

Memorandum 82-31

Subject: Study L-616 - Probate Law (Definitions)

Attached to this Memorandum as Exhibit 1 is a set of definitions of terms used in the UPC provisions presented to the Commission to date. These are taken from the UPC definitional section (Section 1-201) with the addition of California's existing definition of "quasi-community property." Other definitions will be included later as the remaining substantive provisions of the UPC are considered.

Respectfully submitted,

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EXHIBIT 1

Section 1-201. Definitions

1-201. Subject to additional definitions contained in the subsequent [Articles] which are applicable to specific [Articles] or [parts], and unless the context otherwise requires, in this ~~Code~~ division :

. . .

(3) "Child" includes any individual entitled to take as a child under this ~~Code~~ code by intestate succession from the parent whose relationship is involved and excludes any person who is only a step-child, a foster child, a grandchild or any more remote descendant.

(4) "Claims", in respect to estates of decedents ~~and protected persons~~ , includes liabilities of the decedent ~~or protected person~~ whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent ~~or after the appointment of a conservator~~ , including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) "Court" means the ~~Court~~ court or branch having jurisdiction in matters relating to the affairs of decedents. ~~This Court in this state is known as {-----}~~.

. . .

(7) "Devise", when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(8) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

. . .

(10) "Distributee" means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A

beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(11) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this ~~Gode~~ code as originally constituted and as it exists from time to time during administration.

(12) "Exempt property" means that property of a decedent's estate which is described in Section [2-402].

. . .

(17) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

. . .

(21) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this ~~Gode~~ code .

. . .

(24) "Minor" means a person who is under ~~{21}~~ 18 years of age.

(25) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

. . .

(27) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, ~~2~~ two or more persons having a joint or common interest, or any other legal entity.

(28) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this ~~Gode~~ code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(29) "Person" means an individual, a corporation, an organization, or other legal entity.

(30) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons

who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(31) "Petition" means a written request to the ~~Court~~ court for an order after notice.

(32) "Proceeding" includes action at law and suit in equity.

(33) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

. . .

(37) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

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(40) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

. . .

(42) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code code .

. . .

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, trust accounts as defined in [Article VI], custodial arrangements pursuant to the California Uniform Gifts to Minors Act (Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code) , business trusts providing for certificates to be issued to

beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(46) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

. . .

(48) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(49) "Quasi-community property" includes only the following property:

(A) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired by the decedent while domiciled elsewhere which would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time of its acquisition.

(B) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired in exchange for real or personal property, wherever situated, which would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the property so exchanged was acquired.

(C) As used in this subdivision, personal property does not include, and real property does include, leasehold interests in real property.

Comment. Section 1-201 contains definitions taken from Section 1-201 of the Uniform Probate Code. These definitions apply only to the provisions on intestate succession and wills, not to the entire Probate Code. Subdivision (49) is not found in the UPC, and continues the definition of "quasi-community property" found in former Section 201.5. "Community property" and "separate property" are not defined; whether property is community or separate is determined under the general rules of law that determine the nature of property.