



THE CAYMAN ISLANDS LAW REFORM COMMISSION



DISCUSSION PAPER

THE COMMON LAW FORFEITURE RULE: A CASE FOR LEGISLATIVE INTERVENTION

27 MARCH, 2026

THE CAYMAN ISLANDS LAW REFORM COMMISSION

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CAYMAN ISLANDS LAW REFORM COMMISSION

Public Submissions

Stakeholders and members of the general public are invited to comment on the issues identified in this Discussion Paper and, in particular, to submit their views on the recommendations presented for discussion.

The Paper may be viewed on the following website: www.lrc.gov.ky or www.gov.ky or a copy may be collected from the Offices of the Law Reform Commission.

Submissions should be forwarded no later than **27 June, 2026** to the Director of the Law Reform Commission, 5th Floor Government Administration Building, Portfolio of Legal Affairs, 133 Elgin Avenue, George Town, Grand Cayman, P.O. Box 136, Grand Cayman KY1-9000 either electronically to **cilawreform@gov.ky**, or in writing, by post or hand delivered.

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1 Introduction

- 1.1 The forfeiture rule (the “Rule”) is a well-established common law principle that prevents a person who has unlawfully caused the death of another from benefiting from the deceased’s estate.¹ Rooted in public policy, this principle operates under the Latin maxim *nullus commodum capere potest de injuria sua propria*, meaning that no person should benefit from their own wrong.
- 1.2 The Rule applies in both testate and intestate succession and has been treated in comparative jurisprudence as extending to property interests such as joint tenancies, life insurance, superannuation, and pension entitlements, as well as various forms of unlawful killing. It remains a doctrine of public policy rather than a codified rule of succession in the Cayman Islands, which preserves flexibility, but also creates uncertainty.
- 1.3 The purpose of this Discussion Paper is to critically examine the Rule as it applies within the Cayman Islands legal framework. This Paper will assess whether the strict common law approach remains appropriate, or whether statutory reform should be introduced to provide clearer and fairer outcomes in cases involving manslaughter, diminished responsibility, or coercive control.
- 1.4 In doing so, this Paper will –
 - (a) outline the historical and legal foundations of the Rule;
 - (b) analyse its likely application in the Cayman Islands;
 - (c) conduct a comparative analysis of how the Rule has been modified in other jurisdictions; and
 - (d) provide recommendations for potential reform in the Cayman Islands.

¹ *Cleaver v Mutual Reserve Fund Life Association* [1892] 1 QB 147, 155.

2 The Forfeiture Rule: Historical and Legal Foundations

2A Origins and Development of the Rule

- 2.1 The Rule was first established by the 1891 decision of the English Court of Appeal in *Cleaver v Mutual Reserve Fund Life Association*.² The court held that a woman who had been convicted of murdering her husband could not claim the proceeds of her husband's insurance policy. Lord Esher MR emphasised the fundamental principle of public policy, stating –

*“the rule of public policy in such a case prevents the person guilty of the death of the insured, or any person claiming through such person, from taking the money.”*³

- 2.2 Lord Justice Fry agreed –

*“...no system of jurisprudence can with reason include among the rights which it enforces rights directly resulting to the person asserting them from the crime of that person. If no action can arise from fraud, it seems impossible to suppose that it can arise from felony or misdemeanor...”*⁴

- 2.3 Although there was no direct authority expressly recognising the Rule, it had been illustrated in *Amicable Society for a Perpetual Life Assurance Office v Bollard* (the *Fauntleroy's Case*).⁵ The House of Lords considered whether an insurance company was required to pay money due under a life insurance policy upon the death of a policy-holder who had been convicted and hanged for forgery. The House of Lords held that there was no obligation to pay as directed by the policy-holder because his death was brought about by his having committed a capital felony.

² Ibid.

³ Ibid.

⁴ Ibid., 156.

⁵ (1830) 4 Bli NS 194; 5 ER 70.

- 2.4 In *Cleaver*, Lord Justice Fry described the Rule as a principle of public policy that should be applied broadly –

*“This principle of public policy, like all such principles, must be applied to all cases to which it can be applied without reference to the particular character of the right asserted or the form of its assertion...”*⁶

- 2.5 Similarly, in *In the Estate of Crippen*, Dr. Crippen, who was convicted of murdering his wife, was barred from transferring her property to his mistress. The Court reaffirmed the principle that no person may enforce rights resulting from their own crime. Sir Samuel Evans P emphasised –

*“It is clear that the law is that no person can obtain, or enforce, any rights resulting to him from his own crime; neither can his representative, claiming under him, obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence.”*⁷

- 2.6 Having been formulated in *Cleaver*, the principle was recognised as an absolute rule in *In the Estate of Hall*.⁸ In that case, the Rule was held to apply to both manslaughter and murder. Lord Justice Hamilton stated –

*“[It is] [t]rue that [Cleaver] was a case of murder, but I do not think that, by using terms wide enough to cover manslaughter, the members of the Court supposed themselves to be speaking obiter, or were in fact doing so. The principle can only be expressed in that wide form. It is that a man shall not slay his benefactor and thereby take his bounty; and I cannot understand why a distinction should be drawn between the rule of public policy where the criminality consists in murder and the rule where the criminality consists in manslaughter.”*⁹

⁶ [1892] 1 QB 147.

⁷ [1911-13] All ER Rep, 207.

⁸ [1914] P 1.

⁹ Ibid.

2B Judicial Application of the Rule

- 2.7 Historically, courts have applied the Rule strictly, barring individuals from inheritance without consideration of the circumstances of the unlawful killing. Following the formulation of the Rule in *Cleaver*, courts in the United Kingdom (the “UK”) and Australia sought to clarify when the Rule applies, how it operates, and the consequences for distribution of the deceased person’s estate. In *In the Estate of Hall*, the Rule was held to apply to manslaughter as well as murder, however it is less clear whether it applies to all forms of manslaughter, including when arising from negligent, inadvertent or involuntary acts or omissions. Recent judicial approaches in the UK, New South Wales (Australia), and the Australian Capital Territory have evolved towards a greater discretionary approach, particularly in cases of manslaughter, mental impairment, or coercive control.
- 2.8 In the English case of *Re K*,¹⁰ the Court exercised discretion under the UK’s *Forfeiture Act 1982* (the “UK Act”), recognising that the offender’s moral culpability was significantly reduced due to prolonged domestic violence. Similarly, in *Challen v Challen*,¹¹ a woman subjected to years of coercive control was permitted to inherit after killing her husband, as the court recognised the impact of psychological abuse in reducing her culpability.
- 2.9 The recent case of *Re Ninian (Deceased)*¹² further highlights the court’s willingness to consider nuanced circumstances in forfeiture cases. In this case, Mr. Ninian, who had been diagnosed with progressive supra-nuclear palsy, travelled to Switzerland to end his life with assistance from Dignitas. His wife, Mrs. Ninian, provided administrative support in arranging the trip. The court considered whether her actions triggered the Rule. The ruling emphasised that, when applying the Rule, the court must assess the offender’s conduct, moral culpability, and any other relevant factors. The court ultimately granted relief from forfeiture, reflecting the broader trend toward judicial discretion in cases involving assisted suicide.

¹⁰ [1986] Ch 180.

¹¹ [2020] EWHC 1330 (Ch).

¹² [2019] EWHC 297 (Ch).

3 The Forfeiture Rule in the Cayman Islands

- 3.1 The Cayman Islands currently has no statutory codification of the Rule. The Rule therefore applies through the inherited English common law, as supplemented by persuasive case law from the UK and other Commonwealth jurisdictions.
- 3.2 The primary law governing inheritance and succession in the Cayman Islands is the *Succession Act (2021 Revision)* which contains no specific provisions addressing inheritance in cases where a beneficiary has unlawfully killed the deceased. The absence of statutory codification creates uncertainty as to the Rule's precise scope and application, particularly in complex contexts.
- 3.3 For instance, it remains uncertain whether unlawful killing automatically results in the severance of joint tenancies or whether equitable intervention is required. Similarly, the position of entitlement to insurance proceeds and pension benefits is unclear.
- 3.4 The Cayman Islands' position contrasts with jurisdictions such as New Zealand, the UK and some Australian states and territories, which have enacted legislation to provide clarity and proportionality in the Rule's application.

4 Comparative Analysis of the Forfeiture Rule in Other Jurisdictions

- 4.1 The Rule has evolved differently across common law jurisdictions, with some embracing judicial discretion and statutory modifications while others maintain a strict application. This section examines the Rule's application in the UK, Australia, and New Zealand, analysing key case law and legislative developments.

United Kingdom

Following Cleaver

- 4.2 Following the formulation of the Rule in *Cleaver*, courts in the UK sought to clarify when it applies, how it operates and the consequences for the distribution of the deceased person's estate.

4.3 In the 1970 case of *Gray v Barr*,¹³ there was a departure from the inflexible application of the Rule. The Court of Appeal applied the Rule to a man who had accidentally shot his wife's lover. He had been acquitted in criminal proceedings of murder and manslaughter but, in subsequent civil proceedings in the High Court, Justice Lane found he had committed manslaughter and applied the Rule.

4.4 Although the Court of Appeal upheld this decision, it recognised that there are circumstances where, in the event of manslaughter, it would not be appropriate to apply the Rule. Lord Justice Salmon said –

*“I am not deciding that a man who has committed manslaughter would, in any circumstances, be prevented from enforcing a contract of indemnity in respect of any liability he may have incurred for causing death or from inheriting under a will or upon the intestacy of anyone whom he has killed. Manslaughter is a crime which varies infinitely in its seriousness. It may come very near to murder or amount to little more than inadvertence, although in the latter class of case the jury only rarely convicts.”*¹⁴

4.5 Lord Denning agreed with the following test, set out by Justice Lane, for determining when to apply the Rule –

*“The logical test, in my judgment, is whether the person seeking the indemnity was guilty of deliberate, intentional and unlawful violence or threats of violence. If he was, and death resulted therefrom, then, however unintended the final death of the victim may have been, the court should not entertain a claim for indemnity.”*¹⁵

4.6 In *R v National Insurance Commissioner, Ex parte Connor*,¹⁶ the High Court considered whether Mrs. Connor, who said that she had killed her husband by accident during an argument, was entitled to a widow's pension. Mrs. Connor had been convicted of manslaughter and placed on probation for two years. Although it took account of the *Gray v Barr* test and endorsed Lord Justice Salmon's comments about the need to apply the Rule

¹³ [1970] 2 QB 626.

¹⁴ *Ibid.*, 581.

¹⁵ *Ibid.*, 568–9.

¹⁶ [1981] QB 758.

more flexibly, the court applied the Rule because “the killing was deliberate, conscious and intentional.”¹⁷

The Forfeiture Act 1982

4.7 The UK legislated to provide relief from the Rule with the UK Act.

4.8 Under section 2(1) of the Act, the court is empowered to modify the Rule –

“(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as “the offender”) who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying [or excluding] the effect of that rule.”¹⁸

4.9 However, the common law Rule is still applied strictly to all persons convicted of murder.¹⁹

4.10 The court may not modify the effect of the Rule unless it is satisfied that –

“having regard to the conduct of the offender and the deceased and to such circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case.”²⁰

4.11 The courts have applied the Act to modify the Rule in cases involving domestic violence,²¹ suicide pacts,²² diminished responsibility, and terminal illness.²³ For example, in *Re K* and *Challen v Challen*, relief was granted where prolonged domestic violence or coercive control significantly reduced culpability. In *Dunbar v Plant*, the court considered the effect of a failed suicide pact, and in *MacMillan Cancer Support v Hayes*, modification was granted where the offender acted to relieve the suffering of a terminally ill spouse.

¹⁷ Ibid.

¹⁸ Forfeiture Act 1982, section 2(1).

¹⁹ Ibid., section 5.

²⁰ Ibid., section 2(2).

²¹ *Re K (Deceased)* [1985] Ch 25; *Re K* [1986] Ch 180.

²² *Dunbar v Plant* [1997] 4 All ER 289.

²³ *MacMillan Cancer Support v Hayes* [2017] EWHC 3110 (Ch).

- 4.12 The case of *Re Amos (Deceased)*²⁴ raised new considerations regarding the application of the Rule in cases of causing death by careless driving. In this case, Mrs. Amos pleaded guilty to causing the death of her husband due to careless driving and was sentenced to a suspended prison term. The High Court ruled that, although the Rule applied, judicial discretion under the UK Act should be exercised in her favour. The court reasoned that her conduct, while unlawful, did not involve deliberate violence or moral culpability comparable to other forms of manslaughter. This decision underscores the importance of distinguishing between degrees of culpability in forfeiture cases.
- 4.13 The UK's approach provides a balanced model for the Cayman Islands to consider. By allowing judicial discretion in cases of manslaughter, diminished responsibility, and coercive control, courts can ensure that justice is served on a case-by-case basis rather than through an inflexible legal standard.

Australia

New South Wales (NSW)

- 4.14 The NSW Court of Appeal in *Troja v Troja*²⁵ demonstrated an inflexible approach to the Rule. This appeal involved a woman, Jeanna Troja, who shot and killed her husband while suffering from depression, and argued that she should not be disentitled from inheriting. At first instance, Waddell CJ held that she was barred from any inheritance from the deceased's estate as a result of the Rule. He saw the only remedy for problems raised by the Rule as lying with the legislature.
- 4.15 The majority (Mahoney and Meagher JJA) affirmed this strict approach, observing that –
- “all felonious killings are contrary to public policy and hence, one would assume, unconscionable. Indeed, there is something a trifle comic in the spectacle of Equity judges sorting felonious killings into conscionable and unconscionable piles.”*²⁶

²⁴ [2020] EWHC 1063 (Ch).

²⁵ (1994) 33 NSWLR 269.

²⁶ *Ibid*, 272.

4.16 In dissent, Kirby P, criticised this approach stating that –

*“The knowledge of domestic violence allowed to judges, and of the circumstances in which conduct, although manslaughter, can sometimes be morally virtually blameless, requires of them a rule of sufficient flexibility which accords with the justice of the case. Otherwise, the law becomes a vehicle for serious injustice.”*²⁷

4.17 In response to the decision in *Troja*, the Parliament of NSW legislated to provide relief from the strict application of the Rule in relation to particular types of unlawful killings such as those occurring in the context of family violence, assisted suicide, suicide pacts, and culpable driving.

4.18 Under section 5 of the *Forfeiture Act 1995* (the “NSW Act”), the court may make a forfeiture modification order if satisfied that justice requires such modification. In determining this, the court must consider –

- (a) the conduct of the offender;
- (b) the conduct of the deceased;
- (c) the effect of the application of the Rule on the offender or any other person; and
- (d) such other matters as appear to the court to be material.

4.19 Although the NSW Act was modelled on the UK Act, the NSW Act introduced refinements. Most notably, unlike the UK Act, the NSW Act provides that any interested party may apply to the Supreme Court for an order modifying the effect of the Rule.²⁸ Additionally, while the NSW Act expressly permits modification in relation to joint tenancies, it does not codify what the precise effect of the Rule is on those property interests, leaving that question to judicial determination.²⁹

4.20 In 2005, the NSW Act was amended to ‘prevent mentally ill murderers from profiting from their crime by applying the Rule’.³⁰ Subsequent to these amendments, if a person who has

²⁷ Ibid., 285.

²⁸ Forfeiture Act 1995 No 65, section 5(1), and section 2.

²⁹ Ibid, section 6(2).

³⁰ New South Wales, Parliamentary Debates, Legislative Assembly, 21 September 2005, 18042 (Graham West).

killed another is not subject to the Rule because they have been found not guilty by reason of mental illness, any interested person may make an application to the Supreme Court for an order modifying the effect of the Rule so that the Rule applies as if the offender had been found guilty of murder.

- 4.21 Since the enactment of the NSW Act, the effect of the Rule has been modified at the court's discretion in cases of diminished responsibility and culpable driving. One of them was the case of *Lenaghan-Britton v Taylor*.³¹ In that case, the plaintiff was convicted of manslaughter after killing her grandmother following a breakdown exacerbated by major depression and a borderline personality disorder. As a result, her mental responsibility for her crime was substantially diminished. She applied to the court for relief from the Rule. The court accepted psychiatric evidence showing that her mental responsibility was substantially diminished and that her relationship with the deceased was very close but very troubled. Despite the seriousness of the offence – including efforts to construct an alibi and to deceive the police as to what happened – the court concluded that justice required modification of the Rule. It therefore granted a forfeiture modification order under section 6(1) of the Act, allowing the plaintiff to inherit under the will. This case illustrates how statutory discretion can balance public policy against the realities of mental illness.
- 4.22 In one of the more recent cases, *Re Settree Estates*,³² the Supreme Court of NSW ruled on a case in which a man killed his parents and was found not guilty by reason of mental illness. Under the common law, he would have been barred from inheriting. However, the court, guided by the NSW Act, imposed a partial forfeiture order, allowing him to receive a limited portion of the inheritance.

Australian Capital Territory (ACT)

- 4.23 The ACT *Forfeiture Act 1991* (the “ACT Act”) is closely based on the UK Act.
- 4.24 Section 3 of the ACT Act allows the Supreme Court to modify the effect of the Rule after considering –

³¹ [1998] NSWSC 218.

³² [2018] NSWSC 1417.

- (a) the conduct of the offender;
 - (b) the conduct of the deceased; and
 - (c) any other circumstances that appear to the court to be material.
- 4.25 The ACT Act also provides for the Rule to be partially or wholly excluded in relation to specific property interests. However, the ACT Act expressly excludes relief for murderers,³³ preserving the public policy principle in its strictest form for the most culpable form of killing.

Victoria

- 4.26 The position in Victoria was considered in *Estate of Soukup*.³⁴ Justice Gillard left open the question of whether the Rule applies to every manslaughter case. He suggested that the Rule does not apply if the person was not guilty of deliberate intentional and unlawful violence or threats of violence resulting in death. Justice Gillard reiterated that –
- (a) the Rule applies in murder and manslaughter cases;
 - (b) the Rule does not apply where the person responsible had a mental impairment at the time the crime was committed; and
 - (c) the application of the Rule to manslaughter cases does not depend upon moral culpability or any other factor.
- 4.27 In 2014, the Victorian Law Reform Commission identified several key deficiencies in the application of the Rule. For example, the lack of clarity regarding whether the Rule applies uniformly to all forms of unlawful killing beyond murder, its inflexible operation, which fails to account for the offender’s moral culpability, uncertainty about how forfeited benefits should be redirected, and the absence of any judicial power to modify the Rule’s effect.
- 4.28 In its Final Report, the Victorian Law Reform Commission made several recommendations.

³³ Forfeiture Act 1991, section 4.

³⁴ (1997) 97 A Crim R 103, 115.

1. Introduce a Forfeiture Act that defines the scope and effect of the common law rule of forfeiture and provides for the Supreme Court, on application, to modify the effect of the rule if the justice of the case requires it.
2. The Forfeiture Act should specify that the Rule applies only where the killing, whether done in Victoria or elsewhere, would be murder or another indictable offence under the *Crimes Act 1958* (Vic).
3. However, the Rule should not apply where the killing, whether done in Victoria or elsewhere, would be an offence under the *Crimes Act 1958* (Vic) of –
 - (a) dangerous driving causing death;
 - (b) manslaughter pursuant to a suicide pact with the deceased person or aiding or abetting a suicide pursuant to such a pact; or
 - (c) infanticide.
4. The existing exception to the common law rule of forfeiture for persons found not guilty by reason of mental impairment should be retained.
5. The Supreme Court should be empowered to make a forfeiture rule modification order if satisfied that, having regard to the offender's moral culpability and responsibility for the unlawful killing and such other matters as appear to the court to be material, the justice of the case requires the effect of the rule to be modified.
6. In determining the moral culpability of the offender, the Supreme Court should have regard to –
 - (a) findings of fact by the sentencing judge;
 - (b) findings by the Coroner;
 - (c) victim impact statements presented at criminal proceedings for the offence;
 - (d) submissions on interests of victims;
 - (e) the mental state of the offender at the time of the offence; and

- (f) such other matters that in the court's opinion appear to be material to the offender's moral culpability.
7. An 'interested person' should be able to apply for a forfeiture rule modification order, being –
- (a) the offender;
 - (b) the executor or administrator of the deceased person's estate; or
 - (c) any other person who in the opinion of the court has an interest in the matter.
8. The property, entitlements and other benefits that may be affected by a forfeiture rule modification order should include –
- (a) gifts to the offender made by the will of the deceased person;
 - (b) entitlements on intestacy;
 - (c) eligibility to make an application for family provision under Part IV of the *Administration and Probate Act 1958* (Vic); and
 - (d) any other benefit or interest in property that vests in the offender as a result of the death of the deceased person.
9. An interested person should be able to apply for revocation or variation of a forfeiture rule modification order if –
- (a) the offender is pardoned;³⁵
 - (b) the offender's conviction is quashed or set aside and there are no further avenues of appeal available in respect of the decision to quash or set aside the conviction; or

³⁵ Victorian Law Reform Commission, *The Forfeiture Rule: Report* (September 2014), p 48. The Victorian Law Reform Commission considers "such a provision essential to allow for the court to consider new evidence that may exonerate an offender. A forfeiture rule modification order previously made by the court may enable the applicant to obtain only some, but not all, of their entitlements. Such an order would therefore need to be revoked to enable an exonerated person to make a claim on the rest of the property to which they may be entitled."

- (c) in all other cases – if the court considers it just in all the circumstances to give leave for such an application to be made.

10. The Forfeiture Act should provide that, unless the Supreme Court gives leave for a late application to be made, an application for a forfeiture rule modification order must be made by the later of –

- (a) if the Rule operates immediately on the death of a deceased person to prevent the offender from obtaining the benefit concerned – within six months from the date of the death of the deceased person;
- (b) if the Rule subsequently prevents the offender from obtaining a benefit – within six months from the date on which the Rule operates to preclude the offender from obtaining the benefit concerned;
- (c) six months after grant of probate of the will of the deceased person or letters of administration of the deceased person’s estate; or
- (d) six months after all charges of unlawful killing laid against any beneficiary have been dealt with.

11. The Supreme Court should be permitted to give leave for a late application for a forfeiture rule modification order if –

- (a) the offender concerned is pardoned after the expiration of the relevant period;
- (b) the offender’s conviction is quashed or set aside by a court after the expiration of the relevant period;
- (c) the fact that the offender committed the unlawful killing is discovered after the expiration of the relevant period; or
- (d) the court considers it just in all the circumstances to give leave.

12. The *Administration and Probate Act 1958* (Vic) should be amended to provide that, where a person appointed executor by a will or who is otherwise eligible to be appointed administrator is precluded by the Rule from acquiring an interest in the

deceased's estate, the person is to be treated as having died immediately before the deceased person.

13. Part 4 of the *Wills Act 1997* (Vic) should be amended with the effect that, where a will contains a devise or bequest to a person who has been precluded by the common law rule of forfeiture from acquiring it, the person is, unless a contrary intention appears by the will, to be treated for the purposes of the Act as having died immediately before the will-maker.
14. The *Administration and Probate Act 1958* (Vic) should be amended with the effect that, for the purposes of the distribution of an intestate's residuary estate, a person who would have been entitled to an interest in the residuary estate if not precluded from acquiring it by the common law rule of forfeiture is to be treated as having died immediately before the intestate, and entitled to the interest in the residuary estate at the time of the deemed death.
15. Part IV of the *Administration and Probate Act 1958* (Vic) should be amended to disentitle persons to whom the Rule applies from making an application for family provision in respect of the deceased person's estate.
16. The effect of section 50 of the *Transfer of Land Act 1958* (Vic) should be amended to provide that, where a joint proprietor has been unlawfully killed (within the meaning of the Forfeiture Act) by another joint proprietor, the property shall devolve at the death of the victim as follows –
 - (a) where the offender and the victim were the only joint proprietors, as if the property were owned by each of them as tenants in common in equal shares;
or
 - (b) where there were more than two joint proprietors –
 - (i) the offender holds their interest as a tenant in common;
 - (ii) the surviving innocent joint proprietor(s) take the victim's interest by survivorship;

- (iii) as between the offender and the innocent joint proprietors, a tenancy in common exists; and
- (iv) as between the innocent joint proprietors, a joint tenancy exists.

17. If an offender obtains registration by survivorship under section 50 of the *Transfer of Land Act 1958* (Vic) before it becomes apparent that the Rule applies, the Registrar should be empowered to rectify the Register appropriately.³⁶

4.29 No legislation has been enacted in Victoria to implement the recommendations. The Rule remains governed by common law, without statutory guidance. This approach has been criticised as lacking transparency and fairness, particularly in morally complex cases.³⁷ The Victorian Court of Appeal in *Edwards v State Trustees Ltd*³⁸ suggested a nuanced approach, asserting that manslaughter cases should be analysed individually, considering the offender's level of culpability.

Queensland

4.30 Queensland continues to enforce a rigid application of the Rule. The Rule covers convictions for both murder and manslaughter, and also extends to assisted suicide.

4.31 There have been judicial calls for legislative reform of the Rule. In *The Public Trustee of Queensland v The Public Trustee of Queensland*,³⁹ Jersey CJ noted –

“The whole purpose of the forfeiture legislation in New South Wales and the Australian Capital Territory was to ameliorate what was perceived to be harshness in the otherwise necessary rigid application of the forfeiture rule (see In the Estate of the Late Fiona Ellen Fitter & The Forfeiture Act 1995; Public Trustee of New South Wales v Fitter & Ors [2005] NSWSC 1188 at para 42 and Nay v Iskov [2012] NSWSC 598 at para 10).

³⁶ Victorian Law Reform Commission, *The Forfeiture Rule: Report* (September 2014), p xii-xvi.

³⁷ Sun Y, 'Reforming the Forfeiture Rule in Victoria' (2025) *Proceedings of the 4th International Conference on International Law and Policy* <https://doi.org/10.54254/2753-7048/2025.LD24919>.

³⁸ [2016] VSCA 28 - 54 VR 1.

³⁹ *The Public Trustee of Queensland v The Public Trustee of Queensland* [2014] QSC 47.

In this State, the law is clear. A person who assists the suicide of someone else cannot act as that person's executor, or take an interest in his or her estate. The court has no discretion to modify the application of that rule. Saying nothing as to the facts of this case, I observe that it is irrelevant that the offender may have been motivated to ease suffering or to have acted at the request of the deceased.

If there is to be any change in that arena, it is a matter of high public policy appropriate for consideration by the legislature, not determination by the courts. I should say that I am not to be taken to be inviting any such legislative consideration.”⁴⁰

- 4.32 Atkinson J has indicated it would be useful for Queensland to consider legislating to provide for modification of the Rule. In *Pike v Pike*,⁴¹ her Honour said –

“In my view, it would also be useful for the legislature to consider legislation consistent with the Forfeiture Acts to which I have referred in the United Kingdom, New South Wales and the Australian Capital Territory. As I held in Re Nicholson:

The forfeiture rule may be applied strictly unless modified by statute as has been the case in New South Wales and the Australian Capital Territory in the Forfeiture Act 1995 and the Forfeiture Act 1991 respectively which are based on the United Kingdom Forfeiture Act 1982.”⁴²

Tasmania

- 4.33 In Tasmania, the Rule forms part of the common law. The Rule applies strictly to all forms of unlawful killing, including murder, manslaughter, and assisted suicide, irrespective of moral culpability or extenuating circumstances.⁴³
- 4.34 The Tasmania Law Reform Institute has considered the need for reform.⁴⁴ It expressed concern that a strict common law rule could lead to harsh and unjust outcomes, particularly in cases such as suicide pacts, diminished responsibility, and killings in

⁴⁰ Ibid., 13 and 19-20.

⁴¹ [2015] QSC 134.

⁴² Ibid., 25.

⁴³ Tasmania Law Reform Institute, *The Forfeiture Rule* (Issues Paper No 5, December 2003).

⁴⁴ Tasmania Law Reform Institute, *The Forfeiture Rule* (Final Report No 6, December 2004).

response to prolonged domestic violence.⁴⁵ The Institute noted that relying solely on the common law lacks flexibility and judicial discretion.

4.35 The Institute considered the following options for reform –

- (a) enacting a Forfeiture Act granting courts discretion to modify the effects of the Rule, following the approach adopted in NSW, the ACT and the UK; or
- (b) codifying the Rule and its exceptions, as proposed in New Zealand.

4.36 The Institute ultimately recommended legislative reform to enact a Forfeiture Act, allowing for modification of the effects of the Rule.⁴⁶ The Institute made the following recommendations –

1. The proposed Forfeiture Act should provide that the Rule applies where an Australian court has convicted a beneficiary of the unlawful killing of the deceased.
2. Where a beneficiary has not been convicted of the unlawful killing of the deceased, an interested person should be able to apply to the court for an order as to whether the Rule applies.
3. Where the Rule is applied, the estate should be distributed as if the killer had predeceased the deceased.
4. If the Rule applies, any interested person may make an application to the Supreme Court for an order modifying the effect of the rule. An interested person is –
 - (a) the offender;
 - (b) the executor or administrator of the estate of the deceased person;
 - (c) a beneficiary under the will of the deceased person or a person who is entitled to any estate or interest on the intestacy of the deceased person;
 - (d) a person claiming through the offender; or
 - (e) any other person who has a special interest in the matter.

⁴⁵ Tasmania Law Reform Institute, *The Forfeiture Rule* (Issues Paper No 5, December 2003), p 8, 13.

⁴⁶ Tasmania Law Reform Institute, *The Forfeiture Rule* (Final Report No 6, December 2004), p 17.

5. The court may make an order modifying the effect of the Rule if it is satisfied that justice so requires. The court should have regard to the following matters –
 - (a) the conduct of the killer;
 - (b) the conduct of the deceased person;
 - (c) the effect of the application of the rule on the killer or any other person;
 - (d) any findings of fact by the sentencing judge;
 - (e) the mental state of the killer; and
 - (f) such other matters as appear to the court to be material.
6. The court should be empowered to modify the Rule in any case of unlawful killing, including murder.
7. The court should be empowered to revoke and vary modification orders.⁴⁷

4.37 Tasmania has not enacted legislation to give effect to these recommendations, and the Rule therefore continues to operate under the common law.

New Zealand

4.38 In 1997, the New Zealand Law Commission recommended codification of the Rule in a single statute.⁴⁸ The *Succession (Homicide) Act 2007* implements that recommendation.

4.39 The Act prevents a person who unlawfully kills another from benefiting as a result of the victim's death from the victim's estate or any other related property arrangement. The Act specifies both –

- (a) the killings that trigger the Rule, namely murder and certain forms of manslaughter, including where a person unlawfully aids or abets the death of another; and

⁴⁷ Tasmania Law Reform Institute, *The Forfeiture Rule* (Final Report No 6, December 2004), p 17-29.

⁴⁸ New Zealand Law Commission, *Succession Law: Homicidal Heirs* (Report No 38, 1997).

- (b) the killings that are excluded and do not trigger the Rule, including killings caused by a negligent act or omission, infanticide, a killing in pursuance of a suicide pact, or assisted suicide.
- 4.40 Additionally, the Rule does not apply if an individual is found not guilty by reason of insanity.
- 4.41 The Act specifies the effect of the Rule on the distribution of benefits to which the person would otherwise have been entitled⁴⁹ –
- (a) for inheritance under a will or intestacy, the killer is treated as having died before the victim;⁵⁰
 - (b) for non-probate assets, the killer is not entitled to the property interest, which then passes as if the killer had predeceased the victim;⁵¹
 - (c) in cases of joint tenancies, the property is converted into a tenancy in common, preventing the killer from automatically inheriting the victim's share;⁵² and
 - (d) for other property interests, the killer is prevented from receiving an enhanced or more valuable interest as a result of the victim's death.⁵³
- 4.42 By specifying excluded offences, the New Zealand legislation resolves questions of culpability, limiting the need for judicial discretion in cases like infanticide or suicide pacts. This provides a greater degree of certainty and consistency in outcomes compared to the UK, NSW and ACT legislation, where the Rule is more frequently modified through judicial discretion on a case by case basis. However, New Zealand courts still retain some discretionary power in manslaughter cases where a strict application would be unjust, balancing a clear statutory framework with judicial flexibility.

⁴⁹ Ibid., section 11.

⁵⁰ Ibid., section 7.

⁵¹ Ibid., section 8(1), (2).

⁵² Ibid., section 8(3).

⁵³ Ibid., section 11.

5 Recommendations for Reform

- 5.1 The Rule remains a fundamental principle of public policy, ensuring that no person who unlawfully causes the death of another may benefit from that wrongdoing. However, the strict common law approach in the Cayman Islands risks producing disproportionate and unjust outcomes in cases involving reduced culpability, such as diminished responsibility, domestic or family violence, coercive control or mental illness. Accordingly, legislative reform is necessary in the Cayman Islands to provide clearer guidance on the application of the Rule.
- 5.2 Comparative analysis reveals that the UK, NSW, and ACT have all enacted legislation that preserves the Rule but empowers courts to modify or exclude its effect in appropriate cases. This discretionary model provides flexibility to reflect varying levels of culpability while still upholding the public policy principle that no one should benefit from their wrongdoing. In contrast, New Zealand has adopted a codified model with clearer statutory exclusions but less judicial discretion.
- 5.3 Reform in the Cayman Islands should adopt a discretionary statutory framework to modify the Rule, while codifying the property consequences where the Rule is applied. This will ensure that the court retains flexibility to grant relief in cases of diminished responsibility, domestic or family violence, coercive control, mental illness, or other circumstances where moral culpability is significantly reduced. At the same time, the legislation should maintain certainty by excluding relief for murder and providing for the treatment of estates and property interests when the Rule is applied. The recommendations are set out below.

Recommendation 1: Judicial Discretion to Modify the Rule	Enact legislation empowering the court to modify or exclude the Rule in non-murder cases where the justice of the case requires.
Recommendation 2: Statutory Factors Guiding Discretion	In exercising its discretion to modify or exclude the Rule, the court should have regard to the following factors – (a) the conduct of the offender;

	(b) the moral culpability of the offender, including any diminished responsibility or mental illness; (c) the conduct of the deceased (including any evidence of domestic or family violence, abuse, coercive control, or provocation); (d) the nature of the relationship between the deceased and the offender; (e) the effect of forfeiture on the offender or any other person (including dependants or other beneficiaries), including non-financial consequences such as emotional hardship, disruption to the beneficiaries, loss of the family home, or other matters bearing on the justice of the case; (f) any findings of fact made by the sentencing judge or coroner, any victim impact statements made during related proceedings, and such other matters as the court considers material to the justice of the case; (g) the context of the killing (for example, suicide pact, assisted suicide); and (h) any other circumstances that appear to the court to be material to the case and necessary to achieve justice.
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Recommendation 3: Property Consequences	The legislation should codify the property consequences of the Rule by – (a) deeming the offender to have predeceased the victim for the purposes of wills and intestacy; (b) severing joint tenancies so that the property is converted into a tenancy in common, ensuring the deceased's share passes to alternate heirs rather than by survivorship to the offender; (c) ensuring the Rule applies equally to all property-related entitlements, including wills, intestacy, survivorship in joint tenancies, insurance policies, pension and superannuation benefits, and family provision claims, subject to any order of the court modifying or excluding the Rule; and (d) in the case of non-probate property interests, preventing the offender from obtaining any enhancement, acceleration, or increase in value of a property interest by reason of the victim's death (for example, early vesting of a remainder interest, uplift in value, or receipt of insurance proceeds).
Recommendation 4: Exclusion for Murder	No relief from forfeiture should be available in cases of murder.

Recommendation 5: Procedural Framework	The legislation should establish a clear procedural framework including – (a) specifying who has standing to bring an application to modify the effect of the Rule, being the offender, the executor or administrator of the deceased’s estate, any beneficiary or potential beneficiary of the estate, any person claiming through the offender, or any person who has a special interest in the outcome of the application; (b) a time limit for applications, with judicial discretion to extend where justice requires; (c) the power to grant full or partial relief (including partial forfeiture orders where appropriate); and (d) provision for revoking or varying modification orders.
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6 Conclusion

6.1 This Paper has examined the historical development of the Rule, its likely application in the Cayman Islands, and comparative approaches across other jurisdictions. The analysis highlights that while jurisdictions such as the UK, NSW, the ACT and New Zealand have introduced statutory reform, there has been no comparable legislative codification of the Rule across Commonwealth Caribbean jurisdictions or in Canada, where the Rule continues to operate primarily as a matter of common law grounded in public policy.

6.2 The comparative review shows that discretionary models, such as those in the UK, NSW and ACT, preserve the Rule but empower courts to grant relief in exceptional cases, particularly where reduced culpability is present. In contrast, New Zealand has enacted a

codified framework that removes judicial discretion but clarifies property consequences and excludes certain killings, such as those caused by negligence, infanticide, suicide pacts, and assisted suicide. By comparison, jurisdictions such as Queensland and Tasmania continue to maintain a strict application of the Rule.

- 6.3 The Cayman Islands has an opportunity to adopt a principled modern statutory model that balances certainty with fairness. Legislation should preserve Rule but empower the court to grant relief in non-murder cases, guided by statutory considerations, while codifying the property consequences of forfeiture. This approach prevents unjust enrichment while enabling proportionate outcomes in morally complex cases.
- 6.4 Stakeholders, legal practitioners, and members of the general public are invited to comment on these recommendations. This feedback will be crucial in shaping a final legislative proposal that ensures Rule in the Cayman Islands remains responsive, balanced and principled.

List of References

Books, articles and reports

New Zealand Law Commission, *Succession Law: Homicidal Heirs* (Report No 38, 1997).

Rebecca Bradfield, 'Domestic Homicide and the Defence of Provocation: A Tasmanian Perspective on the Jealous Husband and the Battered Wife' (2000) 19(1) *University of Tasmania Law Review*, 5.

Sun Y, 'Reforming the Forfeiture Rule in Victoria' (2025) Proceedings of the 4th International Conference on International Law and Policy <https://doi.org/10.54254/2753-7048/2025.LD24919>.

Tasmania Law Reform Institute, *The Forfeiture Rule* (Issues Paper No 5, December 2003).

Tasmania Law Reform Institute, *The Forfeiture Rule* (Final Report No 6, December 2004).

The Law Commission, *The Forfeiture Rule and The Law of Succession*, (Law Com No 295, 2004).

Victorian Law Reform Commission, *The Forfeiture Rule* (Consultation Paper No 20, March 2014)

Victorian Law Reform Commission, *The Forfeiture Rule: Report* (September 2014).

Legislation

Crimes Act 1900 (NSW)

Forfeiture Act 1982 (UK)

Forfeiture Act 1991 (ACT)

Forfeiture Act 1995 No 65 (NSW)

Succession (Homicide) Act 2007 (NZ)

Succession Act (2021 Revision) (Cayman Islands)

Testators Family Maintenance Act 1912 (Tasmania)

Authorities

Amicable Society for a Perpetual Life Assurance Office v Bollard (1830) 4 Bli NS 194; 5 ER 70

Challen v Challen [2020] EWHC 1330 (Ch)

Cleaver v Mutual Reserve Fund Life Association [1892] 1 QB 147, 155

Dhingra v Dhingra Estate [2012] ONCA 261

Dunbar v Plant [1997] 4 All ER 289

Gray v Barr [1970] 2 QB 626

In the Estate of Crippen [1911] P 108, 112

In the Estate of Hall [1914] P 1, 5

Lundy v. Lundy (1895) 24 SCR 650

MacMillan Cancer Support v Hayes [2017] EWHC 3110 (Ch)

Pike v Pike [2015] QSC 134

R v National Insurance Commissioner, Ex parte Connor [1981] QB 758

Re Amos (Deceased) [2020] EWHC 1063 (Ch)

Re Batten's Will Trusts (1961) 105 Sol Jo 529

Re Callaway [1956] 1 Ch 559, 562

Re Giles (decd) [1972] Ch 544

Re Giles, Giles v Giles [1972] Ch 544, [1971] 3 All ER 1141

Re Houghton, Houghton v Houghton [1915] 2 Ch 173

Re K (decd) [1985] Ch 85

Re K [1986] Ch 180

Re Ninian (Deceased) [2019] EWHC 297 (Ch)

Re Pitts, Cox v Kilsby [1931] 1 Ch 546

Re Plaister (1934) 34 SRNSW 547

Re Pollock, Pollock v Pollock [1941] Ch 219, [1941] 1 All ER 360

Re Royse (decd) [1985] Ch 22

Re S' Estate [1968] P 302, [1967] 2 All ER 150

Re Settree Estates [2018] NSWSC 1417

Re Sigsworth, Bedford v Bedford [1935] Ch 89

The Public Trustee of Queensland v The Public Trustee of Queensland [2014] QSC 47

Troja v Troja (1994) 33 NSWLR 269

Unreported, Supreme Court of Tasmania, Neasey J, 22 September 1985