

2016

# The World of the Dead, the Right of Sepulcher and the Power of Information

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## Recommended Citation

Calderon, Katherine (2016) "The World of the Dead, the Right of Sepulcher and the Power of Information," *Touro Law Review*: Vol. 32: No. 4, Article 7.

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**THE WORLD OF THE DEAD, THE RIGHT OF SEPULCHER,  
AND  
THE POWER OF INFORMATION**

**COURT OF APPEALS OF NEW YORK**

Shipley v. City of New York<sup>1</sup>

(decided June 10, 2015)

**I. INTRODUCTION**

The common law right of sepulcher is an old rule that protects the next of kin's right to find peace and comfort in the act of burying a loved one.<sup>2</sup> The New York State legislature recognizes the importance of protecting the next of kin's right to interment and has codified this right in New York Public Health Law ("NYPHL") article 42.<sup>3</sup> Therefore, a plaintiff may bring an action under the common law right of sepulcher and the applicable section of NYPHL article 42 when an interference to the right of proper burial occurs.<sup>4</sup> New York courts have broadly interpreted the issues surrounding the right to bury a loved one.<sup>5</sup> This broad interpretation has permitted compensation for the interference with the right to bury.<sup>6</sup> However, there is a tendency to apply a narrow interpretation resulting in a deprecia-

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<sup>1</sup> 37 N.E.3d 58 (N.Y. 2015).

<sup>2</sup> *Melfi v. Mount Sinai Hosp.*, 877 N.Y.S.2d 300, 304 (App. Div. 1st Dep't 2009).

<sup>3</sup> N.Y. PUB. HEALTH LAW COMMENT ON § 4200 (McKinney 2015) (citing to *Patterson v. Patterson*, 59 N.Y. 574 ("The decent burial of the dead is a matter in which the public has concern, and it is against the public health if it does not take place, at all, and against a proper public sentiment, that it should not take place with decency.")).

<sup>4</sup> *See, e.g., Rugova v. City of N.Y.*, 16 N.Y.S.3d 233, 237 (App. Div. 1st Dep't 2015) (claiming a loss of sepulcher and violation of NYPHL § 4214).

<sup>5</sup> *See, e.g., Foley v. Phelps*, 37 N.Y.S. 471, 473 (App. Div. 1st Dep't 1896) (circumventing the argument that because there is "no such thing as a property value in human remains," there is not a valid injury claim).

<sup>6</sup> *See Darcy v. Presbyterian Hosp.*, 95 N.E. 695, 696 (N.Y. 1911) (holding that plaintiff can recover monetary loss for wounded feelings and mental distress).

tion of the common law right of sepulcher.<sup>7</sup> Specifically, *Shipley v. City of New York* failed to uphold the next of kin's right to proper burial when it narrowly interpreted both the common law right of sepulcher and NYPHL § 4215.<sup>8</sup>

This Note argues that New York courts must apply a broad interpretation of both the common law and statute to protect the survivor's right to interment. It also proposes that a notification requirement is essential to the continued protection of the next of kin's right of sepulcher. In Section II, this Note analyzes the issue presented in *Shipley*. Section III explores the relationship between the common law and the statute. Finally, Section IV discusses the impact a narrow interpretation has on the right of sepulcher, and why the legislature should amend the statute to include a notification requirement.

## II. SHIPLEY V. CITY OF NEW YORK

### A. Factual and Procedural History

Jesse Shipley, a high school student, died in an auto accident.<sup>9</sup> Shortly after his death, his parents (the "Shipleys") agreed to the performance of an autopsy but cautioned the Medical Examiner ("M.E.") to maintain the body in a condition "as presentable as possible" for burial purposes.<sup>10</sup> At the conclusion of the autopsy, the M.E. placed the brain in a jar, labeled it with Jesse's name and the date of the accident, and placed the jar on a shelf.<sup>11</sup> It was standard procedure for the M.E. to withhold the organ so that a neuropathologist, who came to the office when at least six specimens were available, could examine it.<sup>12</sup> The Shipleys became aware that the M.E. retained their son's brain when students visited the New York Office of Chief Medical Examiner ("OCME").<sup>13</sup> However, the Shipleys' priest informed them that without the organ, the funeral

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<sup>7</sup> See, e.g., *Harris-Cunningham v. Med. Exam'r of N.Y. County*, 690 N.Y.S.2d 253, 254 (App. Div. 2d Dep't 1999) (holding that the written consent requirement did not apply to the medical examiner).

<sup>8</sup> *Shipley*, 37 N.E.3d at 66.

<sup>9</sup> *Id.* at 59.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 59-60.

<sup>12</sup> *Id.* at 60.

<sup>13</sup> *Shipley*, 37 N.E.3d at 60.

was performed improperly.<sup>14</sup> As a result, a second funeral was held months after the first funeral.<sup>15</sup>

The Shipleys commenced an action in New York Supreme Court against the City of New York and the OCME claiming negligent infliction of emotional distress resulting from the display and alleged mishandling of the brain, and unlawful interference with “the Shipleys’ right to decedent’s whole body.”<sup>16</sup> The defendants argued that the Shipleys failed to state a claim because the M.E. had the authority to perform the autopsy, and the law authorized the removal and retention of the organ.<sup>17</sup> The New York Supreme Court denied the defendants’ motion for summary judgment, and the defendants appealed to the Appellate Division for the Second Department.<sup>18</sup>

The Appellate Division held that the M.E. had statutory authority to use its discretion in conducting an autopsy and retaining organs for further examination.<sup>19</sup> However, the power to retain the organs was extinguished at the completion of a legitimate purpose.<sup>20</sup> The Appellate Division further held that the M.E. had a mandated obligation under both NYPHL § 4215(1) and the common law right of sepulcher “to turn over the decedent’s remains to the next of kin for preservation and proper burial.”<sup>21</sup> Furthermore, the court viewed this obligation to be ministerial in nature, which was for the benefit of and owed to the next of kin.<sup>22</sup> Informing the next of kin that although the body was ready for burial, the M.E. would retain particular organs for further examination could have satisfied this obligation.<sup>23</sup> The notice would allow for a proper burial because the next of kin, who knew what is needed for their ritual to be complete, could make an informed decision to either bury the body without the organs or wait for the completion of the necessary examination and then bury the body with the organs.<sup>24</sup> Thus, the case went to trial on the issue

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<sup>14</sup> *Id.* at 69 (Rivera, J., dissenting).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 60 (majority opinion).

<sup>17</sup> *Id.* at 60.

<sup>18</sup> *Shipley*, 37 N.E.3d at 60.

<sup>19</sup> *Id.* at 61.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; *see also* Lauer v. City of N.Y., 733 N.E.2d 184 (N.Y. 2000) (holding that a governmental discretionary act renders a city immune to liability while a ministerial act does not).

<sup>23</sup> *Shipley*, 37 N.E.3d at 61.

<sup>24</sup> *Id.*

of whether the M.E. had failed to notify the Shipleys of the retention of their son's brain.<sup>25</sup> The jury entered a verdict in favor of the Shipleys for \$1 million.<sup>26</sup> The defendants subsequently appealed to the Appellate Division for the Second Department where no relief was found, and finally to the Court of Appeals of New York.<sup>27</sup>

### B. The Court's Reasoning

The Court of Appeals of New York rejected the Appellate Division's decision in favor of the Shipleys, and held that mandating a notification requirement "was [an] error that broadly expanded the M.E.'s obligations under common law and statute."<sup>28</sup> In coming to this conclusion, the court analyzed the common law right of sepulcher and NYPHL article 42.<sup>29</sup> First, in analyzing the common law right of sepulcher, the court interpreted the phrase "affords the next of kin the immediate possession of a decedent's body for burial purpose" to mean an immediate possession of the body with or without internal organs or tissue samples.<sup>30</sup> The court reasoned that the purpose of the right was to afford the next of kin solace and comfort through the ritual of burying the decedent's body.<sup>31</sup> Therefore, the return of the body, regardless of the presence of the internal organs, achieved that goal.<sup>32</sup>

Next, the Court of Appeals scrutinized NYPHL article 42 and held that there was no ministerial duty to return any organs or tissue samples or to notify the next of kin.<sup>33</sup> The court reasoned that the M.E. had a "fairly broad" statutory authority to conduct autopsies under NYPHL article 42, and, therefore, their acts were discretionary, not ministerial.<sup>34</sup>

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<sup>25</sup> *Id.* at 61.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 62.

<sup>28</sup> *Shipley*, 37 N.E.3d at 64; *see Shipley v. City of N.Y.*, 908 N.Y.S.2d 425 (App. Div. 2d Dep't 2010) (referencing Appellate Division's decision affirming the denial of defendant's motion of summary judgment and imposing a notification requirement).

<sup>29</sup> *Shipley*, 37 N.E.3d at 63.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 63.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 66.

<sup>34</sup> *Shipley*, 37 N.E.3d at 62; *see* N.Y. PUB. HEALTH LAW § 4209 (McKinney 1983) (providing a list of professionals who are authorized to perform an autopsy); N.Y. PUB. HEALTH LAW § 4210 (McKinney 2014) (conferring authority on a licensed medical physi-

The court also found that the legislature did not intend to include the terms “organs or tissue samples” within the meaning of “remains of the body.”<sup>35</sup> The court reasoned that had the legislature intended to include organs or tissue samples, it would have included the terms “any tissue, organs, or part thereof.”<sup>36</sup> For instance, other sections of NYPHL article 42 and NYPHL § 1389 contain the language “any tissue, organs or part thereof.”<sup>37</sup> Moreover, the court read § 4200(1)<sup>38</sup> and § 4215(1)<sup>39</sup> in tandem and determined that there was no language in the statute, expressed or implied, that would require the M.E. to return any organs or tissue samples retained after a lawful autopsy.<sup>40</sup> Therefore, since the M.E. is a public employee performing a governmental function, the decision to conduct the autopsy and retain the organ was a discretionary act.<sup>41</sup> As a result of this discretionary act, the city was not subject to liability.<sup>42</sup>

Finally, the court declined to impose a notification requirement because of practical and policy considerations.<sup>43</sup> Specifically, the court was concerned that the provision did not address when or under what circumstances the M.E. should send the notification.<sup>44</sup>

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cian); *see also* N.Y. PUB. HEALTH LAW § 4210 (McKinney 2015) (limiting the power to dissect or conduct autopsy).

<sup>35</sup> *Shiple*, 37 N.E. at 64.

<sup>36</sup> *Id.* at 65; for further discussion of this issue, *see* N.Y. PUB. HEALTH LAW § 4216 (McKinney 2015), N.Y. PUB. HEALTH LAW § 4217 (McKinney 2015), and N.Y. PUB. HEALTH LAW § 4218 (McKinney 2015), which applies a criminal penalty for “body stealing, receiving a stolen dead human being, and opening graves” respectively.

<sup>37</sup> *Shiple*, 37 N.E.3d at 65.

<sup>38</sup> N.Y. PUB. HEALTH LAW § 4200 (McKinney 2015) (“Except in the cases in which a right to dissect it is expressly conferred by law, every body of a deceased person, within this state, shall be decently buried or incinerated within a reasonable time after death.”).

<sup>39</sup> N.Y. PUB. HEALTH LAW § 4215 (1) (McKinney 2015).

In all cases in which a dissection has been made, the provisions of this article, requiring the burial or other lawful disposition of a body of a deceased person, and the provisions of law providing for the punishment of interference with or injuries to it, apply equally to the remains of the body after dissection as soon as the lawful purposes of such dissection have been accomplished.

*Id.*

<sup>40</sup> *Shiple*, 37 N.E.3d at 66.

<sup>41</sup> *Id.* at 66.

<sup>42</sup> *Id.* at 62 (quoting *Valdez v. City of N.Y.*, 960 N.E.2d 356 (N.Y. 2012) “[M.E.’s] conduct involved the ‘exercise of reasoned judgment’ that ‘may not result in the [City’s] liability even [if] the conduct [was] negligent.’”).

<sup>43</sup> *Shiple*, 37 N.E.3d at 66.

<sup>44</sup> *Id.* at 67.

Also, the Appellate Division presumed that all of the next of kin wanted notice, and this assumption would lead to an influx of litigants claiming “that they possessed a property interest in their decedent’s organs.”<sup>45</sup>

### C. A Strong Dissent

Judge Jenny Rivera authored a dissent admonishing the majority for failing to uphold the next of kin’s right of sepulcher under the common law and statute.<sup>46</sup> In so doing, the dissent emphasized that the purpose of the common law right of sepulcher is to defend the next of kin’s right to a proper burial.<sup>47</sup> In addition, the dissent noted that the plain language of NYPHL sections 4200 and 4215 protects the right of interment.<sup>48</sup> Finally, the dissent argued that under NYPHL article 42, the M.E.’s authority to conduct an autopsy and retain the remains of the body is limited.<sup>49</sup> Therefore, the M.E. has a ministerial duty based on the limitation, and thus the OCME was subject to liability.<sup>50</sup>

Specifically, the dissent argued that the common law right of sepulcher, NYPHL sections 4200 and 4215, and New York City’s Health Code imposed a ministerial duty.<sup>51</sup> Arguably, once the M.E. fulfilled the lawful purpose of possessing the body, performing an autopsy, and retaining any parts of the body, a ministerial duty arose that obligated the “proper return of all body parts for burial purposes.”<sup>52</sup> Moreover, the ministerial duty indicated legislative’s intent to protect the corporal remains of the deceased and the feelings of family members.<sup>53</sup>

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<sup>45</sup> *Shiple*, 37 N.E.3d at 67 (citing *Waeschle v. Dragovic*, 576 F.3d 539, 545 (6th Cir. 2009)).

<sup>46</sup> *Shiple*, 37 N.E.3d at 74 (Rivera, J., dissenting).

<sup>47</sup> *Id.* at 69.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 70; *but see Shiple*, 37 N.E.3d at 62 (majority opinion) (holding that the M.E.’s authority is fairly broad).

<sup>50</sup> *Shiple*, 37 N.E.3d at 74 (Rivera, J., dissenting).

<sup>51</sup> *Id.* at 70-71; (citing N.Y. CITY CHARTER § 557(f)(1) (2015). Conducting an autopsy may be done if a person died from a criminal act or the deceased died suddenly but the cause of death was not apparent. *Id.* However, an autopsy will not be conducted if “it may be concluded with reasonable certainty that death occurred from natural causes or obvious traumatic injury, and there are no other circumstances which would appear to require an autopsy unless the medical examiner deems the autopsy necessary in accordance with the law.”) *Id.*

<sup>52</sup> *Shiple*, 37 N.E.3d at 75 (Rivera, J., dissenting).

<sup>53</sup> *Id.* at 74.

Furthermore, the dissent adopted a broad interpretation of the common law right of sepulcher and NYPHL article 42 to determine the legislature's intent.<sup>54</sup> First, the dissent focused on the only provision under NYPHL article 42 that deals with "the retention of organs upon completion of an autopsy."<sup>55</sup> NYPHL § 4215(2) states in relevant part "that the persons having possession of the [unclaimed] body may, in their discretion, cause it to be either buried or cremated or may retain parts of such body for scientific purposes."<sup>56</sup> The dissent reasoned that "parts of such body" is a subsection of "remains of the body" because the individual may retain "'parts' rather than the whole of the body, upon completion of the autopsy."<sup>57</sup> Hence, in NYPHL § 4215(1), "remains of the body" means that organs are included with the cadaver "because the reference to 'parts of such body' in NYPHL § 4215(2) would be unnecessary."<sup>58</sup>

Second, the limitation in NYPHL § 4215(2) allowing for the retention of "parts of such body" exclusively for scientific purposes supported the proposition that remains of the body includes organs because "organs are commonly used for scientific study."<sup>59</sup> Additionally, the interpretation that "remains of the body" contained organs within its meaning applied to the entire section 4215 because "the meaning of a single section may not be determined by splitting it up into several parts."<sup>60</sup> Furthermore, NYPHL article 43, dealing with anatomical gifts, included organs within its meaning of "parts of the body."<sup>61</sup>

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<sup>54</sup> *Id.* at 69–72.

<sup>55</sup> *Id.* at 72.

<sup>56</sup> *Id.*

<sup>57</sup> *Shipley*, 37 N.E.3d at 69-72 (Rivera, J., dissenting):

In all cases in which an autopsy or dissection has been made of an unclaimed body, the provisions of this article requiring the burial or other lawful disposition of the body of a deceased person and punishing, interference with or injuries to it, shall apply equally to the remains of such body as soon as the lawful purposes of such autopsy or dissection have been accomplished, except that the persons having possession of the body may, in their discretion, cause it to be either buried or cremated, or may retain parts of such body for scientific purposes.

N.Y. PUB. HEALTH LAW § 4215(2) (McKinney 2015).

<sup>58</sup> *Shipley*, 37 N.E.3d at 73.

<sup>59</sup> *Id.* at 72.

<sup>60</sup> *Id.* (citing N.Y. CONS. LAWS BOOK 1, STATUTES § 97, COMMENT (McKinney 2015)).

<sup>61</sup> *Shipley*, 37 N.E.3d. at 73 (citing N.Y. PUB. HEALTH LAW § 4300 (5) (McKinney 2015) "'Part' of a body includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and 'part' includes 'parts.'").



Lastly, the dissent agreed with the Appellate Division that a notification requirement should be imposed on the M.E.<sup>62</sup> The dissent reasoned that a notification requirement would ensure the next of kin are aware of the condition of the body before preparing for burial.<sup>63</sup> Without the information, the next of kin would be unable to exercise their right of sepulcher.<sup>64</sup>

### III. THE COMMON LAW RIGHT OF SEPULCHER AND ITS RELATIONSHIP TO NYPHL ARTICLE 42

The right of sepulcher is an important common law right.<sup>65</sup> Burial rituals have been performed for centuries and throughout the world.<sup>66</sup> People have a natural desire to bury their dead, and these rituals allow family members to find comfort.<sup>67</sup> New York State has an abundance of religions that practice different burial rituals and the common law right of sepulcher seeks to prevent interference with these rituals.<sup>68</sup> Specifically, the common law is the next of kin's absolute right "to the immediate possession of a decedent's body for preservation and burial."<sup>69</sup> If a "person unlawfully interferes with that right or improperly deals with the decedent's body," damages are awarded against that person "as compensation to the next of kin" for the emotional injury that resulted from their inability to conduct a proper burial.<sup>70</sup>

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<sup>62</sup> *Shiple*, 37 N.E.3d at 76.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Bambrick v. Booth Mem. Med. Ctr.*, 593 N.Y.S.2d 252, 254 (App. Div. 2d Dep't 1993).

<sup>66</sup> *Melfi*, 877 N.Y.S.2d at 304; see Elizabeth C. Burton, M.E., *Religions and the Autopsy*, MEDSCAPE (Mar. 21, 2012), <http://emedicine.medscape.com/article/1705993-overview> (illustrating that the ancient Egyptians would mummify their deceased by embalming the body and enshrouding it in strips of linen); see also *Mummification*, THE BRITISH MUSEUM, <http://www.ancientegypt.co.uk/mummies/home.html> (last visited Nov. 1, 2015) (showing that the Roman Empire imposed a religious duty upon the surviving kin to perform religious ceremonies before the actual burial).

<sup>67</sup> *Melfi*, 877 N.Y.S.2d at 304.

<sup>68</sup> See, e.g., Elizabeth C. Burton, M.E., *Religions and the Autopsy*, MEDSCAPE, Mar. 21, 2012, <http://emedicine.medscape.com/article/1705993-overview> (last visited Nov. 1, 2015) (illustrating different practices in Judaism, Hinduism, and Christianity); See also *Melfi*, 877 N.Y.S.2d at 304 (citing to various religions and cultures practicing burial rituals).

<sup>69</sup> *Rugova*, 16 N.Y.S.3d at 240.

<sup>70</sup> *Id.* See *Melfi*, 877 N.Y.S.2d at 306 (defining the term "right of *sepulcher*" to mean the right to bury a body in a tomb or monument, as opposed to "the right of *sepulture*" which is the right of interment. The terms have been fused together through the years and today the right of *sepulcher* encompasses both meanings); *sepulcher* is pronounced [sep-uh l ker].

New York State has codified the common law right of sepulcher in NYPHL § 4200.<sup>71</sup> The statute protects the next of kin's right to perform a proper burial while ensuring the public's health and concerns.<sup>72</sup> Furthermore, NYPHL article 4200 "does not circumvent or abrogate any rights or causes of action which have existed under the common law for hundreds of years."<sup>73</sup> Therefore, the purpose of the statute is to protect the right to bury a loved one under a particular religious belief.<sup>74</sup> Lastly, NYPHL § 4210(c) provides a religious exemption, which is indicative of the protection afforded to survivors.<sup>75</sup>

### A. The Creation of the Right of Sepulcher: A Broad Interpretation

*Larson v. Chase*<sup>76</sup> is the first court in the United States to hold that interference with the common law right of sepulcher will entitle the next of kin to compensation for mental suffering and injury to his or her feelings if the injury is the natural and proximate cause of the wrongful act.<sup>77</sup> A widow brought an action against the defendant for the unlawful dissection of her husband's body that caused her mental suffering and nervous shock.<sup>78</sup>

The defendant argued that the widow could not maintain a cause of action because the widow did not have a "legal interest in or right to the body," and the widow could not sustain a claim since a "body is not property."<sup>79</sup> The defendant also argued that a claim for "mental anguish and injury to the feelings" is only actionable if it is

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<sup>71</sup> N.Y. PUB. HEALTH LAW COMMENT ON § 4200 (McKinney 2015) (citing *Patterson v. Patterson*, 1875 WL 10590 (1875); citing *In re Kraemer's Estate*, 46 N.Y.S.2d 891 (Sur. Ct. Bronx Cty. 1944), which states that the burial of a deceased is "not only a common law duty in the interest of public health and decency but it has been made a statutory duty which may devolve even upon strangers; citing *Correa v. Maimonides*, 629 N.Y.S.2d 673 (Sup. Ct. Kings Cty. 1995)).

<sup>72</sup> N.Y. PUB. HEALTH LAW COMMENT ON § 4200 (McKinney 2015).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> N.Y. PUB. HEALTH LAW § 4210(c) (McKinney 2015); see [www.nyc.gov](http://www.nyc.gov), stating in their website that if a family raises a realistic religious objection based on "Judaism, Islam, Christian Science, Jehovah's Witness, or 7th Day Adventist," the family is allowed an opportunity to object).

<sup>76</sup> 50 N.W. 238 (Minn. 1891).

<sup>77</sup> *Id.* at 239.

<sup>78</sup> *Id.* at 238.

<sup>79</sup> *Id.*

accompanied by an actual physical “injury to person or property.”<sup>80</sup> However, the Supreme Court of Minnesota rejected defendant’s arguments and reasoned that the widow had a legal right to the possession of her husband’s body because she was “intimately and closely connected with the deceased by domestic ties and that this was a right which the law will recognize and protect.”<sup>81</sup>

Moreover, the court analyzed “the doctrine that a corpse is not property,” to justify its decision.<sup>82</sup> In a limited discussion of the history of the disposition and burial of the body after death, the court explained that the notion that a dead body had no property value was the rule of the land under ecclesiastical law.<sup>83</sup> In England, churches had the authority to take possession of a dead body for burial purposes, and the church enforced the rules of sepulcher.<sup>84</sup> As a result, the next of kin did not have “a property interest in the body or ashes of an ancestor, and thus no legal remedy.”<sup>85</sup> This view changed when ecclesiastical law was no longer the rule during colonial times, and courts conferred the duty of timely and decently burying a corpse on the next of kin.<sup>86</sup> However, the issue of whether the next of kin could recover for a violation of the right of sepulcher when a corpse did not have a property value remained.<sup>87</sup> Courts tried to sidestep this issue by allowing recovery of mental anguish when the tort of trespass was present.<sup>88</sup>

The court in *Larson* creatively cured this matter when it imposed a property value in the exclusive right to the possession of a decedent’s body for burial.<sup>89</sup> The court reasoned that the property value in the exclusive right led to the conclusion that the body “is his property in the broadest and most general sense of the term.”<sup>90</sup> The right allowed the widow to recover for her injuries solely for mental

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<sup>80</sup> *Id.*

<sup>81</sup> *Larson*, 50 N.W. at 239.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 238.

<sup>84</sup> *Melfi*, 877 N.Y.S.2d at 306.

<sup>85</sup> Patrick J. Mulqueen, “Only Dust Remains[?]”: *The 9/11 Memorial Litigation And the Reach of Quasi-Property Rights*, 78 BROOK. L. REV. 231, 254 (2012).

<sup>86</sup> *Id.* at 254.

<sup>87</sup> *Melfi*, 877 N.Y.S.2d at 307.

<sup>88</sup> *Id.* See also *Meagher v. Driscoll*, 99 Mass. 281 (1868) (claiming mental anguish for disturbing and removing the body of an infant buried in a cemetery under an action for trespass).

<sup>89</sup> *Larson*, 50 N.W. at 239.

<sup>90</sup> *Id.* at 239.

suffering and nervous shock without proving pecuniary damages.<sup>91</sup> In New York, *Larson* became a seminal case, and many New York courts have cited to the opinion.<sup>92</sup>

Subsequently, in *Foley v. Phelps*,<sup>93</sup> the New York Appellate Division for the First Department held that a widow had a legal right to the possession of her husband's body "in the same condition it was in when death supervened."<sup>94</sup> The deceased was a man who died at a hospital after falling into an elevator shaft.<sup>95</sup> The widow "begged and implored" the hospital not to perform an autopsy, but it was nevertheless done.<sup>96</sup>

The issue was whether the widow could maintain an action when there was no property value in human remains.<sup>97</sup> The First Department relied on *Larson* and reasoned that there was a quasi-property value in human remains.<sup>98</sup> That value was found in the duty to protect the decedent's body from violation and was "imposed by the universal feelings of mankind."<sup>99</sup> However, the court did not base its holding on a quasi-property principle.<sup>100</sup> Rather, the court relied on the widow's legal right to possess the decedent's body for purposes of burying the "corpse, and to preserve its remains."<sup>101</sup> Finally, the court required the return of the decedent's body in the same condition that it was in at the time death occurred, and "not merely to such a hacked, hewed, and mutilated corpse as some stranger."<sup>102</sup> The court

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<sup>91</sup> *Id.*

<sup>92</sup> See, e.g., *Melfi*, 877 N.Y.S.2d at 306 (citing to *Larson*); see *Foley*, 37 N.Y.S. at 472 (citing to *Larson*); see *Darcy*, 95 N.E. at 696 (citing to *Larson*); see Mulqueen, *supra* note 87 ("the seminal case of *Larson v. Chase* delineated the quasi-property right quite broadly.").

<sup>93</sup> 37 N.Y.S. 471 (App. Div. 1st Dep't 1896). Prior to *Foley*, and while N.Y. courts cited to *Larson*, the issue of whether the next of kin could recover for a violation of the right of sepulcher when a corpse did not have a property value remained. Courts tried to sidestep this issue by allowing recovery for mental anguish when the tort of trespass was present. *Melfi*, 877 N.Y.S.2d at 307. See also *Driscoll*, 99 Mass. at 284 (allowing compensation for mental anguish resulting from the disturbance and removal of an infant deceased body in an action for trespass).

<sup>94</sup> *Foley*, 37 N.Y.S. at 474.

<sup>95</sup> *Id.* at 471.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 473.

<sup>98</sup> *Id.*

<sup>99</sup> *Foley*, 37 N.Y.S. at 473 (citing to *Pierce v. Proprietors of Swan Point Cemetery*, 10 R.I. 227 (1872)).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 474.

declined to determine the measure of damages.<sup>103</sup>

In *Darcy v. Presbyterian Hosp.*,<sup>104</sup> the New York Court of Appeals decided the issue of damages and held that the surviving next of kin “is entitled to maintain the action and to recover damages for her wounded feelings and mental distress.”<sup>105</sup> The plaintiff’s son died while under the care of the defendant.<sup>106</sup> The mother asked for her son’s remains, but the hospital refused to deliver the body to a funeral director, and instead performed an autopsy.<sup>107</sup> The mother claimed that the defendant interfered with her right to possess the body when the autopsy was done and caused her wounded feelings and mental anguish.<sup>108</sup> The defendant moved to dismiss for failure to state a claim.<sup>109</sup>

The New York Court of Appeals reasoned that a cause of action did exist because the right to the possession of the body for burial purposes is a right that the law recognizes and protects.<sup>110</sup> Moreover, the law awards damages to the wounded feelings of the claimant even in the absence of pecuniary damages to protect this right.<sup>111</sup>

New York courts continued their broad interpretation in *Hassard v. Lehane*.<sup>112</sup> The Appellate Division for the First Department held that an M.E. was not justified in keeping body parts after an authorized autopsy in the absence of further direction of a coroner or district attorney.<sup>113</sup> A twenty-eight-year-old man was injured while driving home from a funeral.<sup>114</sup> The man was taken to the hospital where he later died.<sup>115</sup> The hospital’s representatives did not ask the mother for permission to conduct an autopsy.<sup>116</sup> They subsequently dissected his body, removed his spleen, cut it into little pieces, and preserved it in a jar of alcohol.<sup>117</sup> Although the deceased did not die

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<sup>103</sup> *Id.*

<sup>104</sup> 95 N.E. 695 (N.Y. 1911).

<sup>105</sup> *Id.* at 696.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Darcy*, 95 N.E. at 696.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 696.

<sup>112</sup> 128 N.Y.S. 161, 164 (App. Div. 1st Dep’t 1911).

<sup>113</sup> *Id.* at 164.

<sup>114</sup> *Id.* at 162.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Hassard*, 128 N.Y.S. at 162.

in a suspicious way, the M.E. argued his acts were justified.<sup>118</sup> However, the court found that viewing the body without an autopsy would have sufficed in determining the cause of death.<sup>119</sup>

The court reasoned that New York Code § 310 did not confer authority to retain such body parts.<sup>120</sup> The statute states in relevant part that, “[w]here a dissection has been made, requiring the burial of a dead body[,] . . . [the provisions of this article] apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.”<sup>121</sup> This section is the equivalent of the present statute, NYPHL § 4215 and uses the language “apply equally to the remains of the body.”<sup>122</sup>

Finally, in *Melfi v. Mount Sinai Hospital*,<sup>123</sup> the Appellate Division for the First Department held that a loss of sepulcher claim accrues when the next of kin becomes aware of the act that caused the interference to the right of sepulcher.<sup>124</sup> The defendant never notified the next of kin that the deceased, a famous playwright, had died.<sup>125</sup> Instead, the hospital sent the body to a community college for embalming practices and then buried the decedent in “Potter’s Field,” a mass grave site.<sup>126</sup> The Melfis learned of the death two months later when a hotel manager called Mr. Melfi’s niece.<sup>127</sup> The Melfis enlisted the help of local media to locate the final resting place of Mr. Melfi.<sup>128</sup>

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<sup>118</sup> *Id.* at 163.

<sup>119</sup> *Id.* at 164.

<sup>120</sup> *Id.* at 163.

<sup>121</sup> *Id.* (pertaining to the Penal Code § 310, all situations “where a dissection has been made, requiring the burial of a dead body, and other provisions of the Penal Code punishing interference with and injuries to it, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.”).

<sup>122</sup> N.Y. PUB. HEALTH LAW § 4215 (McKinney 2015).

In all cases in which a dissection has been made, the provisions of this article, requiring the burial or other lawful disposition of a body of a deceased person, and the provisions of law providing for the punishment of interference with or injuries to it, apply equally to the remains of the body after dissection as soon as the lawful purposes of such dissection have been accomplished.

*Id.*

<sup>123</sup> 877 N.Y.S.2d 300 (2009).

<sup>124</sup> *Id.* at 309.

<sup>125</sup> *Id.* at 302.

<sup>126</sup> *Id.* (obtaining fame through works such as “Birdbath” and “Oh! Calcutta!”).

<sup>127</sup> *Id.* at 303.

<sup>128</sup> *Melfi*, 877 N.Y.S.2d at 303.

In 2002, the decedent's brother filed a notice of claim stating that Mr. Melfi died in 2001, and the hospital failed to notify the family of the death.<sup>129</sup> The defendant moved for dismissal of the complaint arguing that under the requirement for service of claim, the family failed to file within 90-days.<sup>130</sup> The court rejected defendant's argument and reasoned that although the violation that caused the interference occurred in 2001, the plaintiff's emotional injury did not occur until the knowledge of its existence surfaced in 2002.<sup>131</sup> Therefore, "the 90-day clock" started to run in 2002 when the family became aware that Mr. Melfi's body had been mutilated and buried in Potter's field.<sup>132</sup>

### B. An Emerging Trend: A Narrow Interpretation

New York courts have begun to narrowly interpret both the common law and the statutory right of sepulcher.<sup>133</sup> Consequently, this shift from broadly interpreting the right to narrowly interpreting it has weakened the common law right of sepulcher.<sup>134</sup> This weakening of the right is evident when courts decide on similar issues but come to different conclusions based on their interpretation.<sup>135</sup>

For instance, the Appellate Division for the Second Department in *Bambrick v. Booth Mem. Med. Ctr.*<sup>136</sup> broadly interpreted NYPHL § 4214 to allow for family members to recover for the performance of an unauthorized autopsy.<sup>137</sup> Under § 4214, a hospital is required to receive written consent before administering an autopsy.<sup>138</sup> After the plaintiff sought damages for the performance of an unauthorized autopsy, the hospital argued that the failure to secure a written consent was not "dispositive of the liability issue."<sup>139</sup> However, the court rejected the defendant's argument and held that

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 309.

<sup>132</sup> *Id.* at 310.

<sup>133</sup> *See infra* notes 144, 151.

<sup>134</sup> *See, e.g.,* *Juseinoski v. N.Y. Hosp.*, 795 N.Y.S.2d 753 (App. Div. 2d Dep't 2005) (denying recovery to Muslim plaintiffs because the hospital did not conduct the autopsy).

<sup>135</sup> *See infra* note 145.

<sup>136</sup> 593 N.Y.S.2d 252 (App. Div. 2d Dep't 1993).

<sup>137</sup> *Id.* at 255.

<sup>138</sup> *Id.* at 254.

<sup>139</sup> *Id.* at 254.

the lack of a written consent did warrant the imposition of liability.<sup>140</sup> Further, the court reasoned that the purpose of the written requirement “was designed to afford relatives greater control over the disposition of the remains of their decedents.”<sup>141</sup> Moreover, such “intent is clearly consistent with the body of statutory and decisional law which places great emphasis on the rights of family members to receive the bodies of their loved ones in as undisturbed a condition as possible.”<sup>142</sup> Therefore, the court’s broad interpretation of the common law right of sepulcher allowed the family members to recover.<sup>143</sup>

In contrast, nearly six years after *Bambrick*, the First Department in *Harris-Cunningham v. Medical Examiner of New York County*<sup>144</sup> shifted to narrowly interpreting § 4214 to bar a widow from recovering for interfering with her right to properly bury her decedent husband.<sup>145</sup> The widow claimed she suffered an emotional injury when the M.E. conducted an autopsy without consent and against her religious belief.<sup>146</sup> However, the court held that under NYPHL § 4214, “the hospital’s affirmative duty to seek written consent did not extend to the M.E.”<sup>147</sup> Furthermore, under NYPHL § 4210(c), the M.E. was not obligated to seek consent.<sup>148</sup> Therefore, the court’s narrow interpretation barred the widow from recovering monetary damages for her decedent husband’s unconsented autopsy.<sup>149</sup>

Most recently the First Department broadly interpreted the common law but narrowly interpreted the statutory right to hold that the defendants were not liable for interfering with the right to a proper burial.<sup>150</sup> In *Rugova v. City of New York*,<sup>151</sup> the issue was whether the failure to notify the family of the death of their son resulted in a violation of the common law and statute.<sup>152</sup> The son died in a car ac-

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<sup>140</sup> *Id.*

<sup>141</sup> *Bambrick*, 593 N.Y.S.2d at 254.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 254.

<sup>144</sup> 690 N.Y.S.2d 253 (App. Div. 2d Dep’t 1999).

<sup>145</sup> *Id.* at 245.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Harris-Cunningham*, 690 N.Y.S.2d at 245.

<sup>150</sup> *Rugova*, 16 N.Y.S.3d at 238, 240.

<sup>151</sup> 16 N.Y.S.3d 233 (App. Div. 1st Dep’t 2015).

<sup>152</sup> *Id.* at 235.



cident, and his identity was immediately ascertained.<sup>153</sup> However, the police failed to notify the decedent's family resulting in the inability of the family to object to an autopsy based on their religious belief.<sup>154</sup> Unfortunately, the family became aware of his death after reading a newspaper article, and an autopsy was conducted contrary to decedent's religious views.<sup>155</sup>

The court held that, under the common law, the defendants were liable for interfering with the plaintiffs' right to a proper burial because the defendants' untimely notice resulted in the plaintiffs' emotional distress.<sup>156</sup> However, under the statute the defendants were not liable for their negligent act.<sup>157</sup> Because NYPHL § 4210 (c) is the religious exemption rule, it limits the authority to perform autopsies and establishes the purpose of protecting the decedent's remains and survivors' feelings.<sup>158</sup> The plaintiffs argued that in the absence of a compelling public necessity, the M.E. was required to seek consent before conducting the autopsy.<sup>159</sup> However, the court reasoned that under NYPHL article 4210(c), the M.E. was not obligated "to wait and see if an objection would be made before performing the autopsy."<sup>160</sup> Therefore, the court interpreted the same issue differently under the common law and the statutory right of sepulcher, which led to two different results.<sup>161</sup>

#### IV. DISCUSSION

The court in *Shipley* erred in applying a narrow interpretation and failed to see the importance of a notification requirement.<sup>162</sup> Case law suggests that New York courts must broadly interpret the right of sepulcher.<sup>163</sup> The right to interment is a natural act that people of all backgrounds find sacred.<sup>164</sup> New York courts have long

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<sup>153</sup> *Id.* at 238.

<sup>154</sup> *Id.* at 235.

<sup>155</sup> *Id.* at 236–38.

<sup>156</sup> *Rugova*, 16 N.Y.S.3d at 240.

<sup>157</sup> *Id.* at 238.

<sup>158</sup> *Bambrick*, 593 N.Y.S.2d at 254.

<sup>159</sup> *Rugova*, 16 N.Y.S.3d at 238.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 235.

<sup>162</sup> *See supra* Section II.B.

<sup>163</sup> *See supra* Section III. A.; MULQUEEN, *supra* note 85.

<sup>164</sup> *Melfi*, 877 N.Y.S.2d at 304.

recognized the importance of this right and thus have protected it by any means necessary.<sup>165</sup> The New York State legislature understood the significance of the common law right of sepulcher and codified it in NYPHL article 42 to reflect the public's interest in the decent burial of unknown decedents.<sup>166</sup>

Unfortunately, there has been a trend to narrowly interpret the right of sepulcher based on the failure of understanding its significance.<sup>167</sup> For instance, in *Harris-Cunningham*, the First Department's omission of *Bambrick's* reasoning caused a flawed holding.<sup>168</sup> *Bambrick* explained that under the common law and statute, the control of disposition belongs to the surviving family.<sup>169</sup> Therefore, the written consent requirement was central to the issue of liability because it maintained the control in the next of kin.<sup>170</sup> However, the court in *Harris-Cunningham* misunderstood the purpose of the written consent requirement when it neglected to extend the meaning of hospitals to include an M.E.<sup>171</sup> Similar to hospitals, the M.E. is authorized to perform autopsies.<sup>172</sup> Hence, an M.E. should also be required to receive a written consent before a dissection.<sup>173</sup> Lastly, *Harris-Cunningham* misplaced the control of disposition in the M.E., contrary to the common law and statutory purpose.<sup>174</sup>

There is also a trend to allow recovery under the common law but to deny it under the statute.<sup>175</sup> However, the common law and the statutory right of sepulcher go hand in hand.<sup>176</sup> NYPHL article 42 does not revoke the age old law of sepulcher; rather, it upholds it.<sup>177</sup> For example, in *Rugova*, the plaintiff recovered for emotional distress because defendant's untimely notice resulted in an interference with the immediate possession of the body and burial.<sup>178</sup> However, under

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<sup>165</sup> MULQUEEN, *supra* note 85.

<sup>166</sup> See *supra* Section III.

<sup>167</sup> See, e.g., *Juseinoski*, 795 N.Y.S.2d at 756 (denying recovery to Muslim plaintiffs because the hospital did not conduct the autopsy).

<sup>168</sup> *Harris-Cunningham*, 690 N.Y.S.2d at 254.

<sup>169</sup> *Bambrick*, 593 N.Y.S.2d at 254.

<sup>170</sup> *Id.*

<sup>171</sup> *Harris-Cunningham*, 690 N.Y.S.2d at 254.

<sup>172</sup> N.Y. PUB. HEALTH LAW § 4209 (McKinney 2015).

<sup>173</sup> N.Y. PUB. HEALTH LAW COMMENT ON § 4200 (McKinney 2015).

<sup>174</sup> *Bambrick*, 593 N.Y.S.2d at 254.

<sup>175</sup> *Rugova*, 16 N.Y.S.3d at 235.

<sup>176</sup> See *supra* note 71.

<sup>177</sup> See *supra* note 71.

<sup>178</sup> *Rugova*, 16 N.Y.S.3d at 240.

NYPHL § 4210(c), the defendant was not liable for its negligent act.<sup>179</sup>

The plaintiff's argument that in the absence of a compelling public necessity, the M.E. was required to seek consent before conducting the autopsy made sense because if there is no urgent need to perform the autopsy, i.e., a compelling public necessity, the M.E. should not arbitrarily take away the next of kin's right to object.<sup>180</sup> Furthermore, the court distorted the meaning of NYPHL § 4210(c) when it held that first there must be an objection to an autopsy before a compelling public necessity is required.<sup>181</sup> Alarming, the court acknowledged that the lack of notice was the obvious reason for the inability to raise an objection.<sup>182</sup> Yet, the court refused to interpret the statute broadly to allow recovery.<sup>183</sup> This narrow interpretation robbed the survivor's right to object and unreasonably contradicted the purpose of the common law and statutory right of sepulcher.<sup>184</sup>

*Shiple*y continued this trend by failing to see the importance of the next of kin's right of sepulcher.<sup>185</sup> First, when a statutory scheme that protects a certain class does not provide for civil liability, a court may impose liability to further the statutory purpose—something that the court in *Shiple*y failed to do.<sup>186</sup> Although it is clear that the common law and the statute sought to protect the surviving family members' right to the immediate possession of the body for burial purposes, the statute failed to provide civil liability for the unconsented retention of organs in violation of the common law.<sup>187</sup> Therefore, because organs and tissue samples are sometimes needed to perform a proper burial and the retention of such body parts interferes with the right of proper burial, the court in *Shiple*y should have imposed civil liability on the defendants for interfering with the Shipleys' right of sepulcher.<sup>188</sup>

Second, the court's extensive statutory analysis failed to correctly ascertain legislative intent, which resulted in a flawed

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<sup>179</sup> *Id.* at 238.

<sup>180</sup> *Rugova*, 16 N.Y.S.3d at 238; *Bambrick*, 593 N.Y.S. at 254.

<sup>181</sup> *Rugova*, 16 N.Y.S.3d at 238.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Shiple*y, 37 N.E.3d at 72 (Rivera, J., dissenting).

<sup>186</sup> *Bambrick*, 593 N.Y.S.2d at 254.

<sup>187</sup> N.Y. PUB. HEALTH LAW COMMENT ON § 4200 (McKinney 2015).

<sup>188</sup> *Shiple*y, 37 N.E.3d at 69 (Rivera, J., dissenting).

decision.<sup>189</sup> The intent of the New York State legislature was to protect the next of kin's right to properly bury their deceased.<sup>190</sup> Legislative intent is notable in the codification of the common law right of sepulcher and in the limitation of authority in conducting dissections.<sup>191</sup> The legislature intended to include organs and tissue samples within the meaning of NYPHL § 4215.<sup>192</sup> Including organs and tissue samples would preserve the integrity of the decedent's body, ensure the return of a loved one's body in as "undisturbed a condition as possible," and enable proper burial.<sup>193</sup>

Lastly, the court's reasoning that the M.E. had extensive authority in conducting autopsies is flawed because, although the M.E. has broad discretion in performing dissections, the statute tempers that discretion with guidelines.<sup>194</sup> Regrettably, the holding in *Shiple*y has placed the decision of disposition on the M.E. resulting in a violation of the right of sepulcher.<sup>195</sup> Nevertheless, a notification concerning the condition of the body would help cushion the impact of this decision.<sup>196</sup> The notice would empower survivors to make informed decisions.<sup>197</sup>

Although the court in *Shiple*y cited to policy and practical concerns for rejecting a notification requirement, the New York State legislature should amend NYPHL article 42 to include it.<sup>198</sup> A notice requirement will prevent a violation of the next of kin's right of sepulcher.<sup>199</sup> For instance, under NYPHL § 4210(c), a notice of an impending autopsy safeguards the right to object based on a religious reason.<sup>200</sup> Likewise, under NYPHL § 4214, the OCME, not just

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<sup>189</sup> See *supra* Section II.B.

<sup>190</sup> *Shiple*y, 37 N.E.3d at 70 (Rivera, J., dissenting).

<sup>191</sup> See *Bambrick*, 596 N.Y.S.2d at 254 (holding that the legislative intent is clear in the limitation to perform autopsies); see *Shiple*y, 37 N.E.3d at 70 (Rivera, J., dissenting) (reasoning that limitations in the statute "evinces an intention to ensure proper return of all body parts for burial purposes"); see N.Y. PUB. HEALTH LAW COMMENT ON § 4200 (McKinney 2015) (commenting that the legislature intended to protect next of kin).

<sup>192</sup> *Shiple*y, 37 N.E.3d at 70 (Rivera, J., dissenting).

<sup>193</sup> See *Foley*, 37 N.Y.S. at 474; see also *Shiple*y, 37 N.E.3d at 72 (Rivera, J., dissenting).

<sup>194</sup> *Shiple*y, 37 N.E.3d at 62 (majority opinion); see *Bambrick*, 593 N.Y.S.2d at 254 (holding that NYPHL article 42 limits the performance of autopsies).

<sup>195</sup> *Shiple*y, 37 N.E.3d at 77 (Rivera, J., dissenting).

<sup>196</sup> *Id.* at 61, 77.

<sup>197</sup> *Id.* at 77.

<sup>198</sup> *Id.* at 61, 77.

<sup>199</sup> *Id.* at 77.

<sup>200</sup> *Shiple*y, 37 N.E.3d at 77.

hospitals, would have to notify the next of kin of the impending dissection, which would allow the survivor to consent.<sup>201</sup> Also, under NYPHL § 4215 a decedent's body would not be released without first informing the survivor as to the condition of the body, i.e., the retention of a brain.<sup>202</sup> Finally, the legislative body is in the best position to implement a notification requirement because it can accumulate pertinent information that would address policy and practical concerns.<sup>203</sup>

## V. CONCLUSION

At first blush, protecting the feelings of a person seems insignificant. However, a closer look at the purpose of protecting those feelings makes it clear that the common law right of sepulcher is momentous. The right of sepulcher is an old common law rule that protects the next of kin's right to the immediate possession of the decedent's body for proper burial. New York courts have grasped the importance of protecting the right of sepulcher and the legislature has codified the rule within NYPHL article 42. However, although New York courts had previously broadly interpreted the common law right of sepulcher and NYPHL article 42 for the purpose of upholding the next of kin's right, it began to narrowly interpret the law resulting in a deterioration of the common law right of sepulcher. New York courts must be sensitive to the importance of the right of sepulcher, and fully understand the effect a narrow interpretation has on survivors. A notification requirement can alleviate much of the heartache. The New York legislative body should enact statutes to guide OCME in implementing a notification requirement.

*Katherine Calderon\**

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<sup>201</sup> See *Rugova*, 16 N.Y.S.3d at 238 (failing to notify the plaintiff resulted in an interference with the right to interment).

<sup>202</sup> *Shiple*, 37 N.E.3d at 77 (Rivera, J., dissenting).

<sup>203</sup> See *Macrelli v. Children's Hosp.*, 888 N.E.2d 940, 943, 945 (Mass. 2008) (holding that the M.E.'s retention of the organ did not violate statute); see also *Dorchester Reporter*, <http://www.dotnews.com/2014/making-david-s-law-story-love-grief-resolve> (last visited Nov. 1, 2015) (holding in *Macrelli* resulted in legislature passing David's law).

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Madeline. To my dad Adam, thank you for your tenacity of purpose, which guided me in fulfilling my dreams. To my mom Daisy, thank you for your unconditional support and love. Beverly, thank you for your sisterly advice. I would also like to thank my devoted husband Jay, his fearless devotion to our family has created a strong union that can never be broken. I would like to thank Bridgette Nunez for her infallible determination in helping me find my voice. Finally, Professor Sepowitz, you have inspired me during difficult times when I needed words of encouragement. You are a blessing in my life and every student at Touro. Thank you for all your support and useful advice.