#L-602 6/18/81

Memorandum 81-37

Subject: Study L-602 - Probate Code (Intestate Succession--Cutting Off the "Laughing Heir")

This memorandum concerns the extent to which remote collaterals of the decedent and the decedent's predeceased spouse should take by intestate succession.

Under existing California law, inheritance by blood relatives of the decedent is unlimited, no matter how remote the heir may be. See Prob. Code § 226. Thus, heirs may take who are so remotely related to the decedent as to feel no sense of bereavement at the loss. Such an heir has been described as the "laughing heir." See Cavers, Change in the American Family and the "Laughing Heir," 20 Iowa L. Rev. 203, 208 (1935). If no such heir may be found and the property would otherwise escheat to the state, the property goes instead to relatives of a predeceased spouse of the decedent, no matter how remote such a relative may be. See Prob. Code § 229 (d)-(e).

Unlimited inheritance has been described as an "absurd anachronism" and has long been subjected to scholarly criticism dating back to John Stuart Mill and Jeremy Bentham. See Cavers, supra at 204 n.2. Following this view and "in line with modern policy," the UPC provides for inheritance by lineal descendants of the decedent, by parents and their descendants, and by grandparents and their descendants, but eliminates more remote relatives traced through great-grandparents and more remote ancestors. Official Comment to UPC § 2-103. Unlike California law, the UPC does not provide for inheritance by relatives of a predeceased spouse of the decedent: If property does not pass to near relatives of the decedent under the UPC, it escheats to the state. UPC § 2-105.

The policy arguments in favor of restricting inheritance to nearer relatives as under the UPC are the following:

(1) It will simplify the administration of estates, and of trusts where there is a final gift to "heirs," by avoiding the delay and expense of attempting to find remote missing heirs and by minimizing problems of service of notice. Niles, Probate Reform in California, 31 Hast. L.J. 185, 200 n.98 (1979).

(2) It will eliminate the standing of remote heirs to bring will contests or trust litigation. Niles, supra at 200-01; see Breidenbach, Will Contests, in 2 California Decedent Estate Administration §§ 21.7, 21.10, at 897-98 (Cal. Cont. Ed. Bar 1975). Remote heirs may bring an unmeritorious will contest merely to coerce a settlement. In the notorious case of Matter of Wendel, 143 Misc. 480, 257 N.Y.S. 87 (1932), some 2,300 persons sought to join in overturning a will leaving a large estate to charity. A two-million dollar settlement was made with four relatives in the fifth degree who may have agreed to share this sum with 60 or 70 relatives in the sixth, seventh, and eighth degrees. One claimant was ultimately convicted of having fabricated evidence of his consanguinity. Cavers, supra at 210 n.16. Professor Evans (the draftsman of the 1931 Probate Code) has said that there is prolonged litigation in the California from time to time, brought by remote heirs to establish their relationship to the decedent:

> People whom the decedent did not know and who did not know the decedent appear to claim his estate. There have been several long and costly trials in the courts of San Francisco between groups of relatives none of whom claimed to be related more closely than in the fifth degree.
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> There is, of course, the constant invitation to heir hunting and false testimony, as well as the burden placed upon the courts. This waste of the time of the courts and of the taxpayers' money serves no useful public or private purpose.

Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 613 (1931).

(3) It will remove an important source of uncertainty in land titles. Cavers, supra at 211, 214.

(4) It may create less resentment by remote heirs than perpetuating an illusory "right" to inherit which is defeated by confiscatory rates of taxation. Cavers, supra at 214. Estate taxes are higher for more remote relatives (id.), and eliminating inheritance is not unreasonable when the major portion of the inherited interest is taken for taxes. Niles, supra at 200-01.

The policy arguments against restricting inheritance to nearer relatives are the following:

(1) It may be intention-defeating, since most decedents would probably prefer their estate to pass to remote relatives rather than to

the state. This was the view of the State Bar in 1973. State Bar of California, The Uniform Probate Code: Analysis and Critique 30 (1973). (The possibility of escheat is minimized under California law, however, by the provision that if there are no blood heirs to take from the decedent, the property passes to specified relatives of a predeceased spouse--see discussion below).

(2) Invalid wills may be probated because there is no one with standing to contest the will. Cavers, supra at 213. (In California, if the state stands to benefit by escheat, the Attorney General may contest the will. In re Peterson, 138 Cal. App. 443, 32 P.2d 423 (1934).)

(3) Where the decedent is a minor and thus never attained testamentary capacity, broader collateral succession may be desirable because the minor's property was probably obtained through gift or inheritance from ancestors, and for the additional reason that the willingness of collaterals to maintain a home for an orphaned minor would be promoted. Cavers, supra at 213. (No doubt Professor Niles would object to the first portion of this argument as being another variant of the ancestral property doctrine.)

The staff finds the arguments in favor of cutting off remote collaterals more persuasive than the counter-arguments, both with respect to remote collaterals of the decedent and with respect to remote collaterals of the decedent's predeceased spouse. Although some states have taken an intermediate position (Missouri, for example, limits collateral inheritance to persons related to the decedent at least as closely as the ninth degree), the staff favors the UPC provision which limits succession to collaterals traced through parents or grandparents.

The staff would modify the UPC, however, to preserve the California provisions for inheritance by near relatives of a predeceased spouse (i.e., issue of the predeceased spouse, parents and issue of parents, and grandparents and issue of grandparents) in preference to having the property escheat to the state. Professor Niles appears to support this view. See Niles, supra at 207.

Respectfully submitted,

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