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A Brief "Targeted Research Memorandum" About the Dead Man's Statute
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Dead Man's Statute
A Brief "Targeted
Research
Memorandum" Based
Entirely on Decision-
Summaries in the New
York Appellate Digest
Database---
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*A Brief Overview of the Purpose and Application of the Dead Man's Statute
(CPLR 4519) Drawn from the Decision Summaries in the New York Appellate
Digest Database*

THE DEAD MAN'S STATUTE—FULL TEXT

Civil Practice Law & Rules, Section 4519

Personal transaction or communication between witness and decedent or mentally ill person

Personal transaction or communication between witness and decedent or mentally ill person. Upon the trial of an action or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest against the executor, administrator or survivor of a deceased person or the committee of a mentally ill person, or a person deriving his title or interest from, through or under a deceased person or mentally ill person, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or mentally ill person, except where the executor, administrator, survivor, committee or person so deriving title or interest is examined in his own behalf, or the testimony of the mentally ill person or deceased person is given in evidence, concerning the same transaction or communication. A person shall not be deemed interested for the purposes of this section by reason of being a stockholder or officer of any banking corporation which is a party to the action or proceeding, or interested in the event thereof. No party or person interested in the event, who is otherwise competent to testify, shall be disqualified from testifying by the possible imposition of costs against him or the award of costs to him. A party or person interested in the event or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not

be qualified for the purposes of this section, to testify in his own behalf or interest, or in behalf of the party succeeding to his title or interest, to personal transactions or communications with the donee of a power of appointment in an action or proceeding for the probate of a will, which exercises or attempts to exercise a power of appointment granted by the will of a donor of such power, or in an action or proceeding involving the construction of the will of the donee after its admission to probate.

Nothing contained in this section, however, shall render a person incompetent to testify as to the facts of an accident or the results therefrom where the proceeding, hearing, defense or cause of action involves a claim of negligence or contributory negligence in an action wherein one or more parties is the representative of a deceased or incompetent person based upon, or by reason of, the operation or ownership of a motor vehicle being operated upon the highways of the state, or the operation or ownership of aircraft being operated in the air space over the state, or the operation or ownership of a vessel on any of the lakes, rivers, streams, canals or other waters of this state, but this provision shall not be construed as permitting testimony as to conversations with the deceased.

THE PURPOSE OF THE STATUTE

The [Dead Man's] statute precludes an interested party from being "examined as a witness in his [or her] own behalf or interest . . . concerning a personal transaction or communication between the witness and the deceased person" (CPLR 4519 ...). Given that the **"purpose of the rule is 'to protect the estate of the deceased from claims of the living who, through their own perjury, could make factual assertions which the decedent could not refute in court'...**, it will not preclude any testimony elicited by the representative of the estate, nor does it preclude testimony of transactions between decedent and a non-interested third party [Matter of Nealon, 513733, 3rd Dept 3-28-13](#)

**THE DEAD MAN’S STATUTE DOES NOT APPLY TO DOCUMENTS
SIGNED OR AUTHORED BY A DECEDENT**

The Dead Man’s Statute does not apply to **documents** signed by the decedent, but the document must be **authenticated** by someone who is not an **interested witness**. [Galpern v Air Chefs, L.L.C., 2020 NY Slip Op 01021, First Dept 2-13-20](#)

“ ... **[T]he [Dead Man’s Statute] does not bar “the introduction of documentary evidence against a deceased’s estate. . . . [A]n adverse party’s introduction of a document authored by a deceased does not violate the Dead Man’s Statute, as long as the document is authenticated by a source other than an interested witness’s testimony ...”**. [Wright v Morning Star Ambulette Servs., Inc., 2019 NY Slip Op 02381, Second Dept 3-27-19](#)

**THE DEAD MAN’S STATUTE BARS TRIAL TESTIMONY BUT DOES
NOT NECESSARILY APPLY PRE-TRIAL**

The Dead Man’s Statute is a **trial-evidence rule** which does not apply to a motion to dismiss the complaint. “... [A]ny issue concerning the admissibility of statements under CPLR 4519 ‘is premature at this time, as **its bar is not operative until trial**’ ...” [Matter of Thomas, 2015 NY Slip Op 00017, 4th Dept 1-2-15](#)

While **evidence excludable at trial under CPLR 4519 may be considered in opposition to a motion for summary judgment so long as it is not the sole evidence proffered ... , such evidence “should not be used to support summary judgment”** [Wright v Morning Star Ambulette Servs., Inc., 2019 NY Slip Op 02381, Second Dept 3-27-19](#)

**ONLY PERSONS WHO ARE NOT “INTERESTED WITNESSES” CAN
TESTIFY ABOUT A COMMUNICATION WITH A DECEDENT**

The Dead Man’s Statute does not prohibit a person who is **not an “interested witness”** from testifying about a communication with the decedent. [Matter of Thomas, 2015 NY Slip Op 00017, 4th Dept 1-2-15](#)

The Second Department, reversing the defendants’ verdict and ordering a new trial in this medical malpractice case, determined the statements in the medical records and in depositions that plaintiff’s decedent signed an “against medical advice” (AMA) form and refused admission to the hospital constituted inadmissible hearsay and were not admissible pursuant to the Dead Man’s Statute (CPLR 4519):

“[W]e disagree with the Supreme Court’s determination that the deposition testimony of {the doctors} was admissible.... **[B]oth [doctors] were defendants at the time they gave deposition testimony, making them interested parties under the statute [T]hey both testified to transactions or communications with the decedent and sought to offer that testimony against the decedent’s estate.**” [Grechko v Maimonides Med. Ctr., 2020 NY Slip Op 06504, Second Dept 11-12-20](#)

WAIVER OF THE STATUTORY PROTECTIONS

... [T]he statute’s protections with regard to a particular transaction may be waived where the representative “testifies in his [or her] own behalf concerning a personal transaction of his adversary with the deceased” or when he or she “elicits testimony from an interested party on the personal transaction in issue”
... . [Matter of Nealon, 513733, 3rd Dept 3-28-13](#)

... "[T]he executor does not waive rights under the statute by taking the opponent's deposition"... . [Grechko v Maimonides Med. Ctr., 2020 NY Slip Op 06504, Second Dept 11-12-20](#)

EXCEPTIONS TO THE HEARSAY RULE IRRELEVANT

... “[W]here the Dead Man's Statute renders a witness's testimony inadmissible, "the fact that the testimony would fall within an exception to the hearsay rule is simply irrelevant" [Grechko v Maimonides Med. Ctr., 2020 NY Slip Op 06504, Second Dept 11-12-20](#)