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## **Editorial Matters**

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Suppose you have been asked to contribute an essay to an American Law Review. In that essay you have a passage such as this:\*

A testator wants to leave his property to his three children. He draws up his will determining their shares. Subsequently, he is killed by one of the children. The murderer is excluded from succeeding, for he is not allowed to benefit from a death he has brought about himself.

Of course, you are aware that it will hardly be possible to have this passage published as it is. It is not “gender-neutral”, for it implies that both the testator and the murderer are males, whereas in fact they may just as well be females. The sexist bias inherent in the language used is all too evident. It will, therefore, be necessary to reformulate the passage:

A testator wants to leave his or her property to his or her children. He or she draws up his or her will determining their shares. Subsequently, he or she is killed by one of the children. The murderer is excluded from succeeding, for he or she is not allowed to benefit from a death he or she has brought about him- or herself.

This traditional way of rendering the text gender-neutral hardly enhances its readability. It makes the text distinctly clumsy. For this reason, and also because the pronouns “he” and “she”, or “his” and “her”, “do not encompass the full spectrum of persons (including those who do not identify as one gender or the other) in an ever-changing society” (literal quotation from a message by the Editor-in-Chief of the Law Review referred to in \*), your text is reformulated along the following lines:

A testator wants to leave their property to their three children. They draw up their will determining their shares. Subsequently, they are killed by one of the children. The murderer is excluded from succeeding, for they are not allowed to benefit from a death that they have brought about themselves.

Who draws up the will? Who is killed? Who is not allowed to benefit? The text is now positively confusing in its ungrammatical change from singular to plural. At the same time, it has still not been properly sanitized: the use of the terms “testator” and “murderer” continues to exude male chauvinism.

Of course, you have learnt by now that the use of “testator or testatrix” and “murderer or murderess” will not do, for it fails to be sensitive to those who do not identify with being either a testator or a testatrix, or indeed a murderer or a murderess, in an ever-changing society. In addition, you look for a way to avoid the use of grammatically correct but gendered pronouns in the singular and of grammatically incorrect pronouns in the plural. This can be done by using the neutral “it” (“Where the price or any other contractual term is to be determined by a third person, and it cannot or will not do so ...”: Art. 6:106 (1) Principles of European Contract Law). The text would then read:

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\* This passage is fictional. But it pulls together a number of phrases used in a real essay submitted to a real Law Review and edited by real Law Review editors; cf. also, on the relevant background, ZEuP 1999, 414 ff. and ZEuP 2013, 687 ff.

excluded from succeeding, for it is not allowed to benefit from a death it has brought about itself.

Hardly very elegant, you may think, and hardly unambiguous either. Thus, you remember that, alternatively, the use of grammatically correct but gendered pronouns in the singular and of grammatically incorrect pronouns in the plural can be avoided by repeating the nouns themselves (“The running of the period of prescription is suspended as long as the creditor is prevented from pursuing the claim by an impediment which is beyond the creditor’s control and which the creditor could not ... be expected to avoid or overcome”: Art. 14:303 (1) Principles of European Contract Law). This will result in the following text:

A person who intends to make a will wants to leave that person’s property to that person’s three children. The person draws up a will determining their shares. Subsequently, the person is killed by one of the children. The person who has murdered the person who has made a will is excluded from succeeding, for a person who has murdered a person who has made a will is not allowed to benefit from a death the person who has murdered a person who has made a will has brought about in that person’s own person.

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