Date of Meeting: January 16-17, 1959

Date of Memo: January 8, 1959

Memorandum No. 2

Subject: Study #31 - Doctrine of Worthier Title

I enclose copies of correspondence relating to this study which I believe are self-explanatory.

I sent a copy of my Verrall letter of December 31 to Professor Lewell Turrentine of this faculty asking for his views on the matter. He tells me that (1) he would be inclined to agree that proposed Probate Code Section 109 could just as well be omitted from the bill but (2) that under California law there is this difference between taking by descent and taking under a will: one who takes by descent cannot reject title whereas a devisee may do so. This can have consequences with respect to inheritance and gift taxes and also with respect to the rights of the creditors of the potential taker to reach the property.

I do not know what action the State Bar Committee or the Board of Governors will take on Harold Marsh's suggestion relating to Probate Code Section 109. I am bringing the matter to your attention so that we can discuss it and decide upon what action to take if the State Bar should follow that suggestion.

Please bring the printed recommendation and study on the Doctrine of Worthier Title with you to the meeting.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

December 31, 1958

Professor Harold E. Verrall
School of Law
University of California
Los Angeles 24, California

Dear Harold:

I enclose a copy of the Law Revision Commission's Recommendation relating to the doctrine of worthier title, together with a copy of a letter written by Harold Marsh to the Chairman of the State Bar Committee to which the Commission's Recommendation was referred.

I had a call yesterday from Mr. Edward D. Landels, Chairman of the State Bar Committee, in which he indicated that he thought the Committee would be receptive to Harold's suggestion that there is no need to enact proposed Section 109 of the Probate Code.

My recollection is that Probate Code Section 109 was proposed out of an abundance of caution and against two possibilities each of which is, I suppose, rather remote: (1) the possibility that despite the fact that American authority to the contrary, California courts might hold the doctrine of worthier title applies to testamentary transfers; (2) the possibility that a California court might hold that the enactment of Section 1073 of the Civil Code, without the enactment of a parallel section in the Probate Code, indicates a legislative intention to have the doctrine of worthier title apply to testamentary transfers.

My own inclination is to recommend to the Law Revision Commission that if the State Bar either oppose the enactment of Probate Code Section 109 or seriously question the wisdom of enacting this provision, the Commission reconsider its original action on this aspect of the matter. My reason for writing to you is to ascertain whether you see any substantial reason for the enactment of Probate Code Section 109 which has not occurred to me and which would justify the Commission's getting into a substantial disagreement with the State Bar on this matter.

Since the time for introduction of bills is drawing near, I would appreciate it very much if you could find time to respond to this letter soon.

With best wishes for the New Year,

Sincerely yours,

John R. McDonough, Jr.
Executive Secretary

JRM:imh
Enclosure

March 5, 1958

Mr. Edward D. Landels, Esq.
Landels, Weigel and Ripley
275 Bush Street
San Francisco 4, California

Re: Draft of Statute to Abolish the
Doctrine of Worthier Title

Dear Mr. Landels:

I have received a copy of the recommendation of the California Law Revision Commission concerning the statutes to be enacted to abolish the Doctrine of Worthier Title in California, which was forwarded by Mr. Hayes' memorandum dated February 5, 1958.

Since I am no longer living in San Francisco and will probably not be available to meet with you and other members of the committee, I thought that I would send you my comments on the draft of the Commission.

I would suggest that the proposed section 1073 of the Civil Code should be revised to provide that: "The law of this State includes neither (1) ... nor (2) ...." rather than the present wording. I would also suggest that the word "otherwise" be inserted before the word "applicable" in the 8th line of the proposed section 1073.

I question the advisability of enacting the proposed section 109 of the Probate Code, since I cannot see where it makes any practical difference whether a person is considered to take by descent or under a will as long as he does take the same property. Therefore, it does not seem to me that this section is needed and it may merely be a source of confusion with respect to the proposed retroactive application of the Amendment to the Civil Code.

Very truly yours,

Harold Marsh, Jr.

UNIVERSITY OF CALIFORNIA

School of Law
Los Angeles 24, California

January 13, 1959

John R. McDonough, Jr., Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

In answer to your inquiry of December 31, I still think the legislation should expressly abolish the Rule of Worthier Title in Wills Cases. Lowell Turrentine in reviewing cases of gifts to heirs intimated that decisions involving Section 108 of the Probate Code "seemed" to lead to the conclusion that the section has done away with the rule. But in his annotations to Section 314 of the Restatement of Property he noticed that the California cases have not mentioned the common-law rule. Whether Section 108 then does abolish the rule is still to be directly considered by the courts. The fact that there is a Section 108 and that there are no cases in California discussing the rule, reduces the chances that the rule will be pressed on the courts. The chances are further reduced by the fact that the Restatement of Property in Section 314 states the rule is not part of modern American common law. California courts have shown a decided tendency to follow the Restatements.

On the other side of the ledger is the fact that the California lawyer is an ingenious man whose attention will be directed to the Doctrine of Worthier Title when it is considered by the legislature. He will note the many American cases considering the Doctrine in Wills Cases and the fact that the legislation is only directed to inter vivos conveyances. It will only be a question of time until he finds cases in which pressing the doctrine on the courts will give his client an advantage. Such a case might be one like In re Estate of Warren, fn. 5 page D-10 of the commission's report, involving the applicability of the anti-lapse statutes. Or such a case might be one involving Probate Code Sections 750, 751, 752, or 753. To my mind any chance that the rule will be pressed on the courts is justification for present action.

If we consider the legislation in other states, passed after thorough consideration by the bar of the states involved, we will notice in all states where the Doctrine of Worthier Title is abolished the statute was made to cover the wills part of the doctrine. Notice herein the Illinois, Nebraska, Minnesota and

English legislation. New York for reasons peculiar to that State has legislation, but it cannot be said to abolish the doctrine in any type case.

Finally the Commissioners on Uniform State Laws and the American Law Institute approve of such legislation.

I am rather more impressed with the conclusions reached by the many lawyers who after research recommended legislation, than with the unsupported "think" and "seem" doubts expressed.

Sincerely yours,

S/Harold Verrall

Harold E. Verrall

HEV:bas