rm38
12/13/88

Memorandum 89-17

Study L-654 - In-Law Inheritance

At the last meeting, the Commission decided to limit the in-law inheritance statute (Prob. Code § 6402.5) to apply only where the decedent's predeceased spouse died not more than two years before decedent (the same time period to apply to real and personal property), and to abolish tracing so the statute will apply only to the specific property received from the predeceased spouse. A staff draft of a Tentative Recommendation to do this is attached as Exhibit 1.

In addition, the staff draft limits in-law inheritance to apply only when both spouses die domiciled in California, and to apply only to property acquired in California. This will reduce the likelihood that in-law inheritance would be unexpected by the spouses.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Exhibit 1

Staff Draft

TENTATIVE RECOMMENDATION

relating to

IN-LAW INHERITANCE

BACKGROUND

If a decedent dies intestate without surviving spouse or issue and was predeceased by a spouse, the decedent's property must be divided into that passing to his or her heirs under the usual intestate succession rules,[1] and that passing to the predeceased spouse's heirs

---

1. Prob. Code § 6402. Under Section 6402, property not attributable to the predeceased spouse passes:
(1) To the decedent's surviving parent or parents.
(2) If there is no surviving parent, to surviving issue of the decedent's parent or parents.
(3) If there is no surviving issue of a parent of the decedent, to the decedent's surviving grandparent or grandparents.
(4) If there is no surviving grandparent, to issue of the decedent's grandparent or grandparents.
(5) If there are no takers in the foregoing categories, to surviving issue of decedent's predeceased spouse.
(6) If there are no takers in the foregoing categories, to decedent's next of kin.
(7) If there are no takers in the foregoing categories, to the surviving parent or parents of a predeceased spouse.
(8) If there are no takers in the foregoing categories, to surviving issue of a parent of the predeceased spouse.

under the in-law inheritance statute.[2] The in-law inheritance statute applies to the following property:

(1) Real property attributable to the decedent's predeceased spouse who died not more than 15 years before the decedent.

(2) Personal property attributable to the decedent's predeceased spouse who died not more than five years before the decedent, for which there is a written record of title or ownership, and the aggregate value of which is $10,000 or more.

California is the only state with an in-law inheritance

---

2. Prob. Code § 6402.5. Under Section 6402.5, if decedent dies without surviving spouse or issue, real property attributable to decedent's predeceased spouse who died not more than 15 years before decedent, and personal property attributable to decedent's predeceased spouse who died not more than five years before decedent for which there is a written record of title or ownership and the aggregate value of which is $10,000 or more, goes back to relatives of the predeceased spouse as follows:

(1) To surviving issue of the predeceased spouse.

(2) If there is no surviving issue, to the surviving parent or parents of the predeceased spouse.

(3) If there is no surviving parent, to surviving issue of the parent or parents of the predeceased spouse.

If there is no surviving issue, parent, or issue of a parent of the predeceased spouse, property attributable to the predeceased spouse goes to decedent's relatives, the same as decedent's other intestate property. See *supra* note 1.

statute.[3] Six states other than California have had in-law inheritance at one time or another: Idaho, Indiana, New Mexico, New York, Ohio, and Oklahoma.[4] All six of these states have abolished in-law inheritance.

Complexity Caused by Special Rule for In-Law Inheritance

The in-law inheritance statute requires that the estate be separated into property attributable to the predeceased spouse and property not so attributable. This causes difficult problems of tracing, commingling, and apportionment.[5] Two recent cases illustrate these problems.[6]

Tracing. In *Estate of Luke,*[7] Raymond Luke died intestate in California without surviving spouse or issue. His predeceased spouse, Catherine, had died six years earlier in Iowa. Catherine's heirs argued that Raymond's whole estate was traceable to property acquired in Illinois and Iowa during marriage and brought to California after

---

3. In 1982, the Commission recommended complete repeal of California's in-law inheritance statute. See *Tentative Recommendation Relating to Wills and Intestate Succession,* 16 Cal. L. Revision Comm'n Reports 2301, 2335-38 (1982). However, as the law was finally enacted in 1983, in-law inheritance was kept, but limited to real property received from a predeceased spouse who died not more than 15 years before the decedent. 1983 Cal. Stat. ch. 842, § 55. It was thought that by limiting in-law inheritance to real property, it would apply only to property with a clear chain of title, and that by limiting it to the chase where the predeceased spouse died not more than 15 years before the decedent, it would apply in the case where decedent would be more likely to want to provide for family members of the predeceased spouse, and perhaps also would tend to minimize some of the more difficult tracing problems. In 1986, in-law inheritance was further expanded to apply also to personal property with a written record of title or ownership and an aggregate value of $10,000 or more received from a predeceased spouse who died not more than five years before the decedent. 1986 Cal. Stat. ch. 873, § 1.

4. Annot., 49 A.L.R.2d 391 (1957). See also 7 R. Powell, Real Property ¶ 1001, at 673-77 (rev. ed. 1987).

5. Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-Laws,* 8 Community Prop. J. 107, 134 (1981).

6. Estate of Luke, 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987); Estate of Nereson, 194 Cal. App. 3d 865, _____ Cal. Rptr. _____ (1987).

7. 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987).

Catherine's death, and should therefore be treated as former community property subject to in-law inheritance. Raymond's heirs contended that his estate was partly traceable to separate property he owned before marriage, and relied on the presumption that property in the estate of a surviving spouse is the separate property of that spouse.

Raymond had owned a drug business before marriage, and continued to manage it for 10 years after marriage. Then he sold the drug business and used the proceeds to buy a farm where he and Catherine lived and worked for 42 years. Using earnings from the farm and other savings, he bought a home in his own name only, but a few days later changed the title to joint tenancy with Catherine.

The court rejected the contention of Raymond's heirs that funds to purchase the home were traceable to Raymond's separate property drug business. Because the home was acquired during marriage, it was presumed to be community property.[8] This shifted the burden of proof to Raymond's heirs. They failed to meet this burden because (1) they failed to trace the funds directly to the drug business, and (2) failed to show that when the home was purchased all community income had been exhausted by family expenses.[9]

Raymond's estate included cash assets of $224,722 in various banks and savings and loan institutions. The court held Catherine's heirs had overcome the presumption that property in the estate of a surviving spouse is the separate property of that spouse by a process of elimination: At Catherine's death, all the couple's property was community, Raymond died only six years after Catherine, and Raymond was not employed and had no significant income after Catherine's death.[10]

---

8. Civ. Code § 5110. For the purpose of in-law inheritance, property brought to California from another state must be reclassified as separate or community property as though it had been acquired in California. Estate of Perkins, 21 Cal. 2d 561, 570, 134 P.2d 231 (1943); Estate of Luke, 194 Cal. App. 3d 1006, 1012, 240 Cal. Rptr. 84 (1987); 7 B. Witkin, Summary of California Law *Wills and Probate* § 82, at 5602 (8th ed. 1974).

9. Estate of Luke, 194 Cal. App. 3d 1006, 1018, 240 Cal. Rptr. 84 (1987).

10. Estate of Luke, 194 Cal. App. 3d 1006, 1013, 1020, 240 Cal. Rptr. 84 (1987).

Since Catherine's heirs met their burden of proof and Raymond's heirs did not, the court treated all of Raymond's estate as former community property subject to in-law inheritance. The court noted that it had to "unravel a snarl of conflicting presumptions and cases reaching apparently inconsistent conclusions . . . . The task is not an easy one."[11]

Apportionment. In *Estate of Nereson,*[12] Oberlin Nereson died intestate in California in 1980 without surviving spouse or issue. His predeceased spouse, Ethel, had died in California in 1972. The issue concerned their residence, formerly their community property. At Ethel's death, the residence had a gross value of $50,000. The remaining balance on the original mortgage of $27,500 was $7,177. Oberlin continued to make mortgage payments on the house after Ethel's death. He made the last payment in 1978. Two weeks before Oberlin's death, a fire damaged the residence. In its damaged condition, it was worth $160,000. Fire insurance proceeds of $47,096 were paid to his estate after his death.

Oberlin's sister, Marjorie, was his only blood heir and was administratrix of his estate. She used the fire insurance proceeds to repair the residence, and also used $5,529 of her own funds. After repair, the house was valued at $220,000.

Ethel's two sisters urged application of the in-law inheritance statute. Because the residence had been community property, it was clear that the in-law inheritance statute applied, and that Ethel's sisters were entitled to an interest. But Marjorie argued that her share should be adjusted upward, and the share of Ethel's sisters adjusted downward, for two reasons:

(1) The insurance proceeds were Oberlin's separate property not subject to in-law inheritance because the premium was paid in 1980, long after Ethel's death. Marjorie asked that an amount equal to the insurance proceeds be treated as her proper inheritance.

---

11. Estate of Luke, 194 Cal. App. 3d 1006, 1010-11, 240 Cal. Rptr. 84 (1987).

12. Estate of Nereson, 194 Cal. App. 3d 865, _____ Cal. Rptr. (1987).

(2) Since Oberlin paid the balance of the mortgage after the community was dissolved by Ethel's death, the share of Ethel's sisters should be adjusted downward according to some apportionment formula.

The court agreed with both of Marjorie's arguments, and reduced the share passing to Ethel's sisters by the amount of the fire insurance proceeds and a pro rata share based on the proportion of the mortgage payments after Ethel's death to the total mortgage payments.

The court's holding on Marjorie's second argument requires apportionment of the total value of the asset to separate out the portion attributable to the predeceased spouse from the portion not so attributable. This is an exception to intestate succession law generally, under which there is no apportionment. Apportionment requires resort to community property law as well as to intestate succession law.[13]

Under community property law, when there have been both community and separate property contributions to property that has appreciated in value, the court must allocate the proper portion of enhanced value to the separate and community interests.[14] There is no invariable formula or precise standard. Allocation is a question of fact governed by the circumstances of each case.[15] The trial court has considerable discretion in choosing the method for allocating separate and community property interests.[16]

One commonly used rule of apportionment in community property law is that of *Pereira v. Pereira*.[17] Under *Pereira,* the separate property contribution to community property is allowed the usual interest on a

---

13. Estate of Nereson, 194 Cal. App. 3d 865, 871, _____ Cal. Rptr. _____ (1987).

14. 7 B. Witkin, Summary of California Law *Community Property* § 25, at 5119 (8th ed. 1974).

15. 7 B. Witkin, Summary of California Law *Community Property* § 26, at 5120 (8th ed. 1974).

16. Estate of Nereson, 194 Cal. App. 3d 865, 876, _____ Cal. Rptr. _____ (1987).

17. 156 Cal. 1, 103 P. 488 (1909).

long-term investment well secured -- for example, seven percent.[18] In the *Nereson* case, the mortgage payments made from separate property were $7,177. If we apply the *Pereira* rule and allow seven percent interest on the accumulating mortgage payments, that yields about $2,000 as the return on separate property. The result is that most of the appreciation in value (about $115,000)[19] accrues to the community property interest, not the separate property interest.

The other commonly used rule of apportionment in community property law is that of *Van Camp v. Van Camp*.[20] In *Van Camp*, the husband formed a corporation with separate property funds. He worked for the corporation and received a salary. The salary was obviously community property, but the court held that corporate dividends were his separate property. The court declined to apportion any of the corporate earnings to the husband's skill and labor, a community contribution. Under *Van Camp*, the reasonable value of the husband's services is allocated to the community interest. The rest of the increase in value remains separate property. This is the reverse of the *Pereira* rule (reasonable return to separate contribution, bulk of appreciation to community interest). If we apply the *Van Camp* rule to the *Nereson* case and allow a seven percent return to the community interest, that yields about $24,000 as the return on community property. The result is that most of the appreciation in value (about $93,000) accrues to the separate property interest, not the community interest.

---

18. 7 B. Witkin, Summary of California Law *Community Property* § 28, at 5121 (8th ed. 1974).

19. At Ethel's death, the home was entirely community property and had a net value of $42,823 (gross value of $50,000, less mortgage balance of $7,177). At Oberlin's death, the mortgage had been paid off and the home was worth $160,000. Thus the increase in net value between the deaths of Ethel and Oberlin was $117,177 ($160,000 less $42,823). This is the amount that must be apportioned between separate and community property.

20. 53 Cal. App. 17, 199 P. 885 (1921).

In summary, the *Pereira* and *Van Camp* rules yield the following results in the *Nereson* case:

	Community property portion	Separate property portion
Pereira rule:	$115,000	$2,000
Van Camp rule:	$24,000	$93,000

In making a proper apportionment under the in-law inheritance statute, the court may use the *Pereira* rule, the *Van Camp* rule, or some other formula.[21] Thus it is impossible to tell what the apportionment will be without actually litigating the issue.

Justification Given for In-Law Inheritance Statute

The main argument in favor of in-law inheritance is that it is needed to protect children of a prior marriage of the predeceased spouse, especially when the two spouses die within a short period of each other. Assume that husband and wife are killed in an accident. The wife has a child by a former marriage and the husband has a brother, his nearest surviving relative. Assume that they have $500,000 of community property, that the husband has $300,000 of separate property, and that the wife has $100,000 of separate property. How the property will pass depends on the order of their deaths, and on whether the in-law inheritance statute applies:

> **Example 1. Wife survives husband by five minutes.** Wife inherits from husband his half of the community property ($250,000), and half of his separate property ($150,000). On the wife's death, her child receives $750,000, consisting of the following:
>
> (1) All of the community property ($500,000) (the wife's half and the half she inherited from her husband).
>
> (2) All of the wife's separate property ($100,000).
>
> (3) The share of the husband's separate property inherited by the wife ($150,000).
>
> The husband's brother receives $150,000 (a half share of $300,000, the portion of the husband's separate property not passing to the wife).
>
> The in-law inheritance statute does not apply in this case, because the surviving spouse (the wife) has issue surviving.

---

21. Estate of Nereson, 194 Cal. App. 3d 865, 876, _____ Cal. Rptr. _____ (1987).

Example 2. Husband survives wife by five minutes; in-law inheritance statute does not apply. Husband inherits from wife her half of the community property ($250,000), and half of her separate property ($50,000). On the husband's death, his brother receives $850,000, consisting of the following:

(1) All of the community property ($500,000) (the husband's half and the half he inherited from his wife).

(2) All of the husband's separate property ($300,000).

(3) The share of the wife's separate property inherited by the husband ($50,000).

The wife's child receives $50,000 (a half share of $100,000, the portion of the wife's separate property not passing to the husband).

Example 3. Husband survives wife by five minutes; in-law inheritance statute does apply. Husband inherits from wife her half of the community property ($250,000), and half of her separate property ($50,000). On the husband's death, his estate must be segregated into the portion attributable to his predeceased spouse ($300,000) and the portion not so attributable ($550,000) (his half of the community property -- $250,000 -- and his separate property -- $300,000). His brother receives $550,000, consisting of the following:

(1) The husband's half of the community property ($250,000).

(2) All of the husband's separate property ($300,000).

The wife's child receives $350,000, consisting of the following:

(1) Half of the community property ($250,000) (the wife's half which comes back from the husband's estate under in-law inheritance).

(2) All of the wife's separate property ($100,000) (the half the child inherited on the wife's death and the half which comes back from the husband's estate under in-law inheritance).

The results in these three examples are summarized in the following table:

	Husband dies first	Wife dies first (no in-law inh.)	Wife dies first (with in-law inh.)
To W's child:	$750,000	$50,000	$350,000
To H's brother:	$150,000	$850,000	$550,000

These examples show that the in-law inheritance statute does protect the wife's child of her former marriage when she dies first, and also tends to reduce the disparity of result, depending on the order of deaths. The Commission thinks a better way to deal with the problem of disparate results depending on the order of deaths in a

treat the deaths as simultaneous if they occur within 120 hours of each other, thereby awarding the husband's separate property and his half of the community property to his heirs, and the wife's separate property and her half of the community property to her heirs. In the above examples, this solution would divide their combined estates as follows, without regard to the order of their deaths: $350,000 to the wife's child (the wife's $250,000 share of community property and her $100,000 of separate property), and $550,000 to the husband's brother (the husband's $250,000 share of community property and his $300,000 of separate property). The Commission has made a tentative recommendation to revise general intestate succession law to do this.[22]

However, the spouses may die more than 120 hours apart, yet only a few days or weeks apart. Arguably, a special rule of in-law inheritance may be needed to protect children of a prior marriage of the first-to-die spouse in this situation. A distinguished law professor has written that this objective may be better accomplished by improving the priority such children have under general intestate succession law to take all of the decedent's property, instead of creating a special rule for a limited class of property -- that attributable to a predeceased spouse.[23] The new intestate succession law, enacted in 1983,[24] did improve the position of issue of the decedent's predeceased spouse: If decedent dies without a surviving spouse, issue, parent, issue of a parent, grandparent, or issue of a grandparent, the property goes to surviving issue of a predeceased spouse.[25] This improvement of the position of children of a prior marriage under general intestate succession law is a better way to protect such children than is the in-law inheritance statute which only applies to a limited class of property and causes so much complexity.

---

22. See Cal. L. Revision Comm'n, *Tentative Recommendation Relating to 120-Hour Survival to Take by Intestacy* (December 1988).

23. Niles, *Probate Reform in California,* 31 Hastings L.J. 185, 207 (1979).

24. 1983 Cal. Stat. ch. 842.

25. Prob. Code § 6402(e).

RECOMMENDATIONS

The Commission recommends limiting in-law inheritance as follows, to deal with the most serious problems of tracing, commingling, and apportionment:[26]

(1) Shorten the maximum time that may elapse between the deaths of the spouses from 15 years to two years for real property, and from five years to two years for personal property. This will provide a measure of equity for heirs of the first-to-die spouse where the second spouse dies without a will within a short period after the first-to-die spouse.[27] But the intestate succession law is a kind of statutory will substitute,[28] and should therefore carry out the intent of the last-to-die spouse. Where the last-to-die spouse dies without a will many years after the other, the likelihood that the last-to-die spouse would have provided by will for heirs of the predeceased spouse is substantially reduced, making the complexity of in-law inheritance more difficult to justify.

(2) Abolish tracing, so the special rule of in-law inheritance will apply only to the specific property received from the predeceased spouse. As *Estate of Luke*[29] illustrates, tracing creates some of the most difficult problems of in-law inheritance, which may require examining property transactions over a half century or longer.[30]

(3) Limit the special rule of in-law inheritance to apply only when both spouses die domiciled in California, and to apply only to

---

26. The Commission is not recommending complete repeal of in-law inheritance, because it may provide a measure of equity where the two spouses die more than 120 hours apart, but still within a few days or weeks of each other. See *supra* text accompanying notes 23-25.

27. The Commission has made a tentative recommendation to deal with the case where the two spouses die within 120 hours of each other. See *supra* note 22.

28. Niles, *Probate Reform in California,* 31 Hastings L.J. 185, 200 (1979).

29. 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987).

30. In Estate of Luke, 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987), the Court of Appeal in 1987 had to consider decedent's drug business which he owned before his marriage in 1926, more than a half century earlier.

property acquired in California. Since no state other than California has in-law inheritance,[31] when a person brings property to California acquired in another state from a predeceased spouse, the likelihood is that application of California's special in-law inheritance rule would be wholly unexpected by the spouses.[32]

---

31. See *supra* text accompanying notes 3-4.

32. In Estate of Luke, 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987), Catherine and Raymond Luke had spent most of their lives in Iowa. Raymond came to California late in life and after Catherine's death. It is unlikely that Raymond was aware of California's in-law inheritance statute. Moreover, since in-law inheritance is unknown in Iowa, it is likely that either Raymond or Catherine ever gave any thought to the possibility of such a special rule of succession. Intestate succession law should pass the property the way the average decedent would want if the decedent had a will. *Id.* at 1011, 240 Cal. Rptr. at _____. It is likely that if Raymond had had an opportunity to express an opinion, application of California's in-law inheritance statute would have caught him by surprise, and would have distributed his property in a manner contrary to his wishes.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 6402.5 of the Probate Code, relating to intestate succession.

The people of the State of California do enact as follows:

Probate Code § 6402.5 (amended). Portion of estate attributable to decedent's predeceased spouse

SECTION 1. Section 6402.5 of the Probate Code is amended to read:

6402.5. (a) For purposes of distributing real property under this section , if the decedent had a predeceased spouse who died domiciled in this state not more than ~~15~~ two years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the

portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(b) For purposes of distributing personal property under this section , if the decedent had a predeceased spouse who died domiciled in this state not more than ~~five~~ two years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(c) For purposes of disposing of personal property under subdivision (b), the claimant heir bears the burden of proof to show the exact personal property to be disposed of to the heir.

(d) For purposes of providing notice under any provision of this code with respect to an estate that may include personal property subject to distribution under subdivision (b), if the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate is believed in good faith by the petitioning party to be less than ten thousand dollars ($10,000), the petitioning party need not give notice to the issue or next of kin of the predeceased spouse. If the personal property is subsequently determined to have an aggregate fair market value in excess of ten thousand dollars ($10,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law.

(e) For the purposes of disposing of property pursuant to subdivision (b), "personal property" means that personal property in which there is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more.

(f) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:

(1) One-half of the community property in existence at the time of the death of the predeceased spouse.

(2) One-half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.

(3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(4) Any separate property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(g) ~~For the purposes of this section, quasi-community property shall be treated the same as community property.~~ This section does not apply to property acquired outside this state. This section does not apply if the decedent dies domiciled outside this state. This section only applies to the specific property received from the predeceased spouse by the decedent.

(h) For the purposes of this section:

(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

Comment. Subdivisions (a), (b), and (g) of Section 6402.5 are amended to limit application of the section as follows:

(1) To apply only where both spouses die domiciled in California.

(2) To apply only to property acquired in California.

(3) To apply only to the specific property received from the predeceased spouse by the decedent, abolishing tracing.

(4) To apply to real property where the decedent's predeceased spouse died not more than two years before the decedent, rather than 15 years as formerly.

(5) To apply to personal property where the decedent's predeceased spouse died not more than two years before the decedent, rather than five years as formerly.

Uncodified transitional provision

SEC. 2. This act does not apply in any case where the decedent died before the operative date of this act, and such case continues to be governed by the law applicable to the case before the operative date of this act.