

## The Dead Man's Rule

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BRINGING EXCELLENCE TO CLE

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## The Statute

- ◉ The statute itself is lengthy and difficult to follow because it is constructed on a triple negative:

“Except as... provided... neither... party... nor... person... shall be... competent Unless... in which case all persons shall be fully competent.”

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## Breaking Down the Statute

- ◉ While the actual wording of the statute always controls, practitioners may find it convenient and easier to comprehend the statute if it is broken down as follows:

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## Breaking Down the Statute

◉ EXCEPT as otherwise provided:

- Where a party to a transaction or thing is DEAD, and
- His right in the transaction has PASSED to another party on the record, who represents that interest, then
- No surviving party to the transaction
- AND no other person whose INTEREST is ADVERSE to the right of the dead party
- Shall be COMPETENT to testify in any civil action to any matter which occurred before the decedent's death

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## Even Simpler

- ◉ Where one party to a transaction is dead, and his interest has passed to a party of record, the surviving party/person with adverse interest is incompetent to testify as to any matter occurring before the death.

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## Exceptions

- ◉ UNLESS the action is by or against the surviving or remaining partners, or joint promisors or promisees of the dead party, and the transaction occurred between either (i) such partners, promisors or promisees and (ii) the dead party's representative on the record or the party having an interest adverse to them, in which case any person may testify;

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### Exceptions

- ◉ UNLESS the action is a possessory action against several defendants, one or more of whom disclaim title to the premises in controversy at the time the suit is brought and pays into court costs accrued at the time of his disclaimer or gives security as the court directs, in which case the disclaiming defendant shall be a fully competent witness;

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### Exceptions

- ◉ UNLESS the issues is devisavit vel non or any other issue respecting the property owned by a dead person and the controversy is between parties claiming the property by devolution on the death of the owner, in which case all persons are fully competent witnesses.

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### Exceptions

- ◉ NOTE: If case involves person adjudged to be lunatic, substitute "adjudged lunatic" for "dead person".

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## The Living Witness Rule

- A surviving party or a person with an adverse interest who is incompetent under §5930 is restored to competence if the subject matter of the proposed evidence is something that occurred between the surviving party and another living and competent witness who has testified against the surviving party at trial. 42 Pa. C.S.A. §5933

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## Dueling Burdens of Proof

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The Veteran in a New Field, 1865  
Winslow Homer (American, 1836-1910)

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