

## MURDER AND MONEY: THE DARK SIDE OF TAYLOR SWIFT

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### ABSTRACT

*Under the dramatically named “Slayer Rule,” murderers cannot inherit from their victims. This principle is so intuitive that it is easy to miss critical questions of implementation. One such question is: What if one cannot prove the murder with certainty? Should the Slayer Rule apply only to individuals convicted beyond a reasonable doubt of murder, or should some lower level of proof suffice? This essay examines those questions through an unlikely lens: the music of Taylor Swift.*

### INTRODUCTION

Taylor Swift’s genius extends beyond music to . . . wait for it . . . the law of inheritance. Swift’s new album *Midnights* has made her the first artist in history to sweep the top ten spots for songs on the Billboard chart.<sup>1</sup> As with prior albums, critics and fans analyze Swift’s new lyrics with an almost obsessive intensity.<sup>2</sup> But not many have

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1. Harrison Brocklehurst, *A complete rundown of all the insane records Taylor Swift has broken in the last week*, THE TAB (Nov. 4, 2022), <https://thetab.com/uk/2022/11/04/taylor-swift-records-broken-2022-279674> [<https://perma.cc/6EY8-D4J6>].

2. See Rebecca Jennings, Shira Tarlo & Gabriela Fernandez, *Every song on Taylor Swift’s Midnights, explained*, VOX (Oct. 21, 2022 2:54 PM), <https://www.vox.com/culture/2022/10/21/23416464/taylor-swift-midnights-lyrics-explained-anti-hero-video> [<https://perma.cc/V793-7GYF>] (analyzing each song on Swift’s album, *Midnights*).

recognized the ways in which Swift illuminates important principles of trust and estate law.<sup>3</sup>

### I. HOW *ANTI-HERO* ILLUMINATES THE LAW OF INHERITANCE

The first song on *Midnights* to hit number one, *Anti-Hero*,<sup>4</sup> includes this bridge: “I have this dream my daughter-in-law kills me for the money / She thinks I left them in the will / The family gathers ‘round and reads it / And then someone screams out / ‘She’s laughing up at us from hell!’” This is not the first successful pop song to explore the theme of dying in a dream or even to suggest an upside.<sup>5</sup> What distinguishes *Anti-Hero* from other murder ballads are the details of the murderer, the motive, the mistake, and the money. Swift’s compact story raises fundamental moral and legal questions about what happens to someone’s property when they die.<sup>6</sup>

Straight out of the gate, Swift’s choice of a “daughter-in-law” rather than a blood relative has hidden significance. In the United States, at least, the primary objective when distributing a dead person’s property is to achieve the result that the decedent wanted.<sup>7</sup> That is relatively easy when the person expressed their wishes in a will or other

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3. *But see* Richard Johnson, *Richard Johnson: Taylor Swift would have been a good lawyer*, N.Y. DAILY NEWS (Nov. 12, 2022), <https://www.nydailynews.com/snyde/ny-richard-johnson-taylor-swift-cardi-b-20221112-6yxgw2cctzbnrpgtckn5kn7i2m-story.html> [<https://perma.cc/MG5C-PZPV>] (analyzing the legal validity of the lyrics on the Swift song *Anti-Hero*). I am not the first legal scholar to take music seriously: “Songs can provide material to help inform legal analysis and push forward understanding of issues such as crime or justice.” Daniel Newman, *Murder Ballads and Death in Song*, 46 AUSTRALIAN FEMINIST L.J. 17, 35 (2020).

4. TAYLOR SWIFT, *Anti-Hero*, on *MIDNIGHTS* (Republic Records 2022); *see* Jennifer Zhan, *Taylor Swift’s Midnights Makes the Whole Top Ten of Billboard’s Hot 100 Shimmer*, VULTURE (Oct. 31, 2022), <https://www.vulture.com/2022/10/taylor-swifts-midnights-number-1-billboard-charts.html#:~:text=Update%2C%20October%2031%3A%20A%20new,leads%20the%20pack%20at%20No> [<https://perma.cc/952N-2TPS>] (reporting that *Anti-Hero* was the first song on *Midnights* to hit number one).

5. *See, e.g.*, TEARS FOR FEARS, *Mad World*, on *THE HURTING* (Mercury Records 1983) (“The dreams in which I’m dying are the best I’ve ever had.”).

6. It is exactly this kind of murder ballad that merits “more nuanced analysis . . . to deepen understanding.” Newman, *supra* note 3, at 37.

7. *See* Mark Glover, *The Timing of Testation*, 107 KY. L.J. 221, 223 (2018) (“[T]he law’s primary objective is to carry out the decedent’s intent.”).

legal instrument.<sup>8</sup> But many people leave no instructions.<sup>9</sup> When that happens, each state's law of "intestacy" kicks in with its best guess of what the decedent would want.<sup>10</sup> Intestacy favors spouses and blood relatives.<sup>11</sup> No state permits children-in-law to inherit through intestacy.<sup>12</sup> It is not clear whether that reflects people's actual preferences or stereotypes about strained relationships with in-laws. Either way, this feature of the law of intestacy means that the will in Swift's story is essential: the daughter-in-law could not inherit without one.<sup>13</sup>

The motive for murder was the daughter-in-law's mistaken belief that she was included in the will, along with other family members ("She thinks I left *them* in the will.").<sup>14</sup> When the mistake is revealed, a family member "screams out" that the decedent is "laughing up at us from hell!"<sup>15</sup> This raises my second point, which is not really a legal one. The narrator might have been better off telling her family about the terms of her will while she was still alive. That would have given her the chance to laugh from the comfort of her Rhode Island beach house rather than from the hereafter.<sup>16</sup> But I suppose announcing the terms of the will could have itself precipitated a murderous reaction.

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8. This could include, say, a trust, a joint tenancy, or a payable-on-death account. *See, e.g., In re Houston's Est.*, 201 A.2d 592, 601 (Pa. 1964) (Roberts, J., dissenting) ("All must agree that the best evidence of decedent's intention is his language.").

9. Jeffrey M. Jones, *How Many Americans Have a Will?*, GALLUP NEWS (June 23, 2021), <https://news.gallup.com/poll/351500/how-many-americans-have-will.aspx> [<https://perma.cc/7J4R-LRWV>] (reporting that 46 percent of U.S. adults surveyed had a will).

10. Mary Louise Fellows, E. Gary Spitko & Charles Q. Strohm, *An Empirical Assessment of the Potential for Will Substitutes to Improve State Intestacy Statutes*, 85 IND. L.J. 409, 410–11 (2010).

11. *See* Katheleen R. Guzman, *Property, Progeny, Body Part: Assisted Reproduction and the Transfer of Wealth*, 31 U.C. DAVIS L. REV. 193, 235 (1997) ("By limiting potential heirs to spouses or blood relatives, intestacy schemes institutionalize traditional conceptions of family and status.").

12. *See* RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 2.4 cmt. g (AM. L. INST. 1999). California is unusual in providing for some in-laws, but not even California provides for children-in-law. Karen J. Sneddon, *Should Cain's Children Inherit Abel's Property?: Wading into the Extended Slayer Rule Quagmire*, 76 UMKC L. REV. 101, 113 & n.82 (2007).

13. Of course, the daughter-in-law could benefit indirectly if her spouse inherits through intestacy (or otherwise).

14. TAYLOR SWIFT, *supra* note 4 (emphasis added).

15. *Id.*

16. *See* TAYLOR SWIFT, *the last great american dynasty*, on FOLKLORE (Republic Records 2020). Contrary to the old proverb, she who laughs last does not always laugh best. *He who laughs last, laughs best*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/he%20who%20laughs%20last%2C%20laughs%20best> [<https://perma.cc/AD9X-PAG8>].

## II. THE SLAYER RULE: MURDERERS CANNOT INHERIT (*KARMA*?<sup>17</sup>)

This brings me to the third, and most profound, issue raised by the story. As explained above, because of the law of intestacy, a daughter-in-law cannot inherit unless she is named in a will. But the fact that this daughter-in-law murdered the decedent, if proved, means that the daughter-in-law would not inherit even if she had been named in the will. The existence of a will gave the daughter-in-law a chance to inherit, but the murder eliminated that chance. The dramatically named “Slayer Rule” is designed to prevent murderers like the daughter-in-law from inheriting from their victims, even if the will names the murderer as a beneficiary.<sup>18</sup> The assumption is that no one writes a will expecting to be murdered by a beneficiary. Common sense is an adequate justification for the Slayer Rule, but courts and legal scholars give two more specific reasons: (1) no one should profit from their own wrongdoing, and (2) a dead person would not want their killer to inherit.<sup>19</sup> These are both compelling reasons.

No one seriously questions the wisdom of the Slayer Rule. As with many things, however, “the devil’s in the details.”<sup>20</sup> One big issue is what to do if we suspect murder but cannot prove it with certainty. *Anti-Hero* sheds no light on this evidentiary problem, but other Swift songs do. Murder, inheritance, and evidence are not new themes for her.

### A. *Where is the Evidence? no body, no crime*

In Swift’s song *no body, no crime*,<sup>21</sup> a cheating husband kills the narrator’s friend, so the narrator takes revenge by killing the husband. That is where the Slayer Rule and the problem of proof come in. After disposing of the body<sup>22</sup> and concocting a fake alibi, Swift sings in the

17. See TAYLOR SWIFT, *Karma*, on *MIDNIGHTS* (Republic Records 2022).

18. See Michael G. Walsh, Annotation, *Homicide as precluding taking under will or by intestacy*, 25 A.L.R.4th 787 § 1[a] (1983); see also Mary Louise Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 IOWA L. REV. 489, 505 (1986) (explaining that the Slayer Rule applies to both intestate succession and transfers by will).

19. Adam J. Hirsch, *Text and Time: A Theory of Testamentary Obsolescence*, 86 WASH. U.L. REV. 609, 620–21 (2009).

20. TAYLOR SWIFT, *peace*, on *FOLKLORE* (Republic Records 2020).

21. TAYLOR SWIFT, *no body, no crime*, on *EVERMORE* (Republic Records 2020).

22. The narrator was not in line to inherit, but still wanted to avoid detection. To that end, she had “a boating license” and had “cleaned enough houses to know how to cover up a scene.” *Id.* Even without those skills, no protagonist of Swift’s would be dumb enough to use Google for ideas. Compare Julianne McShane, *Missing Massachusetts woman’s husband searched for ‘10 ways to dispose of a dead body,’ prosecutors say*, NBC NEWS (Jan. 18, 2023, 12:44 PM), <https://www.nbcnews.com/health/missing-massachusetts-woman-s-husband-searched-for-10-ways-to-dispose-of-a-dead-body-prosecutors-say-rcna104883>.

bridge: “Good thing his mistress took out a big life insurance policy; / They think she did it but they just can’t prove it.”<sup>23</sup> The life insurance policy is a “good thing” because it gives the mistress an apparent motive and thereby shifts suspicion away from the narrator.

But would it not be even better if the mistress were framed for the murder and denied the big life insurance payout under the Slayer Rule, which covers life insurance in addition to inheritance?<sup>24</sup> Apparently not. Swift is unwilling to push her narrator’s revenge plot so far as to punish the mistress for a crime the mistress did not commit.<sup>25</sup> What prevents that unjust result is not mercy, however, but rather a lack of evidence: “they just can’t prove it.”

*B. How Strong Must the Evidence Be? (“Are you sure?”<sup>26</sup>)*

There is a live controversy about how much evidence should be required to trigger the Slayer Rule. Some jurisdictions go so far as to demand proof of the murder beyond a reasonable doubt resulting in a criminal conviction.<sup>27</sup> In other states, the Slayer Rule applies if the court finds it is more likely than not that there was an intentional killing.<sup>28</sup> This lower standard of proof is called a “preponderance of evidence” and is often equated to a 51 percent probability.<sup>29</sup> In contrast, the “beyond a reasonable doubt” standard is said to require a very high likelihood of guilt, usually 90 percent or higher.<sup>30</sup> Perhaps the

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[www.nbcnews.com/news/crime-courts/ana-walshes-husband-searched-10-ways-dispose-dead-body-rca66281](https://www.nbcnews.com/news/crime-courts/ana-walshes-husband-searched-10-ways-dispose-dead-body-rca66281) [<https://perma.cc/6R4Q-9734>] (reporting that a real-life murder suspect Googled: “10 ways to dispose of a dead body if you really need to”).

23. TAYLOR SWIFT, *supra* note 21.

24. See F. S. Tinio, Annotation, *Killing of insured by beneficiary as affecting life insurance or its proceeds*, 27 A.L.R.3d 794 § 2[a] (1969).

25. This is consistent with Swift’s “responsibility” and “code” to do “what’s upstanding and right” with respect to women who have been wronged. TAYLOR SWIFT, *Girl at Home*, on RED (Big Machine Records 2012).

26. TAYLOR SWIFT, *august*, on FOLKLORE (Republic Records 2020).

27. See, e.g., CONN. GEN. STAT. ANN. § 45a-447 (West 2016) (outlining classes of people found guilty of certain crimes who cannot inherit from their victims). This Connecticut law will determine who inherits from an alleged victim of “murder on the high seas.” Yes, that is the actual name of the crime. Fredrick E. Vars, *Opinion: murder on the high seas: CT’s slayer rule on trial*, CTPOST (June 18, 2022), <https://www.ctpost.com/opinion/article/Opinion-Murder-on-the-high-seas-CT-s-slayer-17248524.php> [<https://perma.cc/LH55-AWXL>].

28. See, e.g., MASS. GEN. LAWS ANN. Ch. 190B, § 2-803(b)(g) (West 2016); see also Lillian Wan, Note, *Parents Killing Parents: Creating A Presumption of Unfitness*, 63 ALB. L. REV. 333, 357 n.187 (1999) (listing nine other states).

29. See Fredrick E. Vars, *Toward A General Theory of Standards of Proof*, 60 CATH. U. L. REV. 1, 7 (2010).

30. *Id.*

best-known example of these two standards in action is O.J. Simpson being found not guilty in his criminal case, but nonetheless liable for Nicole Simpson's death in a separate civil suit.<sup>31</sup> "Taken together, the juries indicated that they believed O.J. probably did it, but that there was room for reasonable doubt."<sup>32</sup>

Swift does not weigh in directly on the choice of proof standard, but many of her fans have. They did so as part of an anonymous survey I administered to 1,047 married U.S. residents.<sup>33</sup> To be clear, being a Swift fan was not required to participate in the survey, and the survey asked no questions about Swift. But given Swift's extraordinary popularity,<sup>34</sup> it is nearly certain that many of the survey respondents were Swift fans. The survey included a hypothetical case in which a husband intentionally killed his wife.<sup>35</sup> The respondents were divided into two halves.<sup>36</sup> The first half was told that the husband was criminally convicted; the second half was told that the husband was found not guilty because there was not enough evidence.<sup>37</sup> Both halves overwhelmingly favored applying the Slayer Rule so that the husband would not inherit.<sup>38</sup> Based on this survey, states should not require a criminal conviction or proof beyond a reasonable doubt before applying the Slayer Rule.

### C. *A Bad reputation Is Not Everything*

Before declaring the "preponderance" standard the winner, however, there is a middle path to consider. One leading scholar, Professor Mary Louise Fellows, has argued for an intermediate standard that would require proof of an intentional killing by "clear and convincing evidence."<sup>39</sup> In other words, the Slayer Rule would

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31. *Id.* at 1–2.

32. *Id.* at 2.

33. Fredrick E. Vars, *The Slayer Rule: An Empirical Examination*, ACTEC L.J. (forthcoming 2023) (manuscript at 15), (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4109563](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109563) [<https://perma.cc/PA4G-RBXR>]).

34. See Chris Jackson, Mallory Newall & Haley Gullquist, *Nearly half of Americans consider themselves at least a little bit of a fan of Taylor Swift and her music*, IPSOS (Oct. 20, 2022), <https://www.ipsos.com/en-us/nearly-half-of-Americans-consider-themselves-at-least-a-little-bit-of-a-fan-of-Taylor-Swift-and-her-music> [<https://perma.cc/3ZC6-EJ7M>] (reporting that 44 percent of Americans consider themselves fans of Taylor Swift).

35. Vars, *supra* note 33 (manuscript at 14).

36. *Id.* (manuscript at 13–15).

37. *Id.* (manuscript at 14).

38. *Id.* (manuscript at 22).

39. Fellows, *supra* note 18, at 502.

apply only if the evidence shows that the probability of guilt is at least 75 percent.<sup>40</sup> Fellows justifies this higher standard on the ground that being found to be an intentional killer is stigmatizing.<sup>41</sup> To be clear, Fellows is not concerned about the guilty, but rather about the innocent who end up being falsely labeled as “slayers.” If there is only a 51 percent chance that someone is guilty, then there is a 49 percent chance that they are innocent. So, under the preponderance standard, there are likely to be many mistakes. Raising the standard of proof to 75 percent should reduce the number of innocent people wrongly convicted in the court of public opinion.

Other lyrics by Swift suggest that she may be sympathetic to Fellows’s argument. Swift is clearly sensitive to stigma and shame, having used the phrase “scarlet letter” in two of her songs.<sup>42</sup> The name of one of her albums is *reputation*.<sup>43</sup> That album includes the song *I Did Something Bad*.<sup>44</sup> In it, Swift addresses directly the problems of stigmatizing labels and standards of proof: “They’re burning all the witches, even if you aren’t one / They got their pitchforks and proof.”<sup>45</sup> The “witch” label is so powerful that it motivates the cruel and unusual punishment of death by “burning.”<sup>46</sup> Innocent people are swept up in the purge, even though the witch hunters claim to have “proof.” At least when the stakes are this high, Swift demands strong evidence.<sup>47</sup>

Fellows and Swift are no doubt correct that labels like “witch,” “murderer,” “killer,” and “slayer” cause serious reputational harm. But, for better or worse, being publicly accused of wrongdoing generates a great deal of harm well before any adjudication.<sup>48</sup> Most of the damage has already been done. So, it is the *additional* reputational

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40. See Vars, *supra* note 29, at 19.

41. Fellows, *supra* note 18, at 502.

42. See TAYLOR SWIFT, *New Romantics*, on 1989 (Big Machine Records 2014); TAYLOR SWIFT, *Love Story*, on FEARLESS (Big Machine Records 2008).

43. TAYLOR SWIFT, *REPUTATION* (Big Machine Records 2017).

44. TAYLOR SWIFT, *I Did Something Bad*, on *REPUTATION* (Big Machine Records 2017).

45. *Id.*

46. See *In re Kemmler*, 136 U.S. 436, 446 (1890) (stating that “cruel and unusual punishment[]” includes “burning at the stake”).

47. On the other hand, in making her own personal judgments about people, Swift requires remarkably little evidence before concluding that someone is a “killer.” See TAYLOR SWIFT, . . . *Ready For It?*, on *REPUTATION* (Big Machine Records 2017) (“Knew he was a killer first time that I saw him.”).

48. See Christopher Lutes, *Hart Failure: Assessing the Mr. Big Confessions Framework Five Years Later*, 43 MAN. L.J. 209, 230 (2020) (“The social stigma that surrounds being a murder suspect has the potential to render an accused both socially and economically vulnerable.”).

harm caused by a probate court finding that leads Fellows to argue that some people should inherit from decedents whom they probably killed. More precisely, when the probability of guilt is in the 50 to 75 percent range, avoiding misplaced stigma is more important to Fellows than the twin justifications for the Slayer Rule.<sup>49</sup>

Fellows's argument gives stigma too much weight and the purposes of the Slayer Rule too little. Recall that the reasons for the Slayer Rule are: (1) no one should benefit from their own wrongdoing, and (2) decedents would not want their killers to inherit. In cases in which it is more likely than not that someone intentionally killed the decedent, applying the Slayer Rule to disallow any inheritance minimizes the number of bad outcomes. Specifically, using the preponderance standard will reduce the number of people benefitting from their own wrongdoing and more often distribute property consistent with decedents' intent.<sup>50</sup> Bad outcomes are more important than bad publicity.

The O.J. Simpson case illustrates. Most people would be outraged if O.J. inherited from Nicole — including Nicole, I would bet.<sup>51</sup> The wrongful death judgment against O.J. at the preponderance level (51 percent) should be enough to disqualify him from inheriting.<sup>52</sup> If the civil judgment were not enough, the result could not only undermine the policies served by the Slayer Rule, but also effectively negate O.J.'s civil liability. Imagine O.J. and others like him paying wrongful death judgments to victims' families using assets from the estates of their victims rather than from their own separate resources. The victim, not the perpetrator, ends up bearing the cost of the crime, twice. A heightened pleading standard for the Slayer Rule undermines not only its important purposes, but also a key feature of the tort system.

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49. Fellows, *supra* note 18, at 502 (“In 1981, the Wisconsin Supreme Court also held that the felonious and intentional killing must be proved by clear and convincing evidence . . . . The higher burden of proof seems appropriate given the stigma of a finding that a person feloniously and intentionally killed the decedent.”).

50. *Cf.* Dill v. S. Farm Bureau Life Ins. Co., 797 So. 2d 858, 866 (Miss. 2001) (reviewing public policy considerations behind the preponderance of the evidence standard).

51. See Janell Ross, *Two decades later, black and white Americans finally agree on O.J. Simpson's guilt*, WASH. POST (Mar. 4, 2016 12:26 PM), <https://www.washingtonpost.com/news/the-fix/wp/2015/09/25/black-and-white-americans-can-now-agree-o-j-was-guilty/> [<https://perma.cc/RPY2-ZES8>] (reporting that in 2015 majorities of both Black and white Americans believed O.J. Simpson was guilty).

52. That is in fact the current law in California. See CAL. PROB. CODE § 254(b) (West 2022) (requiring a “preponderance of evidence”).



## CONCLUSION

Why take Swift's lyrics so seriously? Her words reach more people in a minute than traditional legal scholarship reaches in a lifetime. In the first twenty-four hours after *Midnights*' release, the album was streamed a record 184 million times.<sup>53</sup> The most-cited legal scholar is the prolific professor and former judge Richard Posner.<sup>54</sup> When Posner was eighty-two years old, law review articles had cited his many published books and articles 48,852 times.<sup>55</sup> At that rate, Posner will need to live 300,000 more years for his citation count to catch up with Swift's twenty-four-hour stream total.

Swift's popularity and rich lyrics provide an opportunity for all of us to engage with important legal and moral issues. A fundamental principle of law, the Slayer Rule, holds that murderers cannot inherit from their victims. Swift's new song *Anti-Hero* provides a clear-cut case, but the real world can be messier. Guilt is often uncertain, and states disagree about what to do when it is. Other Swift lyrics are helpful, but resolving the standard of proof dispute ultimately requires appreciation of the purposes of the Slayer Rule, the public's views about it, and the Slayer Rule's interaction with tort law. The conclusion is that the Slayer Rule should apply if it is more likely than not that there was an intentional killing. Of course, the standard of proof does not matter with respect to Taylor Swift's career: beyond a reasonable doubt, she is killing it.<sup>56</sup>

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53. Sanj Atwal, *Taylor Swift's album Midnights smashes three Spotify records*, GUINNESS WORLD RECORDS (Oct. 24, 2022), <https://www.guinnessworldrecords.com/news/2022/10/taylor-swifts-album-midnights-smashes-three-spotify-records-723058> [<https://perma.cc/CQ76-WUJL>].

54. Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U. CHI. L. REV. 1595, 1602 tbl.1 (2021). Having many citations shows that others are engaging with the work but does not necessarily show that the work is of high quality. Ian Ayres & Fredrick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 J. LEGAL STUD. 427, 429 (2000).

55. Shapiro, *supra* note 54. Richard Posner was born in 1939. See Joe Patrice, *Happy Birthday, Judge Posner*, ABOVE THE LAW (Jan. 11, 2018, 12:09 PM), <https://abovethelaw.com/2018/01/happy-birthday-judge-posner/> [<https://perma.cc/X8FH-EGTH>].

56. If you are reading this, Taylor, my twelve-year-old daughter has said she "would kill" for tickets to one of your shows. She is deadly with a bow and arrow, so let us not test it. See TAYLOR SWIFT, *The Archer*, on LOVER (Republic Records 2019).