

MEMORANDUM NO. 2

Subject: Study No. 31 - Doctrine
of Worthier Title

The Commission last considered this matter at its meeting of August 2 and 3, 1957. A copy of the portion of the minutes of that meeting which reports the action taken is attached.

Attached, also, is a draft of statutes to abolish the doctrine of worthier title in California which we have prepared pursuant to the Commission's direction.

Please bring your copy of the worthier title study with you to the meeting.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

ENACTMENTS PROPOSED BY STAFF
TO ABOLISH DOCTRINE OF WORTHIER TITLE

1. To abolish the doctrine as applied to testamentary transfers, amend Probate Code Section 108 as follows:

§108. Disposition to heirs, etc.: Words of donation. The common law doctrine of worthier title and the common law rule that a person cannot create a limitation in favor of his own heirs are abolished. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," "family," "nearest (or next) of kin" of any person, including the testator, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of Division II of this code. Such terms are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person. Persons taking property hereunder do so by purchase and not by descent.

Note: Probate Code Section 108 is part of Chapter 5 of Division 1 of the Code. The first section in Chapter 5, Section 100, reads as follows:

§100. Law governing: The interpretation of wills, wherever made, is governed, when relating to property within this state, by the law of this state, and the rules prescribed by this code are to be observed, unless an intention to the contrary clearly appears. (Emphasis added.)

2. To abolish the doctrine as applied to inter vivos transfers, add a new Section 1072 to the Civil Code to read as follows:

§1072. The common law doctrine of worthier title and the common law rule that a person cannot create a limitation in favor of his own heirs are abolished. An inter vivos disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," "family," "nearest (or next) of kin" of any person, including the grantor, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to suc-

ceed to the property of such person, according to the provisions of Division II of this code. Such terms are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person. Persons taking property hereunder do so by purchase and not by descent.

Note: Section 1072 would appear as part of Article IV of Chapter 1 of Title 4 of Part 4 of Division 2 of the Civil Code. Section 1053 of the Civil Code, which appears in Article II of Chapter 1, etc., reads as follows:

§1053. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two articles, includes all these instruments, unless it is specially applied to real property.

Section 1066 of the Civil Code, which is the first Section in Article IV, reads as follows:

§ 1066. Grants, how interpreted. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article.

§108. ~~Disposition-to-heirs,-etc;--Words-of-donation.~~ The law of this state does not include (1) the common law rule that a person cannot create a limitation in favor of his own heirs, or (2) a presumption or rule of construction that a testator does not intend, by a limitation to his own heirs or next of kin, to create an interest in them. The purpose of this provision is to make it clear that the so-called doctrine or rule of worthier title shall not be applied by the courts of this state in the construction of wills and that the meaning of a limitation to the testator's own heirs or next of kin shall be determined by the general rules controlling the construction of wills.

A testamentary disposition to "heirs", "relations", "nearest relations", "representatives", "legal representatives", "family", "nearest (or next) of kin" of any person, including the testator, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of Division II of this code. Such terms are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person. Persons taking property hereunder do so by donation and not by descent.

§1073. The law of this state does not include (1) the common law rule that a person cannot create a limitation in favor of his own heirs, or (2) a presumption or rule of construction that a

grantor does not/^{intend,} by a limitation to his own heirs or next of kin, to create an interest in them. The purpose of this provision is to make it clear that the so-called doctrine or rule of worthier title shall not be applied by the courts of this state in the construction of inter vivos instruments and that the meaning of a limitation to the grantor's own heirs or next of kin shall be determined by the general rules controlling the construction of such instruments.

An inter vivos disposition to "heirs", "relations", "nearest relations", "representatives", "legal representatives", "family", "nearest (or next) of kin" of any person, including the grantor, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of Division II of the Probate Code. Such terms are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person. Persons taking property hereunder do so by donation and not by descent.