

#L-625

2/22/83

First Supplement to Memorandum 83-22

Subject: Study L-625 - Probate Law (Assembly Bill No. 25)

The Minority Consultant to the Assembly Judiciary Committee has requested further information concerning the Commission's proposal in Assembly Bill No. 25 to adopt the UPC rule that divorce revokes a disposition by will to the former spouse. The Minority Consultant asked whether the Commission has background research indicating the rule in the various states on this matter. In response to this request, a Commission employed law student prepared the attached table. We believe that this table will be of interest to you.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

REVOCATION OF WILL BY DIVORCE

<u>JURISDICTION</u>	<u>DOES DIVORCE REVOKE WILL?</u>	<u>HAS IT ADOPTED UCC § 2-508?</u>	<u>RELEVANT STATUTE</u>	<u>APPLICABLE CASE(S)</u>	<u>REMARKS</u>
ALABAMA	Yes, as to former spouse	Yes	Code of Ala. § 43-8-137 (1975)		
ALASKA	Yes, as to former spouse	Yes	Alaska Stat. § 13.11.185 (1975)		
ARIZONA	Yes, as to former spouse	Yes	Ariz. Rev. Stat. § 14-2508 (1975)		
ARKANSAS	Yes, as to former spouse		Ark. Stat. Ann. § 60-407 (1971)	(cites statute) <u>Mosley & Mosley</u> (1950), 217 Ark. 536, 231 S.W.2d 99 18 A.L.R.2d 695	
CALIFORNIA	No				
COLORADO	Yes, as to divorced spouse	Yes	Colo. Rev. Stat. § 15-11-508 (1973)		
CONNECTICUT	Yes, completely		Conn. Gen. Stat. Ann. § 45-162(b) (West Supp. 1976)		
DELAWARE	Yes, as to divorced spouse	Yes	Del. Code tit. 12, § 209 (Supp. 1976)		
FLORIDA	Yes, as to divorced spouse		Fla. Stat. Ann. § 732.507 (West 1976)	(cites statute) <u>Bavel v. Reese</u> (1964), Fla. ASP 161 So.2d 678, et al.	
GEORGIA	Yes, completely		Ga. Code § 113-408 (1975)	(cites statute) <u>Friedman v. Cohen</u> (1960) 215 Ga. 859, 114 S.E.2d 24 et al.	

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HAWAII	Yes, as to divorced spouse	Yes	Haw. Uniform Probate Code, Act 200, § 2-508, 1976 Hawaii Sess. Laws 383		
IDAHO	Yes, as to divorced spouse	Yes	Idaho Code § 15-2-508 (Supp. 1976)		
ILLINOIS	Yes, as to divorced spouse		Ill. Ann. Stat. ch. 3, § 4-7 (Smith-Hurd Supp. 1977)		
INDIANA	Yes, as to divorced spouse		Ind. Code Ann. § 29-1-58 (Burns 1972)	(cites statute) <u>Steele v. Chase</u> (1972), 151 Ind. App. 600, 281 N.E.2d 137	
IOWA	Yes, as to divorced spouse		Iowa Code Ann. § 633.271 (West 1964)		
KANSAS	Yes, as to divorced spouse		Kan. Stat. § 59-610 (1976)		
KENTUCKY	Yes, completely		Ky. Rev. Stat. Ann. § 394.095 (Baldwin 1969)		
LOUISIANA	No		La. Civil Code Art. 1691	<u>Succession of Cunningham</u> (1918) 142 La. 701, 77 So. 506	
MAINE	Yes, as to divorced spouse	Yes	Me. Rev. Stat. Ann. tit. 18A § 2-508 (1981)		
MARYLAND	Yes, as to divorced spouse		Md. Est. & Trusts Code Ann. § 4-105 (1974)		
MASSACHUSETTS	Yes, as to divorced spouse		Mass. Gen. Laws Ann. 191 § 9 (1958)		
MICHIGAN	Yes, as to divorced spouse	Yes	M.C.L.A. § 700.124(2) (1978)		

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MINNESOTA	Yes, as to divorced spouse	Yes	Minn. Stat. Ann. § 524.2-508 (West 1975)		
MISSISSIPPI	No		Miss. Code Ann. § 91-5-3 (1972)		
MISSOURI	Yes, as to divorced spouse		Mo. Ann. Stat. § 474.420 (Vernon 1956)	(cites statute) <u>Crist v. Nesbit</u> 1961, Mo. App.) 352 S.W.2d 53, et al.	
MONTANA	Yes, as to divorced spouse	Yes	Mont. Rev. Code Ann. § 91A-2-508 (Spec. Supp. 1976)		
NEBRASKA	Yes, as to divorced spouse	Yes	Neb. Rev. Stat. § 30-2333 (1975)		
NEVADA	Yes, as to divorced spouse		Nev. Rev. Stat. § 133.150 (1973)		
NEW HAMPSHIRE	No		N.H. Rev. Stat. Ann. § 551:13 (1976)		
NEW JERSEY	Yes, as to divorced spouse		N.J. Stat. Ann. § 3A:2A-13 (West 1982 Supp.)		
NEW MEXICO	Yes, as to divorced spouse	Yes	N.M. Stat. Ann. § 32A 2-508 (Spec. Supp. 1975)		
NEW YORK	Yes, as to divorced spouse		N.Y. Est., Powers & Trusts Law § 5-1.4(a) (McKinney 1967)	(cites statute) <u>In re Will of</u> <u>Lampshite</u> (1968) 57 Misc. 2d 332, 292 NY S.2d 578 et al.	

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NORTH CAROLINA	Yes, as to divorced spouse		N.C. Gen. Stat. § 31-5.4 (1976)	(cites statute) <u>Ivery v. Ivery</u> (1963) 258 NC 721, 129 S.E.2d 457	
NORTH DAKOTA	Yes, as to divorced spouse	Yes	N.D. Cent. Code § 30.1-08-08 (1975)		
OHIO	Yes, as to divorced spouse		Ohio Rev. Code Ann. § 2107.33 (Baldwin 1971)	<u>Skorapa v. Skorapa</u> 17 Ohio Op.2d 97 177 N.E.2d 310 (1961)	Ohio also requires a settlement
OKLAHOMA	Yes, as to divorced spouse		Okla. Stat. Ann. tit. 84, § 114 (West Supp. 1976)		
OREGON	Yes, as to divorced spouse	?	Or. Rev. Stat. § 112.315 (1975)	(cites statute) <u>In re Estate of Crohn</u> , 8 Or. App. 284, 494 P.2d 258	
PENNSYLVANIA	Yes, as to divorced spouse	Yes	20 Pa. Cons. Stat. Ann. § 2507(2) (Purdon 1975)	(cites statute) <u>In re Darrow's Estate</u> (1949), 164 Pa. Super 25, 63A2d 458 et al.	
RHODE ISLAND	No		R.I. Gen. Laws § 33-5-9 (1969)		
SOUTH CAROLINA	Yes, as to divorced spouse		S.C. Code § 19-223 (1962)		
SOUTH DAKOTA	No	Yes, in 1974 but repealed UPC subsequently	See South Dakota Ch. 196 S.L. 1974, Ch. 228 S.L. 1977		

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TENNESSEE	No			<u>Rankin v. McDearmon</u> , 270 S.W.2d 660 (Tenn. App. 1953)	While no statute, Tennessee case law says divorce plus property settlement will revoke will as to divorced spouse.
TEXAS	Yes, as to divorced spouse		Tex. Prob. Code Ann. § 69 (1956)	(cites statute) <u>Grudzecki v. Starr</u> 1961, Tex. Civ. App., 351 S.W.2d 381 et al.	
UTAH	Yes, as to divorced spouse	Yes	Utah Code Ann. § 75-2-508 (Spec. Supp. 1975)		
VERMONT	No		Vt. Stat. Ann. § 14-11 (1974)		
VIRGINIA	Yes, as to divorced spouse		Va. Code § 64.1-59 (1973)		
WASHINGTON	Yes, as to divorced spouse		Wash. Rev. Code § 11.12.050 (1965)	(cites statute) <u>Re Ziegner's Estate</u> , 146 Wash. 537, 264 P. 12	
WEST VIRGINIA	Yes, completely		W. Va. Code § 41-1-6 (Supp. 1976)		
WISCONSIN	Yes, as to divorced spouse	No	Wis. Stat. Ann. § 853.11 (3) (West 1957)	See <u>Will of Battis</u> , 143 Wis. 234, 126 N.W. 9 (1910) and <u>Estate of Kort</u> , 260 Wis. 621, 51 N.W.2d 501 (1952)	

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WYOMING	Sometimes			<u>Johnston v. Laird</u> , 48 Wyo. 532, 52 P.2d 1219 (1935)	Wyoming case law says di- vorce, coupled with property settlement and re- marriage revokes will.
DISTRICT OF COLUMBIA	Sometimes			<u>Luff v. Luff</u> , 359 F.2d 235 (D.C. Cir. 1966)	While no sta- tute, D.C. case law says divorce plus property settlement will revoke will as to a divorced spouse.