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Second Supplement to Memorandum 89-17

Subject: Study L-654 - In-Law Inheritance (letter from Professor Gail Bird)

Attached to this Supplement as Exhibit 1 is a letter from Professor Gail Bird of Hastings College of the Law. Professor Bird recommends that, rather than amending the in-law inheritance statute to limit it as proposed in the basic Memorandum, we should instead recommend its complete repeal. She says that the in-law inheritance statute "adds unnecessary complexity" to California intestate succession law, and that complete repeal would be in keeping with the "modern trend."

Respectfully submitted,

Robert J. Murphy III
Staff Counsel



UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

CA LAW REV. COMM'N
JAN 30 1989
RECEIVED

GAIL BOREMAN BIRD
Professor of Law

27 January 1989

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto CA 94303

Dear John:

I am writing with regard to the Staff Draft of the Tentative Recommendation relating to In-Law Inheritance (Memorandum 89-17). The tentative recommendation provides for further limitation of the "in-law inheritance" statute (Probate Code Section 6402.5). Rather than amending the statute to limit its application, I urge that the Commission recommend abolition of the statute in its entirety.

Even with the additional limitations provided by the tentative recommendation, the statute adds unnecessary complexity to the California intestate succession scheme. I do not believe that the minimal benefits that the statute might achieve justify the complexity and probable ensuing litigation. As the staff draft indicates, California is the only jurisdiction retaining vestiges of the ancestral property doctrine, and I think that it is high time that we follow the modern trend and abolish the doctrine in its entirety.

The predecessor statutes to Section 6402.5 were frequently revised, led to protracted and bitter inter-family litigation, and were described by Professor Ferrier in 1937 as "productive of complexities, anomalies and injustices in the law of descent." Ferrier, Rules of Desecent under Probate Code Sections 228 and 229

John H. DeMouilly
January 27, 1989
Page 2

and Proposed Amendments, 25 Calif. L. Rev. 261 (1937). Professor Niles again argued cogently for their abolition in 1979. Niles, Probate Reform in California, 31 Hastings L.J. 185, 204-208 (1979). I think abolition is long overdue.

If you have any questions concerning my views on this issue, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Gail Boreman Bird". The signature is written in dark ink and is positioned above the printed name.

Gail Boreman Bird