

#L-654

9/9/83

First Supplement to Memorandum 83-63

Subject: Study L-654 - Ancestral Property Doctrine

Attached is a letter from our consultant, Professor Gail Boreman Bird, urging the total elimination of the ancestral property doctrine.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW
200 MCALLISTER STREET
SAN FRANCISCO, CALIFORNIA 94102-4978

September 3, 1983

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear John:

Unfortunately my teaching commitments will prevent my attending the September meeting of the Commission. I am in the process of reviewing the materials relating to the September agenda items, and have a few comments on some of the proposals.

Ancestral Property Doctrine (Memorandum 83-63)

I am in favor of totally eliminating the ancestral property doctrine for the reasons outlined at pages 2-3 of the memorandum. The existing statute (Probate Code §229) is confusing and breeds litigation. Although the compromise version contained in AB 25 might mitigate some of the problems, it certainly does not eliminate them. Furthermore, I do not think that the definition of the "portion of decedent's estate attributable to the predeceased spouse" contained at § 6402.5(b) is terribly clear. If subsections 1, 2 and 3 are taken together, it seems that all (i.e. both halves) of the former community real property would be included within the definition, and hence pass to the relatives of the predeceased spouse under §6402.5(a). I doubt that this result is intended. California is one of the few jurisdictions retaining such a statute; indeed, it may be the only one. Ohio repealed a similar statute in 1976. (See Ritchie, Alford & Effland, Decedents' Estates and Trusts (6th ed. 1982) p.109, n.61).

I will continue to review the probate materials, and if I have any further comments, I will send them to you before the meeting.

Very truly yours,



Gail Boreman Bird

GBB/dbv