

CADAVERIC CONFUSION: CONFLICTS BETWEEN WHOLE BODY DONATION AND FAMILY WISHES

*by Clinton Jones**

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I. INTRODUCTION

The hot summer morning of August 1, 1966 began like most others in the college town of Austin, Texas.¹ Visitors strolled the sprawling campus at the University of Texas, mingling with students on their way to summer classes.² Then, an unmistakable sound broke the idyllic silence.³ At approximately noon, in the crowded center of one of the largest universities in the nation, Charles Whitman began a shooting spree that would last nearly two hours and claim the lives of sixteen individuals.⁴ Stunned citizens across the country puzzled over the senselessness and brutality of the violence that was perpetrated that day.⁵ But an odd request by the shooter himself would continue to puzzle scientists for years.⁶

Before he began the campaign of bloodshed that would ultimately take his life, Charles Whitman wrote a suicide note.⁷ In that note, Whitman requested an autopsy of his brain, “convinced that it would show some visible physical disorder.”⁸ Inside his brain, scientists discovered a malignant tumor.⁹ To this day, scientists debate the tumor’s role in causing Whitman’s violence.¹⁰

The donation of one’s body to scientific study is not unique to mass murderers.¹¹ In fact, an individual’s decision to will their body for the advancement of science is a fundamental component of modern medicine and has been a source of controversy and conflict for more than 2,000 years.¹²

This Comment will first examine the historical foundation of anatomical donation and how this history has led to our modern statutory scheme relating to anatomical gifts.¹³ This Comment will then discuss conflicts that arose out of the common law before statutory body donation became widespread.¹⁴ Finally, this Comment will focus on conflicts that arise between a decedent’s wishes when it comes to the donation of their body and the conflicting wishes of their family members.¹⁵ In particular, this Comment will examine body

1. Eva Frederick, *Experts Still Disagree on Role of Tower Shooter’s Brain Tumor*, THE DAILY TEXAN (July 30, 2016, 12:22 PM), <https://www.dailytexanonline.com/2016/07/30/experts-still-disagree-on-role-of-tower-shooters-brain-tumor> [perma.cc/T6L7-LH62].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

12. Marios Loukas et al., *Clinical Anatomy as Practiced by Ancient Egyptians*, 24 CLINICAL ANATOMY 409, 409 (2011).

13. *See infra* Part II.

14. *See infra* Part II.

15. *See infra* Part III.

donation conflicts that arise under state anatomical gift acts, focusing on Texas, and how those conflicts often run counter to the wishes of the deceased.¹⁶ Finally, this Comment will offer the reader guidance in navigating the contentious legal landscape of body donations.¹⁷

II. THE HISTORY OF BODY DONATION AND THE DEVELOPMENT OF A STATUTORY SCHEME

The use of whole bodies in the study of anatomy may seem like a relatively recent development, but the practice has been integral to our understanding of human physiology since the beginning of scientific inquiry.¹⁸ This long history has led to advancements in our knowledge of everything from surgery, to healing, to the human brain.¹⁹ However, this growth in knowledge has often come at an ethical cost.²⁰ Our attempt to come to terms with this ethical struggle has led to our modern statutory framework governing body donations.²¹

A. Early Views Toward Body Donation

Following in the footsteps of the ancient Egyptians, the Greeks greatly expanded the use of systematic cadaveric dissection.²² In much of Greece, cadaveric dissection was the primary means of learning anatomy.²³ For a brief period, systematic dissection flourished among the ancient medical community.²⁴ However, this practice fell out of favor in Greece and was soon seen as blasphemous and immoral.²⁵ The stark change in view largely stemmed from the nonconsensual use of executed criminals as dissection specimens.²⁶ This method of involuntary procurement was representative of anatomical study throughout much of the ancient world.²⁷ The deceased had no say in the fate of their bodies.²⁸

16. See *infra* Part IV.

17. See *infra* Part V.

18. See Loukas et al., *supra* note 12.

19. *Id.*

20. Jennifer Coggins, *Human Dissection in the Early Years of Medical Education at UNC*, UNC U. ARCHIVES: FOR THE RECORD (Apr. 27, 2016), <https://blogs.lib.unc.edu/uarms/index.php/2016/04/human-dissection-in-the-early-years-of-medical-education-at-unc/> [perma.cc/TS6Z-FXLX] (explaining that early medical schools often resorted to graverobbing for cadavers.).

21. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

22. Sanjib Kumar Ghosh, *Human Cadaveric Dissection: A Historical Account from Ancient Greece to the Modern Era*, 48(3) ANATOMICAL CELL BIOLOGY 153, 154 (2015).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*; see also Loukas et al., *supra* note 12.

28. See Ghosh, *supra* note 22.

For centuries following the limited anatomical exploration of the Greeks, scientific investigation of the dead lay dormant largely due to the role that Christianity played in Europe.²⁹ Human dissection during this period was considered blasphemous and was prohibited.³⁰ The value of science declined as religious and spiritual exploration thrived.³¹

The restoration of cadaveric study began in the middle ages, when academic interest in the human body emerged.³² This period saw the rise of some of the first European universities, including the University of Bologna in Italy (1088), the University of Oxford in England (1096), and the Sorbonne in Paris (1150).³³ These innovative institutions of higher learning sparked a renewed interest in human anatomy, accompanied by a novel form of study: public dissection.³⁴ University lecturers dissected cadavers and taught students and citizens alike; they gathered in awe around lecture halls newly built for this purpose of discussing the wonders of the body.³⁵ However, the moral and religious quandaries of the past persisted in this new age.³⁶

As scientific knowledge continued to advance throughout the next several centuries, friction between the spiritual principles of the Catholic church and the unheeding inquiries of university scientists intensified.³⁷ The supply of cadavers initially came from deceased soldiers and criminals.³⁸ Foreigners and vagrants supplied the other source of fresh corpses.³⁹ Toward the middle of the 16th century, however, church officials and the public both grew increasingly appalled by the lack of funeral rites afforded to the individuals under the posthumous knife.⁴⁰ This shift in public opinion led to supply shortages among the medical research community.⁴¹ In response, students and teachers took grisly steps, such as grave robbing and, in one reported instance, the assault of a funeral procession.⁴² In another case, a student even stole "a female corpse from her tomb and flayed the whole skin from the cadaver lest it be recognized by her relatives during public dissection."⁴³ In an attempt to curb this practice, governments began offering statutory solutions at the dawn of the 19th century.⁴⁴

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *See id.* at 155.

35. *Id.*

36. *Id.*

37. *Id.* at 155–59.

38. *See id.* at 156.

39. *See id.* at 154.

40. *Id.* at 157.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 160.

The first major step taken to limit the thievery of bodies in Europe was the Anatomy Act of 1832.⁴⁵ England enacted this law as a measure to streamline the supply of cadavers for medical study and to prevent grave robbing.⁴⁶ The law allowed for unclaimed bodies and the bodies of paupers to be donated to medical schools.⁴⁷ This gave universities the ability to obtain a steady supply of anatomical specimens without either the ethical burden that accompanied grave robbing or the legal burden that accompanied conflicting wishes of family members.⁴⁸ Despite this new framework, unethical practices soon continued as funeral directors simply diverted bodies away from the grave and toward universities.⁴⁹ Nonetheless, medical schools in the United States soon took direction from this law.⁵⁰

B. The Development of Body Donation in America

Early approaches toward the acquisition of bodies by medical schools in the United States largely mirrored their European counterparts.⁵¹ Anatomical dissection in the U.S. originated out of the need to understand and combat diseases that plagued early settlers.⁵² As comprehension of these diseases grew, the importance of training in anatomy grew as well.⁵³ As a result, every “reputable” medical school in the U.S. soon required students to complete an anatomy course.⁵⁴ Predictably, as enrollment increased, so did the demand for cadavers.⁵⁵ Meanwhile, this demand sparked a problematic increase in unethical grave robbing in the U.S., as it had in Europe.⁵⁶

Taking a cue from Europe’s Anatomy Act of 1832, statutory regulations were enacted in the U.S. to address the problem of illegally obtained cadavers.⁵⁷ Initially, these regulations took the form of state anatomy acts, the first of which was adopted in Massachusetts.⁵⁸ During the 19th and 20th centuries, states throughout the U.S. began to follow Massachusetts’s example and adopted their own anatomy acts permitting the dissection of

45. Alexander Powhida, Comment, *Forced Organ Donation: The Presumed Consent to Organ Donation Laws of the Various States and the United States Constitution*, 9 ALB. L. J. SCI. & TECH. 349, 355 (1999).

46. *Id.*

47. *Id.*

48. *Id.*

49. See Ghosh, *supra* note 22.

50. See Powhida, *supra* note 45.

51. Ann Garment et al., *Let the Dead Teach the Living: The Rise of Body Bequeathal in 20th Century America*, 82 ACAD. MED. 1000 (2007).

52. *Id.* at 1001.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* (In 1830 and 1833, Massachusetts passed laws permitting the dissection of unclaimed bodies.).

unclaimed bodies.⁵⁹ However, many of these early anatomy acts left “the final decision about the disposition of the body” with the family of the deceased.⁶⁰ Maine’s Anatomy Act of 1869, for example, stated that “[i]f any resident of the State requests or consents that after death his body may be delivered to a regular physician or surgeon for the advancement of anatomical science, it may be used for that purpose, unless some kindred or family connection makes objection.”⁶¹ The result of many of the statutes was to take the ultimate fate of the deceased’s body out of their own hands.⁶² In addition to many anatomy acts, early case law in the U.S. left the disposition of the deceased’s remains in the hands of the deceased’s family.

I. A Case Study in Conflict: Enos v. Snyder

The following case arose in California in 1900 and illustrates the early conflicts between the wishes of the deceased and the deceased’s family surrounding the final disposition of the body.⁶³

John Enos died on March 30, 1898.⁶⁴ At the time of his death, John was married to Susie Enos.⁶⁵ John and Susie also had a daughter together.⁶⁶ However, for several years prior to his death, John had been living with Rachael Snyder, and not his wife.⁶⁷ Upon his death, John left a will which “contained a direction that the manner, time, and place of his burial should be ‘according to the wishes and directions of Mrs. R. J. Snyder.’”⁶⁸ Dissatisfied with her husband’s final wish, Susie demanded possession of John’s body from Rachael.⁶⁹ After Rachael refused, Susie filed suit seeking a declaration that she and her daughter were entitled to possession and final disposition of her husband’s body for the purpose of burial.⁷⁰ In her answer, Rachael presented John’s will, showing his wish that Rachael should have final disposition over his body.⁷¹ Nonetheless, the district court granted judgement to the Enoses, which Rachael appealed.⁷²

The case primarily considered whether, under California law at the time, the deceased had a right to decide what happened to his or her body over the

59. *Id.*

60. *Id.*

61. ME. REV. STAT. ANN. tit. 22, § 2881 (1981).

62. See Garment et al., *supra* note 51.

63. Enos v. Snyder, 63 P. 170, 170 (Cal. 1900).

64. *Id.* at 171.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

objection of the family.⁷³ The appellant's argument was based on the directions in the deceased's will.⁷⁴

The court began by looking at English and American authorities on the subject and found that, "there is no property in a dead body; that it is not part of the estate of the deceased person; and that a man cannot by will dispose of that which after his death will be his corpse."⁷⁵ The position of English common law, as stated by the court in *Williams v. Williams*, was that "a man cannot by will dispose of his dead body. If there be no property in a dead body, it is impossible that by will or any other instrument the body can be disposed of."⁷⁶ Additionally, U.S. case law during that time held that the surviving spouse retained the sole right to bury his or her deceased wife or husband.⁷⁷

Further complicating the conflict, however, was the proper role to be played by the executor or administrator of a will.⁷⁸ Custom provided that the next of kin, not the executor, have custody of the dead before the funeral.⁷⁹ Moreover, under the probate system, the executor cannot even be determined "until after the appropriate time for the funeral has elapsed."⁸⁰ In the *Enos* case, the executor named in the will was put in the difficult position of having to abide by the wishes of the deceased, which ran counter to the law and custom of the state.⁸¹

Finally, the court used a state statute to further support its analysis.⁸² Section 292 of the Penal Code provided that "the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased."⁸³

Based on the analysis above, the court found that John's wife and daughter, not the wishes of John himself, ultimately control the fate of his body after death.⁸⁴ This holding was consistent with many of the early anatomy acts in effect throughout the United States.⁸⁵

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 171; *see also Williams v. Williams*, L.R. 20 Ch. Div. 659 (1882).

77. *Enos*, 63 P. at 171; *see also Larson v. Chase*, 50 N.W. 238, 239 (Minn. 1891); *see also Foley v. Phelps*, 1 A.D. 551, 556 (N.Y. App. Div. 1896).

78. *Enos*, 63 P. at 172.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*; *see also ME. REV. STAT. ANN. tit. 22, § 2881* (1981).

2. *A Conflicting Case Study in Conflict: In re Henderson's Estate*

The law announced in *Enos* would soon face opposition as policy began to shift away from family control of the deceased's remains and toward a more equitable view that considered the deceased's wishes.⁸⁶

The *Henderson* case followed the death of Katherine Henderson, a wealthy widow who was predeceased by her husband and infant son.⁸⁷ Katherine was the daughter of a pioneering family to Santa Cruz, California.⁸⁸ As such, the remains of her deceased family members, including her husband and son, had been interred in a family burial plot, and upon her death, Katherine was buried there as well.⁸⁹ However, a clause in her will created a \$20,000 trust to construct a mausoleum in a separate cemetery that would house her husband's, her son's, and her own remains.⁹⁰ Nevertheless, Katherine's sole surviving sister and next of kin, Mrs. Younger, refused to consent to the relocation of her sister's remains.⁹¹ The district court, relying on the *Enos* holding, granted judgement for Mrs. Younger.⁹²

The court of appeals distinguished the facts in *Enos* from the present case and concluded that "whenever a dispute arises as to the manner or place of burial of a body as between relatives of the deceased or some of them, and the wishes of the deceased as expressed by him in his will . . . the chancellor should give heed to the wishes of the deceased if they can be ascertained."⁹³ As a result, the court reversed the district court's holding and allowed Katherine's final wish to be granted.⁹⁴

C. *Introduction of a Uniform Statutory Solution*

In 1968, the Uniform Law Commission passed the Uniform Anatomical Gift Act (UAGA), a comprehensive body donation guide and model for the states to adopt.⁹⁵ The UAGA was meant as a template for the states to craft more consistent and reliable anatomical gift acts.⁹⁶ With the passage of the UAGA, the process of scientific body donations became much more ethical and efficient as the desires of the deceased were considered.⁹⁷ The immediate

86. *In re Henderson's Estate*, 57 P.2d 212, 212 (Cal. Dist. Ct. App. 1936).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 213.

91. *Id.* at 215.

92. *Id.*

93. *Id.* at 214–15.

94. *Id.* at 215.

95. Daphne D. Sipes, *Does it Matter Whether There is Public Policy or Presumed Consent in Organ Transplantation?*, 12 WHITTIER L. REV. 505, 509 (1991).

96. *Id.*

97. *Id.*

effect of the UAGA was that it made state law concerning body donation more uniform.⁹⁸ Additionally, it allowed people to consent to their own body donation.⁹⁹ This was a stark change from the previous doctrine concerning body donation, which gave no power of disposition to the deceased.¹⁰⁰ However, the deceased's family could still donate the body of their loved one in the event that the deceased failed to.¹⁰¹

III. THE UNIFORM ANATOMICAL GIFT ACT AND THE TEXAS ANATOMICAL GIFT ACT

A. The Process of Body Donation Under the Uniform Anatomical Gift Act

The UAGA of 1968 allowed for the donation of the whole body or a body part for the purpose of medical or scientific use.¹⁰² Under the Act, any individual over the age of eighteen with a sound mind may gift all or part of his body.¹⁰³ The specific purposes enumerated in the act for which the body may be donated include hospitals, medical schools, storage facilities, and therapy or transplantation.¹⁰⁴ The UAGA did away with the need for family consent and recognized the body as something that could be donated upon death.¹⁰⁵

The Uniform Law Commission identified the following competing interests in drafting the first UAGA:

(1) the wishes of the deceased during his lifetime concerning the disposition of his body; (2) the desires of the surviving spouse or next of kin; (3) the interest of the state in determining by autopsy, the cause of death in cases involving crime or violence; (4) the need of autopsy to determine the cause of death when private legal rights are dependent upon such cause; and (5) the need of society for bodies, tissues and organs for medical education, research, therapy and transplantation.¹⁰⁶

The Uniform Law Commission has revised the UAGA several times since its initial adoption, most recently in 2006.¹⁰⁷ One important part of the 2006 revision includes an “opt-in” function, which takes “first person” consent into

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

103. *Id.*

104. *Id.* at § 4.

105. *Id.*

106. *Id.* at Refs & Annotated.

107. Kristi L. Kielhorn, Note, *Giving Life After Death: The 2006 Revision of the Uniform Anatomical Gift Act*, 56 DRAKE L. REV. 809, 809 (2008).

account.¹⁰⁸ Instead of requiring donors to indicate their desire not to be organ donors, the 2006 revision of the UAGA allows donors to indicate their desire to be donors.¹⁰⁹

B. The Process of Body Donation Under the Texas Anatomical Gift Act

The Texas Anatomical Gift Act (TAGA) expands upon the designs of the Uniform Anatomical Gift Act.¹¹⁰ In addition to adults, the TAGA allows emancipated minors and minors who have their parent's consent to be body donors.¹¹¹ Additionally, the TAGA allows the decedent's agent or guardian to donate the decedent's body.¹¹² It also provides for the revocation of a body donation.¹¹³ In addition, it provides a lengthy list of persons and organizations that may receive anatomical gifts.¹¹⁴ Finally, the TAGA increases the power of the deceased over the disposition of his or her body by allowing the deceased to sign a refusal to make an anatomical gift.¹¹⁵ The TAGA states that "an individual's unrevoked refusal to make an anatomical gift of the individual's body or [body] part bars all other persons from making an anatomical gift of the individual's body or [body] part."¹¹⁶ This subsection effectively protects the deceased's body from unwanted donation.¹¹⁷

IV. MODERN CONFLICTS BETWEEN BODY DONATION AND FAMILY WISHES

A. Texas Law Concerning Rights in the Body of the Deceased

With this modern statutory scheme in mind, the following section will examine present day examples of conflicts surrounding body donation, starting in Texas and then comparing them to two other states.¹¹⁸

In *Evanston Ins. Co. v. Legacy of Life*, a Texas case from 2012, Debra Alvarez's mother became terminally ill.¹¹⁹ As a result of her mother's illness, Debra consented for Legacy of Life, an organ donation charity, to harvest some of her mother's tissues after she died.¹²⁰ Debra believed at the time that

108. *Id.*

109. *Id.*

110. TEX. HEALTH & SAFETY CODE ANN. ch. 692A (Supp.).

111. *Id.* at § 692A.004.

112. *Id.*

113. *Id.* at §§ 692A.005–.006.

114. *Id.* at § 692A.011.

115. *Id.* at § 692A.007.

116. *Id.*

117. *Id.*

118. *See infra* Sections IV.A–B.

119. *Evanston Ins. Co. v. Legacy of Life, Inc.*, 370 S.W.3d 377, 379 (Tex. 2012).

120. *Id.*

her mother's organs would be distributed on a nonprofit basis.¹²¹ However, after discovering that Legacy had instead transferred her mother's tissue to for-profit companies, Debra sued Legacy, seeking compensatory and mental anguish damages and restitution.¹²²

In response, Legacy demanded that Evanston Insurance Company, through which they had a medical and general liability policy, defend them against the suit.¹²³ Evanston argued that it had no duty to defend, because loss of human tissue did not qualify as property damage.¹²⁴ The insurance company based this argument on the traditional Texas interpretation of a mere quasi-property right in body parts.¹²⁵ One of the questions presented to the Texas Supreme Court was whether "the insurance policy provision for coverage of 'property damage,'" includes "coverage for the underlying plaintiff's loss of use of her deceased mother's tissues, organs, bones, and body parts."¹²⁶

The court began by looking at the "bundle of rights" that define property.¹²⁷ Some of the key rights the court identified are the "rights to possess, use, transfer and exclude others."¹²⁸ The court then proceeded to recognize the quasi-property right that next of kin have in the deceased's body.¹²⁹ As the court cited, "the injury [to next of kin] is seldom pecuniary; rather, damages are grounded in the mental and physical injuries of survivors."¹³⁰

Further, the court acknowledged the role that the TAGA plays in defining property rights in the body.¹³¹ As the court stated, the TAGA gives next of kin the right to make "an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education."¹³² Despite this right granted to the next of kin, the court noted that some of the key bundle of rights inherent to property are not granted to family members.¹³³ For example, next of kin have: no right to possess the body of the deceased other than for burial or final disposition; no right to use tissues that have not been designated by the individual; no right to transfer tissues unless set forth in the Anatomical Gift Act; and, generally, no right to

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 382.

126. *Id.* at 379.

127. *Id.* at 382.

128. *Id.* at 383.

129. *Id.*

130. *Id.* at 384 (citing *Culpepper v. Pearl St. Bldg., Inc.*, 877 P.2d 877, 880 (Colo. 1994)).

131. *Id.*

132. *Id.* (citing TEX. HEALTH & SAFETY CODE ANN. § 692A.009(a) (Supp.)).

133. *Id.* at 386.

exclude.¹³⁴ Based on this analysis, the court concluded that tissues of the deceased are not property of the next of kin.¹³⁵ After death, the deceased's tissues cannot serve as compensation to the next of kin.¹³⁶ Only the family can designate a recipient once the individual dies, even though they, like the estate, have no property right in the tissues of the deceased.¹³⁷

As is demonstrated by this case, the unclear distinction between quasi-property rights and property rights in the body of the deceased can be confusing.¹³⁸ Part of this confusion arises out of the clash between the common law definition of "property" and the treatment of body donation under modern statutory anatomical gift acts.¹³⁹ The TAGA, for example, does not define body donation in terms of "property," but in terms of "anatomical gifts."¹⁴⁰ This can make it difficult for courts to interpret an anatomical gift statute when deciding common law claims such as conversion or property damage, which are often resolved only by determining what is "property."¹⁴¹ As the result in *Evanston Ins. Co.* shows, this difficulty can disadvantage non-profits and families alike when it comes to planning for body donation.¹⁴² The following cases arose in different states but present similar problems.¹⁴³

B. Other State Laws Concerning Rights in the Body of the Deceased

In *Lyon v. U.S.*, a case that arose in Minnesota in 1994, Jack Lyon died three months after being admitted to the hospital for an unknown illness.¹⁴⁴ Following his death, Jack's widow and daughter met with Dr. Meyer to sign several forms authorizing an autopsy of the body.¹⁴⁵ Unbeknownst to her, Jack's widow signed an eye donation form while filling out the paperwork.¹⁴⁶ It is uncontested that neither Jack nor his family wanted any part of his body donated.¹⁴⁷ Nevertheless, someone at the hospital other than Dr. Meyer informed the eye bank that they had an available eye donor, and Jack's eyes

134. *Id.* (citing *Burnett v. Surratt*, 67 S.W.2d 1041, 1042 (Tex. App.—Dallas 1934, writ ref'd)), TEX. HEALTH & SAFETY CODE ANN. § 692A.011(a)(3); *Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221, 230 (Tex. 2011)).

135. *Evanston*, 370 S.W.3d at 386.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 387.

140. TEX. HEALTH & SAFETY CODE ANN. § 692A.005(a).

141. *Evanston*, 370 S.W.3d at 387.

142. *Id.*

143. *See infra* Section IV.B.

144. *Lyon v. U.S.*, 843 F. Supp. 531, 532 (D. Minn. 1994).

145. *Id.*

146. *Id.*

147. *Id.*

were subsequently removed.¹⁴⁸ Fortunately, the eye bank learned of the mistake before donation, and Jack's eyes were reset prior to his burial.¹⁴⁹

Jack's wife and daughter filed suit against the hospital and the eye bank for "interference with a dead body, intentional infliction of emotional distress, and negligent infliction of emotional distress."¹⁵⁰ However, pursuant to Minnesota's version of the UAGA, both defendants sought immunity from the suit.¹⁵¹ The court, reading the statute, applied a good faith standard for immunity.¹⁵² After weighing the claims of the plaintiffs, the court ultimately granted immunity to both the hospital and the eye bank.¹⁵³ The court relied largely on the UAGA's scheme to facilitate the donation of eyes and other organs, recognizing that time is an important factor in preserving the body.¹⁵⁴ Additionally, neither the eye bank nor Dr. Meyer, who was a new physician at the time, knew that the facially valid form did not represent the wishes of Jack or his family.¹⁵⁵ Furthermore, both parties did everything they could to correct the harm once they were made aware of it.¹⁵⁶ For these reasons, both parties were immune from suit.¹⁵⁷

The result in this case shows that more clarity is needed in both the writing of forms and the discussion with family members prior to or immediately after the death of a loved one.¹⁵⁸ Similar to *Evanston*, the need for accountability and redress following the improper use of the deceased's body in this case has left the family members in an unfortunate yet avoidable position.¹⁵⁹

A similar case arose in Kansas only a year later.¹⁶⁰ After Kenneth Perry suffered a fatal heart attack, his family was left to quickly decide the fate of his body.¹⁶¹ According to evidence later presented by the family at trial, a nurse at St. Francis Hospital repeatedly asked for and misrepresented the process by which physicians could remove and donate Kenneth's corneas and bone marrow.¹⁶² Believing the donation would be much less invasive than it actually was, his family signed forms donating both of those body parts.¹⁶³

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* at 533.

152. *Id.*

153. *Id.*

154. *Id.* at 536.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Perry v. Saint Francis Hosp. and Med. Ctr., Inc.*, 886 F. Supp. 1551, 1551 (D. Kan. 1995).

161. *Id.* at 1555.

162. *Id.*

163. *Id.*

The family filed suit against the hospital for intentional infliction of emotional distress, breach of contract, and negligence.¹⁶⁴ The court found that, because the nurse had disregarded the initial denial of donation and misrepresented the donation, the hospital was not immune from suit under the good faith standard.¹⁶⁵ The court then considered the family's breach of contract claim.¹⁶⁶ Kenneth's family argued that the form they signed donating only his corneas and bone marrow was a legal contract which the hospital had breached by removing his entire eyes and bones.¹⁶⁷ Furthermore, they argued that Kenneth's corneas and bone marrow served as legal consideration for the contract.¹⁶⁸ Similar to *Evanston Ins. Co.*, the court in this case found that the next of kin does not have a property right in the body of the deceased.¹⁶⁹ Therefore, the next of kin does not have the right to possess the body other than for burial, nor the right to convey it for consideration.¹⁷⁰ Based on this analysis, the court granted the defendant's motion for summary judgment on the breach of contract claim but denied it in all other respects.¹⁷¹

Here, again, the clash between the common law concept of property and the modern classification of anatomical gifts arises.¹⁷² And once again, it is clear how this discrepancy can create confusion for family members and medical institutions alike.¹⁷³

V. HOW LAWYERS AND MEDICAL INSTITUTIONS CAN MAKE BODY DONATION ESTATE PLANNING BETTER IN THE FUTURE

After looking at the medical and legal history of body donation, three overlapping layers of estate planning conflict emerge: (1) the importance of body donation for the advancement of medical science; (2) the conflicts between property law and anatomical gift acts; and (3) the lack of guidance for family members.¹⁷⁴ The following section will explore the confusion that remains surrounding these three areas and how lawyers and legislators can settle some of the conflicts concerning body donation in the future.¹⁷⁵

164. *Id.* at 1556.

165. *Id.* at 1560.

166. *Id.* at 1562.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. Garment et al., *supra* note 51, at 1001; *see also* *Evanston Ins. Co. v. Legacy of Life, Inc.*, 370 S.W.3d 377, 387 (Tex. 2012) (showing the unclear distinction between quasi property rights and rights in the body); *see also* *Lyon v. U.S.*, 843 F. Supp. 531, 536 (D. Minn. 1994) (showing the need for guidance to the deceased's family).

175. *See supra* Part IV.

A. The Scientific Importance of Cadavers and the Ongoing Need for Their Supply

Today, the medical use of cadavers is perhaps more important than it has ever been.¹⁷⁶ Bodies that are currently donated to medical institutions are studied throughout many fields of practice, from dentistry, to neuroscience, to immunology.¹⁷⁷ In fact, almost all medical students in the United States begin their education by dissecting a human body.¹⁷⁸ Moreover, body donation is currently being used to study and cure diseases such as cancer.¹⁷⁹ Nevertheless, the stigma surrounding body donation has led to fewer than 20,000 Americans donating their bodies to research and training each year.¹⁸⁰ In Illinois, for example, annual donations have dropped from 760 in 1984 to just 520 in 2015.¹⁸¹

There is no doubt that the procurement of bodies for medical study has become far more ethical than it was in the early days of dissection.¹⁸² Safe-guards that protect the wishes of the deceased, such as the UAGA, have greatly contributed to this result.¹⁸³ However, there is a clear need for cadavers that is currently not being met.¹⁸⁴ There are two ways to fulfill this need while still ensuring that that process remains ethical and the wishes of the deceased are satisfied.¹⁸⁵

First, greater communication between medical institutions and estate planning lawyers could facilitate this positive change.¹⁸⁶ This could be achieved by increasing funding to medical schools who employ estate planning lawyers to assist in the legal procurement of cadavers.¹⁸⁷ Not only would this ensure that obtaining bodies is ethical and legal but would also provide public medical facilities with additional funding to study human anatomy.¹⁸⁸ Furthermore, it would allow estate planning lawyers to better inform their clients about the benefits of body donation to the scientific

176. Matt McCall, *The Secret Lives of Cadavers*, NAT'L GEOGRAPHIC (July 29, 2016) <https://news.nationalgeographic.com/2016/07/body-donation-cadavers-anatomy-medical-education/?user.testname=loading:c> [perma.cc/AM4A-G2BS].

177. *Id.*

178. *Id.*

179. Phil Staley & Kathleen Calderwood, *How Donating Your Body to Science Can Help Find a Cure for Cancer*, ABC (Dec. 7, 2015, 9:22 PM), <https://www.abc.net.au/news/2015-12-08/medical-donations/7010026> [perma.cc/JSE8-QVYJ].

180. *See* McCall, *supra* note 176.

181. *Id.*

182. *Compare* Ghosh, *supra* note 22, and Loukas et al., *supra* note 12, with UNIF. ANATOMICAL GIFT ACT § 4 (1968) (amended 2009) (illustrating that human dissection practices now require meaningful consent rather than exploitation of criminal and the impoverished populations in earlier civilizations).

183. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

184. *See* McCall, *supra* note 176.

185. *See infra* Part V.

186. *See* McCall, *supra* note 176 (describing the stigma still surrounding body donations).

187. *Id.*

188. *See supra* Part IV.

community and the advancements made therefrom.¹⁸⁹ This open exchange of information between universities, lawyers, and clients would have the added benefit of dispelling much of the stigma surrounding body donation.¹⁹⁰

Another option to increase donations while remaining ethical would be to offer incentives to family members of decedents who will their bodies to science.¹⁹¹ Some states have offered direct monetary or tax incentives to family members whose loved one donated their body or organs.¹⁹² However, many scholars have argued that direct financial incentives violate the prohibition against organ sales.¹⁹³ For this reason, indirect financial incentives would provide a better solution.¹⁹⁴

One viable and ethical incentive is for universities to offer scholarships, grants, or reduced tuition to the family members of a decedent who donated his or her body to a public medical school.¹⁹⁵ This offer would help in three ways.¹⁹⁶ First, the incentive would likely increase the rate of donations given the high tuitions of many universities and the desire of most people to help their family members succeed academically.¹⁹⁷ Second, limiting the incentive to public schools would ensure that private companies and other monetary motives do not allow the process to become unethical.¹⁹⁸ Likewise, the strict legal oversight of estate planning lawyers employed by medical schools would further dispel any ethical concerns.¹⁹⁹ And third, these incentives would increase access to education, especially for low-income individuals, while at the same time expanding medical knowledge.²⁰⁰

B. The Conflict Between Anatomical Gift Acts and Property Law

As discussed above, there is a dichotomy between how the human body is classified under the TAGA and how it is classified under property common law.²⁰¹ The common law has traditionally not recognized the body as “property,” because it cannot be owned or sold.²⁰² Even family members of

189. See McCall, *supra* note 176 (describing the stigma still surrounding body donations).

190. *Id.* (describing the stigma still surrounding body donations).

191. Melanie Levy, *State Incentives to Promote Organ Donation: Honoring the Principles of Reciprocity and Solidarity Inherent in the Gift Relationship*, 5 J. L. & THE BIOSCIENCES 398, 399 (2018).

192. *Id.* at 414.

193. *Id.* at 423.

194. *Id.*

195. See *infra* Part V.

196. See *infra* Part V.

197. Emmie Martin, *Here's How Much More Expensive it is for You to Go to College than it Was for Your Parents*, CNBC (Nov. 29, 2017, 9:55 AM), <https://www.cnbc.com/2017/11/29/how-much-college-tuition-has-increased-from-1988-to-2018.html> [perma.cc/SX35-QFFH].

198. See Levy, *supra* note 191.

199. See *infra* Part V.

200. See Martin, *supra* note 197.

201. *Evanston Ins. Co. v. Legacy of Life, Inc.*, 370 S.W.3d 377, 387 (Tex. 2012).

202. *Enos v. Snyder*, 63 P. 170, 171 (Cal. 1900); see also *Williams v. Williams*, 20 Ch. Div. 659 (1882) (holding that a man cannot dispose of his body by will).

the decedent only have a quasi-property right in the body of their loved one.²⁰³ This right comes from the family's limited ability to dispose of their relative's body.²⁰⁴

The confusion created by this dichotomy stems largely from the departure from the body as a piece of medical property and toward understanding it as a willing gift of the decedent.²⁰⁵ However, as is clear in *Evanston Ins. Co. v. Legacy of Life, Inc.*, the vestiges of property law as it relates to body parts is still very present in the litigation surrounding anatomical gifts.²⁰⁶ While this transition is beneficial to the wishes of the deceased, it arguably makes the legal landscape more difficult to navigate for family members, doctors, and insurers.²⁰⁷

Much of the conflict that arose in *Evanston Ins. Co.* came as a result of two lines of legal history and analysis clashing in one case.²⁰⁸ On one hand, the traditional definitions found within property law governed the insurance company's duty to defend against lawsuits.²⁰⁹ This line of legal precedent framed the human body in terms of "property damage."²¹⁰ The court then used this framework to analyze the case much like a conventional tort claim.²¹¹ Similarly, the plaintiffs and the court in *Perry* also defined the body in terms of property, not for a tort claim, but instead for a contract claim.²¹²

On the other hand, the burgeoning statutory framework that arose after the introduction of the first anatomy acts defines the body from the viewpoint of the decedent.²¹³ Under this legal lens, the decedent, rather than the standards of property law, gets to decide the fate and uses of their body after death.²¹⁴

This conflict is proof that greater clarity is needed both for family members of the deceased and estate planning lawyers before and after death.²¹⁵ There are three major changes that should be made to start to bring about this clarity.²¹⁶

The first would be for courts to completely change the language by which the human body is referred to in cases of donative transfers.²¹⁷ This

203. *Evanston*, 370 S.W.3d at 383.

204. *Id.*

205. Compare Ghosh, *supra* note 22, with UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009) (citing the progression of human dissection practices from a form of capital punishment in ancient Greece to a thoughtful choice in modern times).

206. *Evanston*, 370 S.W.3d at 387.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Perry v. Saint Francis Hosp. and Med. Ctr., Inc.*, 886 F. Supp. 1551, 1562 (D. Kan. 1995).

213. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

214. *Id.*

215. *Perry*, 886 F. Supp. at 1562; *see also* UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

216. *See infra* Part V.

217. *Perry*, 886 F. Supp. at 1562.

should start with phasing out the doctrines of property law from cases involving body donations.²¹⁸ While it was initially helpful to define the deceased as “quasi-property” to distinguish it from other forms of property and allow for greater autonomy, this language remains a barrier to full corporeal autonomy now that anatomy acts are in place.²¹⁹ Until courts begin to shift away from defining the body in property terms, conflicts will continue to complicate the litigation surrounding body donation cases.²²⁰

The second way to reduce conflict in these cases is for estate planning lawyers to better prepare and advise their clients on the overlap between body donations and property law that currently exists.²²¹ Much of the conflict in *Perry* could have been avoided with proper advice from an estate planning lawyer.²²² For example, the nurse could have been advised not to mislead the family as to the nature of the intended procedure, but to give them the proper time and information to make the decision on their own.²²³ Additionally, proper advice from an estate planning lawyer could have prevented the family of the decedent from making a breach of contract claim, and instead a more valid claim.²²⁴ Perhaps with more planning and insight into how courts view, or do not view, body parts as property capable of consideration, the family of the deceased could have strengthened the arguments in their initial complaint.²²⁵

Third, legislators should provide more guidance concerning property law and the human body within the Uniform Anatomical Gift Act and its state counterparts.²²⁶ For those who wish to donate their bodies to science through anatomical gift acts and are unfamiliar with the property law conflicts that may arise, guidance and advice within those statutes would protect unknowing donors.²²⁷ Furthermore, family members of decedent donors would be better informed, and therefore better protected as well.²²⁸ This could be done by including simplified legal precedent within the state anatomical gift acts, much like a restatement.²²⁹

218. *Id.*

219. *Evanston Ins. Co. v. Legacy of Life, Inc.*, 370 S.W.3d 377, 383 (Tex. 2012).

220. *Id.*

221. *Id.*; see also *Perry*, 886 F. Supp. at 1562.

222. *Perry*, 886 F. Supp. at 1562.

223. *Id.* at 1551.

224. *Id.*

225. *Id.* at 1562.

226. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

227. *Id.*

228. *Perry*, 886 F. Supp. at 1562.

229. UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009); see RESTATEMENT (THIRD) OF PROPERTY: DONATIVE TRANSFERS (AM. LAW INST. 1999).

C. The Need for Simplification of Donation Forms and Procedures Within Hospitals

The final area of conflict that emerges from the cases is the confusion created by the inefficiency of donation forms and hospital personnel.²³⁰ It is no surprise that most of people's lives will end in a hospital.²³¹ It is the place people go when in failing health and the place they are rushed to in almost any emergency.²³² As a result, hospitals are often hectic and stressful places.²³³ This can lead to emotional distress and even litigation when it comes to wishes for bodies.²³⁴ The best estate planning in the world will not mean a thing if hospital procedure does not facilitate proper body donation and respect the wishes of the deceased.²³⁵

This is clear from both the *Lyon* and *Perry* cases.²³⁶ In *Lyon*, the decedent's wife inadvertently signed an eye donation form which had been included in the standard admittance forms.²³⁷ It was evident that the decedent had no desire to donate any part of his body, yet due to inefficiency in the way patients were admitted at the hospital, his eyes were removed anyway.²³⁸ Unfortunately for the family, neither the doctor nor the eye bank could be held liable and the family could not recover.²³⁹

In *Perry*, the corneas and bone marrow of the decedent were invasively removed due to the misrepresentation of a negligent nurse.²⁴⁰ Although it is unclear from the case just how much knowledge of body donation the nurse had, it is clear that the donative wishes of the family were taken advantage of, which resulted in emotional harm.²⁴¹

What emerges from both of these cases is the lack of legal guidance and consideration present in hospital donation procedures.²⁴² This results in a rejection of the decedent's or family member's wishes and a frustration of the progress made by the Uniform Anatomical Gift Act.²⁴³ There are a number of solutions that could not only make the process of body donations

230. *Lyon v. U.S.*, 843 F. Supp. 531, 532 (D. Minn. 1994); *see also Perry*, 886 F. Supp. at 1555.

231. *Lyon*, 843 F. Supp. at 532.

232. *Id.*

233. *Id.*; *see also Perry*, 886 F. Supp. at 1555.

234. *Lyon*, 843 F. Supp. at 532.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Perry v. Saint Francis Hosp. and Med. Ctr., Inc.*, 886 F. Supp. 1551, 1555 (D. Kan. 1995).

241. *Id.*

242. *Id.*; *see also Lyon*, 843 F. Supp. at 532.

243. *Lyon*, 843 F. Supp. at 532; *see also Perry*, 886 F. Supp. at 1555; *see also* UNIF. ANATOMICAL GIFT ACT § 2 (1968) (amended 2009).

more ethical and legal but would also encourage greater donations in the future.²⁴⁴

One such solution would be to clearly separate forms at hospitals between those that are routinely required for admittance, and those that ask for donation of all or a part of the deceased's body.²⁴⁵ Attending to a loved one who is sick or hurt can be stressful enough without the added pressure of determining the loved one's wishes.²⁴⁶ Furthermore, separating hospital forms would reduce litigation costs for hospitals, thereby reducing the cost for all patients.²⁴⁷

Another solution would be to ensure that body donation forms are boldly labeled and written in clear, easy-to-understand terms.²⁴⁸ Family members should not be punished for misunderstanding advanced legal or medical language.²⁴⁹

Additionally, estate planning lawyers should work more closely with hospitals in drafting medical forms and training medical staff.²⁵⁰ Not only would this ensure that the wishes of decedents and family members are more closely adhered to, but would protect doctors, nurses, and hospital administrators from legal liability.²⁵¹ Moreover, by combining these strategies, it is likely that universities and medical institutes would see an increase in body donations.²⁵²

VI. CONCLUSION

The human body has been an invaluable learning tool since the dawn of civilization.²⁵³ Its study has helped us solve medical riddles and contributed to the cure of horrific diseases.²⁵⁴ Along the way, we have come to better understand our own morality.²⁵⁵

Cadaveric dissection began as a practice that ignored both the ethical and legal considerations of the deceased.²⁵⁶ After much public debate, dissection began to slowly evolve, giving more and more weight to the wishes of the decedent and his or her family.²⁵⁷ As this occurred, conflicts

244. See *infra* Part V.

245. *Lyon*, 843 F. Supp. at 532.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*; see also *Perry v. Saint Francis Hosp. and Med. Ctr. Inc.*, 886 F. Supp. 1551, 1555 (D. Kan. 1995).

251. *Lyon*, 843 F. Supp. at 532; *Perry*, 886 F. Supp. at 1555.

252. See *McCall*, *supra* note 176.

253. See *Loukas et al.*, *supra* note 12.

254. See *Staley & Calderwood*, *supra* note 179.

255. See *Ghosh*, *supra* note 22.

256. See *Ghosh*, *supra* note 22.

257. *Enos v. Snyder*, 63 P. 170, 172 (Cal. 1900); see also *ME. REV. STAT. ANN.* tit. 22, § 2881 (1981).

began to arise between the decedents and their own families.²⁵⁸ As states such as Texas began to enact anatomical gift statutes, estate planning lawyers and donors alike were provided greater guidance on how to navigate this complex legal framework.²⁵⁹ However, this hardly put an end to the conflict surrounding body donation.²⁶⁰

As recent case law from Texas and other states show, longstanding legal principles and academic and medical inefficiencies still stand in the way of progress and donative intent.²⁶¹ Cases such as *Evanston Ins. Co.* demonstrate the conflicts that arise when common law property principles clash with modern statutes.²⁶² Other cases, such as *Lyon*, show how complicated administrative forms and the lack of legal guidance in the medical field have produced emotionally distressing results for family members.²⁶³ And cases like *Perry* reveal the greater need for informed consent when medical emergencies and body donation meet.²⁶⁴ As such, improvements must be made to the practices of lawyers, courts, and hospitals.²⁶⁵

One of these improvements would be to give better legal advice to universities and offer academic incentives to promote body donation.²⁶⁶ Another would be to eventually eliminate the distinction between defining the body in property law terms and defining it in terms of an anatomical gift.²⁶⁷ This goal would further the historical progression of giving greater power to the decedent over the fate of his or her body.²⁶⁸ Finally, improving the language and procedures of hospitals—both by changing the way donation forms are given and by retraining medical staff—would allow the deceased, his or her family members, and hospitals to be better prepared when death occurs.²⁶⁹

258. *Enos*, 63 P. at 172.

259. TEX. HEALTH & SAFETY CODE ANN. § 692a (Supp.).

260. *Lyon v. U.S.*, 843 F. Supp. 531, 532 (D. Minn. 1994); *see also Perry v. Saint Francis Hosp. and Med. Ctr., Inc.*, 886 F. Supp. 1551, 1555 (D. Kan. 1995).

261. *Lyon*, 843 F. Supp. at 532; *Perry*, 886 F. Supp. at 1555.

262. *Evanston Ins. Co. v. Legacy of Life, Inc.*, 370 S.W.3d 377, 379 (Tex. 2012).

263. *Lyon*, 843 F. Supp. at 532.

264. *Perry*, 886 F. Supp. at 1555.

265. *See supra* Part V.

266. *See supra* Part V.

267. *See supra* Part V.

268. *Enos v. Snyder*, 63 P. 170, 172 (Cal. 1900); ME. REV. STAT. ANN. tit. 22, § 2881 (1981).

269. *See supra* Part V.