

Should a History of Spousal Abuse Serve As A Presumptive Bar To Inheritance?

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Spivack, Carla, [Let's Get Serious: Spousal Abuse Should Bar Inheritance](#), 90 *Or. L. Rev.* 247 (2011).

When I read the title there were three questions that came to mind right away. First, I was curious how to determine the type of abuse that would serve as a presumptive bar. Next, I was curious how this presumptive bar would apply to wills and/or other forms of inheritance. Finally, I wondered what mechanism would be in place to prevent this proposal from being used to usurp a woman's decision to transfer her own property the way she desires.

Professor Spivack answers the first question by proposing a presumptive bar to inheritance to an abusive spouse because it provides an opportunity to expand existing laws. The existing laws already provide a presumptive bar to inheritance to perpetrators of elder and child abuse of the decedent. Including spousal abuse as a barrier to inheritance sends the message that spousal abuse is just as an important public policy stance to deny an unjust enrichment to abusers as the others categories of abuse. As a policy matter I agree that perpetrators of spousal abuse should not be permitted to inherit in cases where systemic abuse exists. As a practical matter I envisioned this would be tougher to regulate because there are different types of abuse and how should abuse be defined for this limited purpose.

Professor Spivack answers with proposals for a specific set of behavior to regulate by limiting the proposed rule to circumstances evidencing "coercive control." She defined coercive control as "a pattern of repeated battery and injury, psychological abuse, sexual assault, progressive social isolation, deprivation, and intimidation by an intimate partner." Her proposal focuses on certain behaviors such as the strategic use of threats and force to "deter or trigger specific behavior, to win arguments or assert dominance" and controlling the victim through fear and intimidation. By barring spouse abusers from inheritance in these circumstances the bridge between intimate violence and women's wealth inequality can be forged.

The article also addressed my question of how the proposed rule would apply to wills or other forms of inheritance. Professor Spivack proposed the best doctrine applicable to the circumstances is duress. Initially I wasn't convinced it was the best approach since undue influence seemed tailor made for such a doctrine. Professor Spivack convinced me she was correct by demonstrating a key distinction between undue influence and duress as applied to her proposal. First, undue influence may easily be demonstrated because of the confidential relationship that exists between spouses. Based on the confidential relationship, the presumption of undue influence would apply if the spouse receives the bulk of the estate and the will occurred under suspicious circumstances. The problem, as she describes it, is that presumption may apply in too many cases which would render the rule too burdensome. The proposed rule is only intended to capture those cases of coercive control. With the additional element of coercive control, duress is more appropriate because the acts of violence or threats of violence, is already incorporated in the doctrine.

A couple of important points to make about the article are that proposal is not designed to deter spousal abuse and coercive control may be proven without a demonstration of actual coercion. I appreciated the fact that Professor Spivack recognized that perpetrators of spouse abuse are not likely to be deterred from abusing because they may lose the right to inherit from the victim spouse. In addition, she points out that coercion may be demonstrated by proving the abuse and making the connection that abuse has the effect of brainwashing the victim which, in turn, weakens the ability of the victim to exercise independent judgment. Keeping in mind the goal is to prevent the unjust enrichment of

the abusive spouse, the justification for the proposed rule is still sound.

My final concern regarding this topic was whether the subject women would be totally prevented from disposing of their property in the manner they selected. She addresses the concern by stating her proposal is an attempt to respond to dynamics of the coercive relationship. She points out that political and social inequalities are a reality and the terms of this proposal does not change that.

Next she indicates that while women may resist their abusers, they are often more concerned with physical safety and may not have property transfers high on the list of priorities. In addition, she points out the victim, under the context of duress, is often in a position of making decisions based on options constrained by the will of the abuser. This could manifest in a will that devises all property to the abuser or a decision not to make a will or other non probate transfers.

Finally, she points out that at the time the proposal would be applicable the victim is dead; therefore, not in a position to make any further decisions. As a result, the analysis is limited to determining how much weight to give to decisions she has already made. Based on the coercive nature of the relationship, the policy behind the proposal, to deny the unjust enrichment to the abusive surviving spouse, is sound because her actions or inactions may not be based on her own free will.

In addition to the above, she provides specific information indicating the type of evidence she that should be used to establish evidence of the coercive control. By providing specific definitions, it further provides guidelines to limit application of the proposed rule to certain types of systematic abuse, and not all cases where abuse might exist.

This article was very insightful and provided the policy justifications as well as the method to implement the changes. This article provides the framework to adopt the provision within applicable UPC and/or state law and I recommend this article to legislators, UPC drafters, and professors teaching trusts and estates.

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