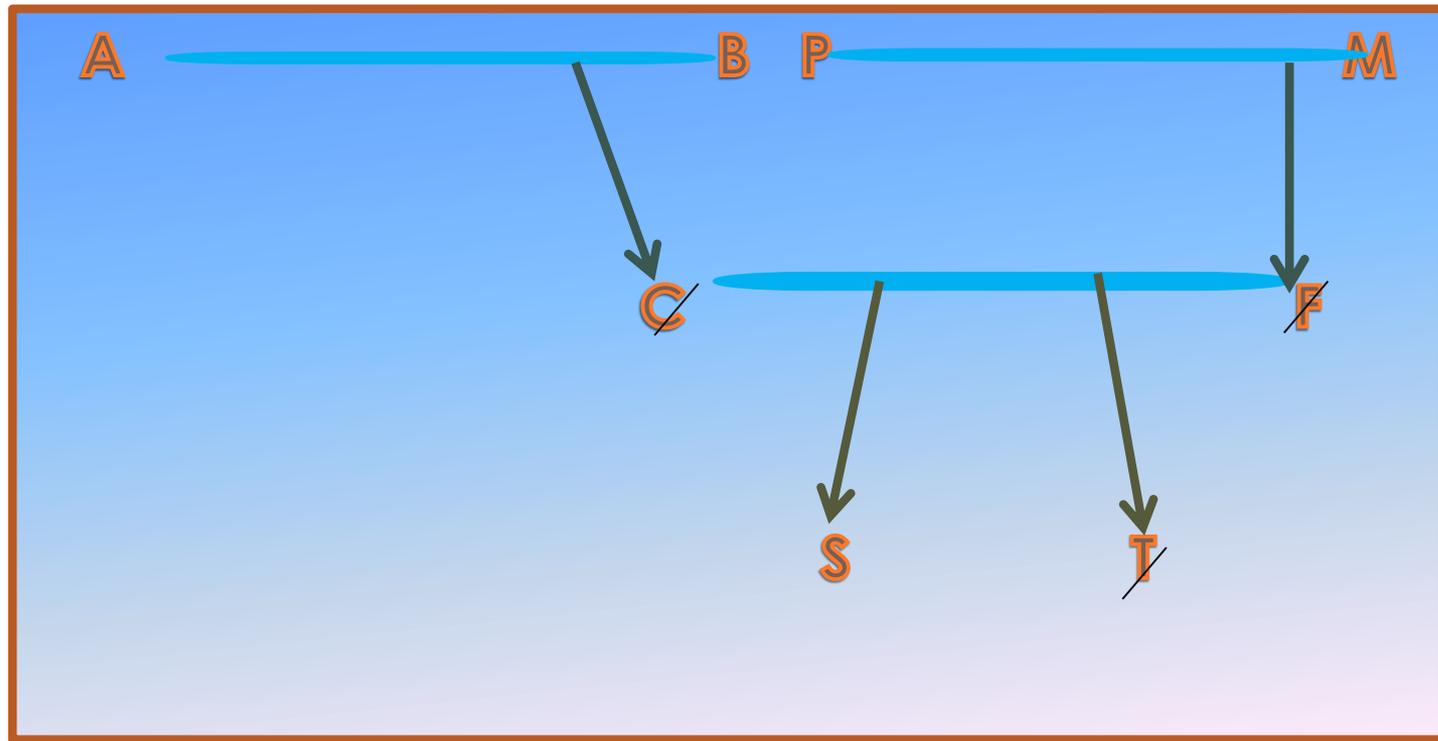
## 4. Simultaneous death

Family murders result in simultaneous death of family members. *Ex parte Graham* 1963 4 SA 145 (D).

- o Not able to inherit from one another.
- o No presumption of sequence
- o Factual question

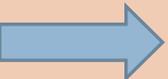
*Greyling v Greyling*

S murdered his parents and twin brother

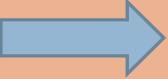


**Victims die simultaneous** 

- Apply Ex parte Graham

**Parents died before twin** 

- Factual question? Evidence that brother died first

**Will of parent?**  **Intestate minor**

- Vesting of rights/separate estates

***Smith v Pretori(o)us NO and Others* (4479/09)  
[2012] ZAFSHC 161 (26 July 2012)**

- ❑ In 2006 the deceased and his mother passed away in an aircraft accident
- ❑ The Master ruled the deaths of the deceased and his mother to have taken place simultaneously
- ❑ In terms of the deceased's will, his mother was nominated by him to inherit his estate
- ❑ In terms of the last will of the deceased's mother, her brother is nominated as her heir
- ❑ Plaintiff's case = that as a matter of medical fact, the deceased passed away before the deceased's mother

## ***Jollimore Estate v. Nova Scotia (Public Archives)*** 2011 NSSC 218.

- A murderer may not inherit from his victim.
- If he is a beneficiary of his victim's will, who gets the share?
- Mrs. J suffered from Parkinson's disease, and lived with her son, Mr. J. They were devoted to each other.
- Their bodies were found in the house they shared. Near Mr. J's body was a note that said
- "Please bury my beloved mother next to me. No plots purchased yet. Use funds in my account. G.J."
- She - strangulation,
- He - self-inflicted asphyxiation.

- Mrs. J's will left everything to her son.
- She further provided in her will that "If my son, has predeceased me I give all of my estate to the Public Archives of Nova Scotia.
- If Mr. J had died first, there would be no question that the Public Archives would be the beneficiary of Mrs. J's estate.
- But he had not died first. Does the estate go to the Public Archives as though he had?
- Or does the estate go to those of Mrs. J's relatives who would have inherited her estate if she had died without a will?

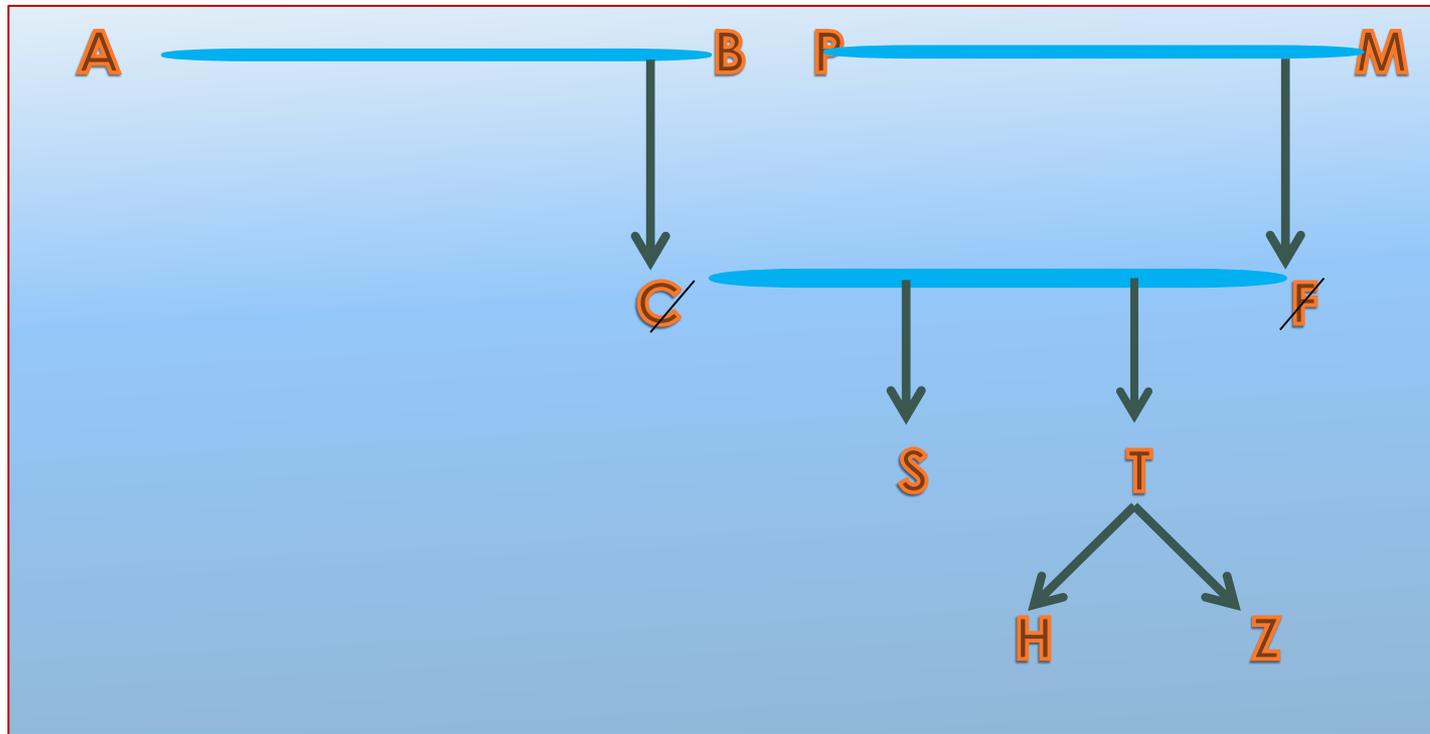
# Aspects to take into account

## 5. Representation

## 6. Repudiation

- Sec 1(7)- Intestate succession (refers to a person)
- Sec 2C(2) – Testate succession (refers to *descendent*)
- “(2) If a *descendent of the testator, ... would have been entitled to a benefit in terms of the provisions of the will if ... had not been disqualified from inheriting, ... the descendants of that descendant shall, subject to the provisions of subsection (1), per stirpes be entitled to the benefit, unless the context of the will otherwise indicates.*”

# T murdered his parents



## Executor must take into account

- He is unworthy to inherit from the victims and their conjunctissimi (spouse, child S, parents (his grandparents) on both sides
- Is he accountable and /or was his act justifiable?
- Did they die simultaneously?
- And: Can he be represented by H and Z?
- Sections 1(7) and 2C(2) are subject to sections 1(6) and 2C(1).

## **Crain v Crain** No. 98 CA 1583. *Louisiana.*

- ❑ The issue is whether the three minor children of S have the legal right to succeed to the estates of their grandparents (S's parents)
- ❑ S was convicted of murdering her parents and can thereby be declared unworthy as an heir
- ❑ But she repudiates her portion, which, if valid, left her two brothers as the remaining heirs in the first degree with respect to the decedents' estates.
- ❑ Can be represented
- ❑ if she is unworthy but not
- ❑ if repudiates sec 1(7).

SA law  
differs

***State of Wisconsin v. Eric. G. Koula*** La  
Crosse County Saaknr. 2010CF00043.

- Koula is serving two life sentences for the deaths of his parents
- Probate records show Eric Koula's two children will split \$740,000 when they're older. The couple's daughter will also receive \$740,000.
- The parents' will named Koula and his sister as representatives of the estate. But a judge removed Eric Koula following his arrest.
- Prosecutors argued at Koula's trial that his deep debt and floundering day trading career drove him to kill his parents for the inheritance.

# Claims against the estate

## 7. Legal costs/Maintenance

- *Ex parte Hauptfleisch* 5 PH. G.11
- *Caldwell v Erasmus* – father from estate of his murdered son (awaits trial)
- In *Masakale v Masakale* (CIV/APN/389/99) [1999] LSCA 120 burial rights of accused of murder
- referred to *Caldwell v Erasmus*
- Du Toit (2012:148)-discuss this position
- *Van der Walt v Flanagan* [2011] ZAFSHC 202 (para. 2 en 3)

## ***S v Lotter*** – murdered parents

- They want to claim their inheritance so they can use the money towards their legal defence.
- But their sister, with the support of other family members, wants to stop them getting their hands on their parents' money.
- In the will, the Lotters divided their estate equally among their three children.
- However, if they are found guilty of the murders, the sister would inherit the entire R2m estate.
- They argued that they were entitled to maintenance from the estate on the presumption of innocence until proven guilty.

- ❑ They applied for R1 500 a month maintenance
- ❑ Ruling:
- ❑ Accused of killing their parents,
- ❑ May not use the deceased couple's money to pay their defence team
- ❑ Judge Vivienne Niles–Duner dismissed their application in this regard with costs, saying an accused could not benefit from his or her own crime.

## ***S v Nursingh***

- N successfully pleaded temporary insanity during his sensational Durban trial.
- He was acquitted of murdering his mother, and his grandparents, who were hacked to death with an axe at their home.
- N said his mother had sexually, verbally and emotionally abused him for years. As result of the acquittal he received the family inheritance.

## Conclusion

- Onus is on executor to apply private law principles
- Uncertainties (conjunctissimi)
- Proposed amendment of the Act **sec 4B**
- Currently section 4A regulates unworthiness

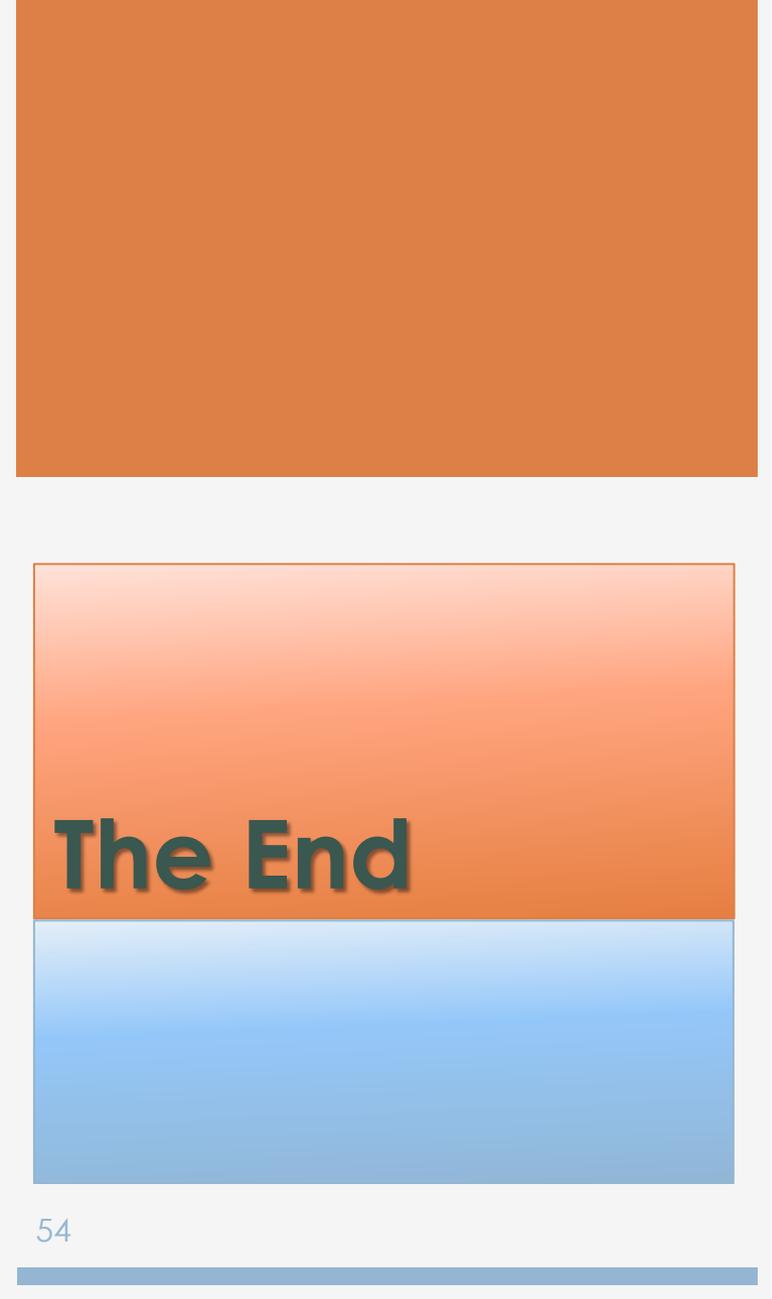
Time to regulate all kinds of unworthiness

- to guide the executor
- to confirm the common law
- to regulate conjunctissimi

## Proposed section 4B

- 4B. Lack of competency of persons involved in the death of the testator
- (1) Any person who intentionally or negligently causes or contributes to the death of the deceased, is unworthy to take any benefit from the estate of the deceased.
- (2) Any person who causes or contribute to the death of the deceased is also unworthy to inherit from the spouse, children or parents of the deceased.
- (3) Any person who shows objectionable behaviour/conduct towards the deceased or who has committed a crime resulting in financial benefits indirectly from the estate of the deceased, is unworthy to benefit from his wrongful act.

- (4) Notwithstanding the provisions of subsection (1)
  - (a) A court may declare a person referred to in subsections (1-3) to be capable (worthy) to receive a benefit from a will of the deceased or otherwise from the estate of a person if the court is satisfied that the person's act was justifiable or he is not **accountable/blameworthy**;
  - (b) A conviction of a crime in a criminal case, related to the death of the deceased or to a benefit that accrues to the person, is sufficient evidence for subsections (1) and (2) to take effect.
  
- (5) For the purpose of subsections (1) and (2) the nomination in a will of a person as executor, trustee or guardian shall be regarded as a benefit to be received by such person from that will.



**The End**