L-625 7/6/82

Ninth Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--Intestate Succession §§ 220.010-220.140)

Attached are the provisions of the recommended statute relating to intestate succession and the pertinent part of the preliminary portion of the tentative recommendation.

Respectfully submitted,

John H. DeMoully
Executive Secretary

INTESTATE SUCCESSION

Share of Surviving Spouse

In the event of intestacy, under existing law, all of the community property[1] and quasi-community property[2] goes to the surviving spouse, but the disposition of the decedent's separate property depends upon the decedent's family situation. The surviving spouse takes all of the decedent's separate property unless the decedent dies leaving surviving issue, parent, brother, sister, or descendant of a deceased brother or sister.[3] If the decedent dies leaving one or more of these relatives, the share of the surviving spouse in the separate property of the decedent is one-half or one-third depending upon who the relatives are.[4]

This scheme causes a number of problems:

(1) Empirical studies show that most persons want the entire estate to go to the surviving spouse in preference to children, parents, and brothers and sisters.[5] Existing law defeats this desire; for example, if the decedent is survived by a spouse and a grandnephew, the grandnephew takes as much of the separate property as the spouse.

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1. Prob. Code § 201.

2. Prob. Code § 201.5.

3. Prob. Code § 224.

4. The surviving spouse receives one-half of the intestate decedent's separate property if the decedent is survived by only one child or only the issue of one deceased child (Prob. Code § 221) or if the decedent dies without issue but is survived by one or both parents or the issue of one or both parents (Prob. Code § 223).

   The surviving spouse receives one-third of the intestate decedent's separate property if the decedent is survived by two or more children, by one child and the issue of one or more deceased children, or by the issue of two or more deceased children. Prob. Code § 221.

5. See Fellows, Simon & Rau, Public Attitudes about Property Distribution at Death and Intestate Succession Laws in the United States, 1978 Am. Bar Foundation Research J. 321, 348-64; Niles Probate Reform in California, 31 Hastings L.J. 185, 192 n.47 (1979). This preference applies in the case of children of the marriage, not in the case of the decedent's children of a former marriage. It is reasonable to expect that a surviving spouse will deal fairly with his or her own children and grandchildren, both during the surviving spouse's lifetime and upon the surviving spouse's death, particularly where they devote attention to and show concern for

(2) A portion of the separate property estate may go to adult children or other relatives of the decedent who have little or no need for the property. The surviving spouse is deprived of a portion of the decedent's estate that may be required to maintain the surviving spouse during lifetime. This problem is becoming greater as the incidence of second marriages, involving substantial amounts of separate property, increases.

(3) Division of the separate property often engenders litigation over such matters as the value of the property.

(4) Treating separate property differently from community property causes delay and expense to determine claims as to the community or separate nature of property. Difficult problems of tracing, commingling, and apportionment often arise in litigation concerning the community or separate nature of property.

(5) An award to minor children is unnecessary, since the surviving spouse has the duty to support them.[6] Moreover, awarding property directly to children often involves the expense of establishing and administering court supervised guardianships for minors who receive property of the decedent.

The proposed law cures these problems by giving all of the intestate decedent's separate property to the surviving spouse. The only exception to this rule is where the decedent is survived by children or other lineal descendants of a former marriage. In this case, one-half of the decedent's separate property goes to the surviving spouse and the other half is divided among all of the decedent's children and descendants of predeceased children (including those who are descendants of both spouses as well as those who are descendants only of the decedent). This scheme is designed to protect children of a prior marriage and their offspring who might otherwise not be provided for by the surviving spouse; it is consistent with the findings of empirical studies that most persons want the children to receive a portion of the estate in this situation.[7]

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the welfare of the surviving spouse after the death of the decedent. Where the decedent has concern that the other spouse may not deal fairly with the children or other relatives, the decedent may provide for them by will.

6. Civil Code §§ 196-196a.

7. Fellows, Simon & Rau, supra note 5, at 366.

The "Laughing Heir"

Under existing California intestate succession law, a blood relative of the decedent may inherit no matter how remote the heir may be.[1] A remotely related heir has been described as a "laughing heir" because such a person is thought unlikely to feel a sense of bereavement at the decedent's death.[2]

Unlimited inheritance has been described as an absurd anachronism and has long been the subject of scholarly criticism. The proposed law limits inheritance by intestate succession to lineal descendants of the decedent, parents and their lineal descendants, and grandparents and their lineal descendants; it eliminates inheritance by more remote relatives traced through great-grandparents and other more remote ancestors.[3] This rule cuts off the "laughing heir" and limits inheritance to relatives whom the decedent probably knew and had an interest in.

The proposed law has a number of advantages over existing law:

(1) It simplifies the administration of estates (and of trusts where there is a final gift to "heirs") by avoiding the delay and expense of attempting to find remote missing heirs and by minimizing problems of service of notice.[4]

(2) It eliminates the standing of remote heirs to bring will contests (or trust litigation) and thus minimizes the opportunity for

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1. See Prob. Code § 226.

2. See Cavers, Change in the American Family and the "Laughing Heir," 20 Iowa L. Rev. 203, 208 (1935).

3. This is also the rule of Uniform Probate Code (1977) § 2-103.

4. Niles, Probate Reform in California, 31 Hastings L.J. 185 200 n.98 (1977).

unmeritorious litigation brought for the sole purpose of coercing a settlement.[5]

(3) It removes a significant source of uncertainty in land titles.[6]

(4) It is consistent with the decedent's desires in a case where the decedent had a predeceased spouse, since it reduces the number of remote relatives who take in preference to stepchildren and close in-laws.[7] The result is that the property will go to persons for whom the decedent is likely to have had real affection in preference to remote relatives who probably were not acquainted with the decedent.

Ancestral Property Doctrine

Modern intestate succession statutes are based on the relationship of the decedent to possible successors; property goes to certain relatives of the decedent regardless of the source from which the decedent acquired the property.[1] Notwithstanding this general rule, there are a number of situations under California law where inheritance is governed not by the relationship of the heirs to the decedent but by the source of the property in the decedent's estate, where the property was received from certain ancestors. This is referred to as the "ancestral property" doctrine.

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5. Id. at 200-01; see Breidenbach, Will Contests, in 2 California Decedent Estate Administration §§ 21.7, 21.10, at 897-98 (Cal. Cont. Ed. Bar 1975). From time to time there is prolonged litigation in California, brought by remote heirs to establish their relationship to the decedent. Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 613 (1931). Eliminating the standing of remote heirs to bring will contests will not result in the probate of invalid wills merely because there is no one with standing to contest the will, since the Attorney General may contest any will where the state stands to benefit by escheat. In re Peterson, 138 Cal. App. 443, 32 P.2d 423 (1934).

6. Cavers, supra note 2, at 211, 214.

7. See discussion under "Right of Heirs of Predeceased Spouse to Escheated Property," infra.

1. Niles, Probate Reform in California, 31 Hastings L.J. 185, 203 (1977).

For example, the usual rule is that on the death of a person without spouse or issue, property passes to the person's parents.[2] But under the ancestral property doctrine:

(1) Property received from a parent or grandparent goes to the parent or grandparent or, if dead, to the heirs of the parent or grandparent.[3]

(2) Property received from a predeceased spouse goes to near relatives of the predeceased spouse.[4]

(3) Property received from a parent by an unmarried minor goes to other children of the same parent.[5]

Likewise, the usual rule is that half blood relatives of a decedent[6] are entitled to inherit equally with whole blood relatives of the same

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2. Prob. Code § 225.

3. Prob. Code § 229(c).

4. See Prob. Code §§ 229, 296.4. First preference is given to children of the predeceased spouse and their descendants by right of representation. If there are no issue of the predeceased spouse, the property goes to the parents of the predeceased spouse equally, or the survivor. If there is no surviving issue or parent of the predeceased spouse, the property goes to the brothers and sisters of the predeceased spouse equally and their descendants by right of representation. If none of the foregoing survive, the property goes to blood relatives of the decedent. Prob. Code § 230; Estate of McDill, 14 Cal.3d 831, 537 P.2d 874, 122 Cal. Rptr. 754 (1975). If none of the foregoing survive, the property goes to relatives of the predeceased spouse more remote than the issue of parents. If none of the foregoing survive, the property escheats to the state. Prob. Code § 231.

5. Prob. Code § 227. If children of the parent are deceased, the property goes to the issue of deceased children.

6. The term "half blood" is used broadly to describe all those who share one common ancestor with the decedent, but not two. Thus, for example, if the decedent's brother had the same father as the decedent but a different mother, the brother would be a half blood kindred of the decedent. Similarly, all descendants of the brother are included within the term "half blood." See Estate of Ryan, 21 Cal.2d 498, 133 P.2d 626 (1943).

degree. But under a California variant of the ancestral property doctrine a half blood relative is excluded from inheriting property that came to the decedent from an ancestor.[7]

The proposed law does not continue the ancestral property doctrine currently found in California law.[7.1] Elimination of the ancestral property doctrine will reduce the cost of probate, because this doctrine injects complexity into administration of intestate estates and often cause difficult problems of tracing, commingling, and apportionment.[8] The estate must be sorted out so that the ancestral property may pass by the special rules of succession. When a portion of the decedent's estate goes to relatives of a predeceased spouse, the problems of tracing heirs and giving notice are substantially increased. When property goes to children of a parent there is a likelihood that a guardian must be appointed. Delay, expense, and inconvenience result.

Moreover, the ancestral property rules violate the basic purpose of the intestate succession laws, which is to provide a will substitute for a person who dies intestate. The laws of succession should correspond

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7. Prob. Code § 254.

7.1. This is consistent with the position of scholars who have studied intestate succession law and concluded that the ancestral property doctrine should be abolished. See Niles, supra note 1, at 207-08; Reppy & Wright, infra note 8, at 135; Evans, Comments on the Probate Code in California, 19 Calif. L. Rev. 602, 614 (1931); Turrentine, Introduction to the California Probate Code, in West's Annotated California Codes, Probate Code § 35 (1956); Fellows, Simon & Rau, infra note 8, at 344. The majority of American States have never adopted any form of ancestral property inheritance. Those that have, generally confined to real property as under English common law. Reppy & Wright, supra at 112-13.

8. 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, 135 (1981). Accord, Niles, supra note 1, at 206; Fellows, Simon & Rau, Public Attitudes About Property Distribution of Death and Intestate Succession Laws in the United States, 1978 Am. Bar Found. Res. J. 321, 344.

to the manner in which the average decedent would dispose of property by will. As a general rule, if the decedent were making a will, it is likely that the relationship of possible beneficiaries to the decedent would be a more important factor than the source of the property.

Besides creating problems of administration and violating the basic policy of the intestate succession laws, the California ancestral property principles accomplish no needed purpose. The courts have stated that they are discriminatory, anachronistic, and illogical, and have narrowly construed them.[9] The provisions are badly drafted, complex, and difficult to apply.

Representation

Under existing law, if all of the decedent's surviving descendants are in the same generation (for example, if all are children or all are grandchildren), they all share the decedent's intestate property equally (per capita).[1] This result is consistent with a strong popular preference for having all descendants in the same generation share equally.[2]

However, the California rule is that, if the decedent's surviving descendants are not all of the same degree of kindred to the decedent, they take by right of representation—that is, the decedent's estate is

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9. See, e.g., Estate of Ryan, 21 Cal.2d 498, 504, 512, 133 P.2d 626 (1943); In re Estate of Sayles, 215 Cal. 207, 8 P.2d 1009 (1932).

1. Prob. Code §§ 221, 222. Under this rule, if all of the decedent's surviving descendants are grandchildren, they share equally without reference to the share that their deceased parent would have taken if living. This rule does not apply to collateral kindred of the decedent. The stocks of the decedent's brothers and sisters are maintained through all generations, even though no brothers or sisters survive and all of their surviving offspring are of the same generation. Prob. Code § 225; Niles, Probate Reform in California, 31 Hastings L.J. 185, 202 (1977). If the decedent's nearest relatives are an aunt or uncle and cousins who are the children of a deceased aunt or uncle, there is no representation at all, since "the estate goes to the next of kin in equal degree." Prob. Code § 226; Niles, supra, at 203.

2. See Fellows, Simon & Rau, Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States, 198 Am. Bar Found. Res. J. 321, 383-84; Niles, supra note 1, at 202 n.111.

divided into as many shares as there are children of the decedent either living or deceased but leaving descendants, and each share of a deceased child leaving descendants is further divided in the same manner at each generation.[3] Because predeceased descendants of the decedent may have had different numbers of children from each other, there is a likelihood that members of the same generation may take unequal shares, contrary to popular preference.

The Uniform Probate Code handles this problem by making the primary division of the estate at the generation nearest to the decedent having at least one living member.[4] Once the estate is divided into primary shares, it descends thereafter by right of representation the same as under California law, with one exception: If a descending share of the estate reaches a generation all of whose members have predeceased the decedent, the share is redivided per capita at the next generation

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3. Prob. Code §§ 221, 222. Under this scheme the primary division of the estate is made at the children's generation, even though there may be no living members of that generation. Maud v. Catherwood, 67 Cal. App.2d 636, 155 P.2d 111 (1945); Niles, supra note 1, at 202. Although this situation occurs relatively infrequently in the context of intestate succession, it does occur in the trust context where the ultimate gift is made long after the death of the settlor to "heirs" as determined under the laws of intestate succession. See id.; Lombardi v. Blois, 230 Cal. App.2d 191, 40 Cal. Rptr. 899 (1964).

4. See Uniform Probate Code (1977) § 2-106 and Comment thereto. The Uniform Probate Code follows the same rule of representation with respect to collateral heirs (descendants of the decedent's parents or grandparents) as it does with respect to descendants of the decedent, except that if both paternal and maternal grandparents survive the decedent, or leave descendants who do, one-half of the decedent's estate goes to each line. See Uniform Probate Code (1977) §§ 2-106, 2-103; Niles, supra note 1, at 201-02.

having any living members.[5] The result is that with respect that descending share, the members of that generation share equally.

The proposed law adopts the Uniform Probate Code rule of representation in place of the California rule. This brings California law closer to a per capita distribution scheme and thus corresponds more closely to popular preference.[6]

Stepparent Adoption

Under California law, when a child is adopted the child is deemed to be a descendant of the adopting parent for all purposes of succession by, from, or through the adopting parent, and inheritance by, from, or through blood relatives of the adopted child is cut off by the adoption.[1] However, if the adoption is by the spouse of a natural parent (i.e., a stepparent adoption), it is desirable that the adopted child inherit not only from or through the adoptive parent but also from or through the natural parent who gave up the child for adoption. For example, if a natural grandparent of the adopted child dies intestate, the child should be entitled to inherit; it is unlikely that the grandparent would disinherit the child, had the grandparent made a will, simply because the child was adopted by a stepparent.[2] Accordingly, under the proposed

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5. See Uniform Probate Code (1977) § 2-106; Waggoner, A Proposed Alternative to the Uniform Probate Code's System for Intestate Distribution Among Descendants, 66 Nw. U.L. Rev. 626, 630-31 (1971).

6. The Commission also considered a system of "per capita at each generation" as recommended by Professor Lawrence Waggoner. See Waggoner, supra note 5. The Commission found Professor Waggoner's scheme theoretically appealing, but chose the Uniform Probate Code rule in the interest of national uniformity of intestate succession law.

1. Prob. Code § 257; 7 B. Witkin, Summary of California Law Wills and Probate § 62, at 5585 (8th ed. 1974).

2. See Estate of Garrison, 122 Cal. App.3d 7, 175 Cal. Rptr. 809 (1981).

law a stepparent adoption does not cut off inheritance by, from, or through the natural parent who gave up the child for adoption.[3]

Advancements

If a person makes a gift during lifetime to a potential heir and later dies intestate, the gift is sometimes treated as an "advancement" to the donee and is deducted from the donee's intestate share on the theory that that is what the donor intended.[1] Under existing law, if the donee predeceases the donor, the advancement is deducted from the share the donee's heirs would take, just as if the advancement had been made directly to them.[2] The proposed law reverses this rule and does not charge the advancement against the donee's heirs unless the donor or donee expressly intended that this be done.[3] Most inter vivos transfers are either intended to be absolute gifts or are a carefully integrated part of a comprehensive estate plan. In addition, the predeceased donee may have disposed of the property during lifetime; to charge the gift against the donee's heirs in such a case would be unfair to them.

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3. This is also the rule of Uniform Probate Code (1977) § 2-109. This rule creates the possibility that the adopted child could inherit from the same person both as a natural and as an adopted child. See Comment to Uniform Probate Code (1977) § 2-114. The Uniform Probate Code precludes this by a provision that a person who is related to the decedent through two lines is entitled only to a single share. Uniform Probate Code (1977) § 2-114. The proposed law includes this provision.

1. Prob. Code § 1050; 7 B. Witkin, Summary of California Law Wills and Probate § 35, at 5557-58 (8th ed. 1974).

2. Prob. Code § 1053.

3. This is also the rule of Uniform Probate Code (1977) § 2-110. Under this rule the donor's writing declaring the gift to be an advancement must be "contemporaneous" with the gift. Although there is now no such express requirement in California law, the accepted rule appears to be that the writing must be either contemporaneous with the gift or embodied in a subsequent testamentary instrument. See In re Estate of Hayne, 165 Cal. 568, 574-75, 133 P. 277 (1913).

PART 2. INTESTATE SUCCESSION

§ 220.010. Intestate estate

220.010. Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in this part.

Comment. Section 220.010 is the same in substance as Section 2-101 of the Uniform Probate Code and supersedes former Section 200 and the first portion of former Section 220.

404/132

§ 220.020. Intestate share of surviving spouse

220.020. (a) As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 110.010.

(b) As to quasi-community property, the intestate share of the surviving spouse is the one-half of the quasi-community property that belongs to the decedent under Section 110.020.

(c) As to separate property, the intestate share of the surviving spouse is as follows:

(1) The entire intestate estate if (A) there is no surviving issue of the decedent or (B) there are surviving issue of the decedent all of whom are issue of the surviving spouse also.

(2) One-half of the intestate estate if there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse.

Comment. Section 220.020 is drawn from Section 2-102A of the Uniform Probate Code.

Subdivision (a) is the same in substance as a portion of former Section 201. See also Section 100.060 (defining "community property"). Subdivision (a) is the same in substance as the Uniform Code provision.

Subdivision (b) is the same in substance as a portion of former Section 201.5. See also Sections 100.380 (defining "quasi-community property"). No provision comparable to subdivision (b) is found in the Uniform Probate Code since that code does not recognize the concept of quasi-community property.

Community property and quasi-community property that passes to the surviving spouse under subdivisions (a) and (b) is subject to Sections 649.1 (election to have community and quasi-community property administered) and 649.2 (power to deal with community and quasi-community real property).

Subdivision (c) changes prior California law. Under prior law, the surviving spouse received all of the decedent's separate estate only if the decedent died without leaving surviving issue, parent, brother, sister, or descendant of a deceased brother or sister. See former Sections 221 and 223. Where there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, subdivision (c) gives one-half of the separate property to the surviving spouse and Section 220.030 gives the remaining one-half of the separate property to the issue of the decedent (both those who are also the issue of the surviving spouse and those who are not).

31172

§ 220.030. Intestate share of heirs other than surviving spouse

220.030. The part of the intestate estate not passing to the surviving spouse under Section 220.020, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation.

(b) If there is no surviving issue, to the decedent's parent or parents equally.

(c) If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation.

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

Comment. Section 220.030 is the same in substance as Section 2-103 of the Uniform Probate Code. Since under Section 220.020 all community property and quasi-community property in the intestate estate passes to the surviving spouse, and all separate property passes to the surviving spouse unless the decedent leaves issue who are not also issue of the

surviving spouse, Section 220.030 will apply only to the decedent's separate property, and only in those situations where the decedent leaves no surviving spouse or leaves a surviving spouse and issue who are not issue of the surviving spouse. See also the Comment to Section 220.020.

Subdivision (a) is consistent with former Section 222 except that the rule of representation is changed. See Section 220.060 and Comment thereto. Subdivisions (b) and (c) are consistent with former Section 225 except for the new rule of representation. See id. Subdivision (d) supersedes former Section 226 and restricts collateral inheritance to the decedent's grandparents and issue of grandparents, the same as Section 2-103 of the Uniform Probate Code. Under former Section 226, inheritance by blood relatives of the decedent was unlimited, no matter how remote the heir may have been.

If there are no takers under Section 220.020 or 220.030, the decedent's estate escheats to the state. See Section 220.050. However, after the estate has escheated, certain relatives of a predeceased spouse may be able to claim the escheated property. See Section 261.010.

7904

§ 220.040. Requirement that heir survive decedent by 120 hours

220.040. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section does not apply if its application would result in the escheat of property to the state.

Comment. Section 220.040 is the same in substance as Section 2-104 of the Uniform Probate Code except that Section 220.040 omits the references found in the Uniform Probate Code section to homestead allowance and exempt property. The requirement that the person survive the decedent by 120 hours is new to California law. For a provision governing disposition of community property and quasi-community property where a married person does not survive his or her spouse by 120 hours, see Section 110.040. See also Sections 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

405/760

§ 220.050. No taker

220.050. If there is no taker under the provisions of this part, the intestate estate escheats to the state.

Comment. Section 220.050 is the same in substance as a portion of former Section 231 and Section 2-105 of the Uniform Probate Code. For provisions relating to escheat, see Sections 260.010-261.010. See also Code Civ. Proc. §§ 1300-1615 (unclaimed property).

39296

§ 220.060. Representation

220.060. If representation is called for by this code, the estate is divided into as many equal shares as there are surviving heirs in the nearest degree of kinship to the decedent and deceased persons in the same degree who left issue who survive the decedent, and the shares shall pass as follows:

(a) Each surviving heir in the nearest degree shall receive one share.

(b) The share of each deceased person in the same degree shall be divided among the deceased person's issue, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation in the same manner as provided in this section.

Comment. Section 220.060 is the same in substance as Section 2-106 of the Uniform Probate Code. Section 220.060 changes the former California rule under which distribution was per stirpes unless all surviving descendants were of the same degree of kindred to the decedent. See former Sections 221, 222. Under Section 220.060, the primary division of the estate takes place at the first generation having any living members. This changes the rule of Maud v. Catherwood, 67 Cal. App.2d 636, 155 P.2d 111 (1945). As to the effect of a disclaimer, see Section 112.280(b).

405/761

§ 220.070. Inheritance by relatives of half blood

220.070. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Comment. Section 220.070 is the same as Section 2-107 of the Uniform Probate Code and supersedes former Section 254. Under former Section 254, half-blood relatives of the decedent who were not of the blood of an ancestor of the decedent were excluded from inheriting property of the decedent which had come to the decedent from such ancestor. Section 220.070 eliminates this rule and puts half bloods on the same footing as whole blood relatives of the decedent.

§ 220.080. Inheritance by afterborn heirs

220.080. Relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

Comment. Section 220.080 is the same in substance as Section 2-108 of the Uniform Probate Code and supersedes the second sentence of former Section 250. Section 220.080 is consistent with Civil Code Section 29.

405/770

§ 220.090. Parent-child relationship

220.090. (a) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) Except as provided in paragraph (3), the relationship of parent and child exists between a child and its natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between a child and its adoptive parents.

(3) The relationship of parent and child does not exist between an adopted child and its natural parents, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.

(b) For the purposes of this section, a parent and child relationship exists where such relationship is (1) presumed and not rebutted pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, or (2) established pursuant to the Uniform Parentage Act. Nothing in this subdivision limits the methods by which the relationship of parent and child may be established.

Comment. Section 220.090 is the same in substance as Section 2-109 of the Uniform Probate Code and supersedes former Sections 255 and 257. Paragraph (3) of subdivision (a) changes the rule of former Section 257 so that in the case of a stepparent adoption, the adopted child may inherit from or through the adoptive parent and also from or through the natural parent who gave up the child for adoption.

Subdivision (b) continues the substance of subdivision (d) of former Section 255. The presumption set forth in Civil Code Section 7004 that a man is presumed to be the natural father of a child if he meets the conditions there set forth applies in the context of intestate succession. Cf. Estate of Peterson, 214 Cal. App.2d 258, 29 Cal. Rptr.

384 (1963). The second sentence of subdivision (b) makes clear that the parent and child relationship may be established in such other proceedings as a child support action.

A person who is only a stepchild, foster child, grandchild, or more remote descendant is not a "child." Section 100.040. A person who is only a stepparent, foster parent, or grandparent is not a "parent." Section 100.300.

405/771

§ 220.100. Advancements

220.100. (a) If a person dies intestate as to all his or her estate, property the decedent gave during lifetime to an heir is treated as an advancement against that heir's share of the estate only if one of the following conditions is satisfied:

(1) The decedent declares in a contemporaneous writing that the gift is to be deducted from the heir's share of the estate or that the gift is an advancement against the heir's share of the estate.

(2) The heir acknowledges in writing that the gift is to be so deducted or is an advancement.

(b) Subject to subdivision (c), the property advanced is to be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first.

(c) If the value of the property advanced is expressed in the writing of the decedent, or in an acknowledgment of the heir made contemporaneously with the advancement, that value is conclusive in the division and distribution of the estate.

(d) If the recipient of the property advanced fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

Comment. Section 220.100 is the same in substance as Section 2-110 of the Uniform Probate Code except for the addition of the portion concerning the effect of a statement of value in the declaration or acknowledgment. Sections 220.100 and 204.440 supersede former Section 1050.

Section 220.100 is consistent with former law with two exceptions:

(1) Under former Section 1053, if the donee of an advancement predeceased the donor, the advancement was deducted from the shares the heirs of the donee would receive from the donor's estate, while under Section 220.100 the advancement is not charged against the donee's issue unless the declaration or acknowledgment provides otherwise.

(2) The provisions relating to the valuation of the property, which supersede former Section 1052, are made consistent with the provisions of Section 204.440 relating to ademption by satisfaction. See the Comment to that section.

The rule stated in subdivision (a) applies notwithstanding a disclaimer. See Section 112.280(b).

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§ 220.110. Debt owed to decedent

220.110. (a) A debt owed to the decedent is not charged against the intestate share of any person except the debtor.

(b) If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

Comment. Section 220.110 is the same in substance as Section 2-111 of the Uniform Probate Code and is consistent with California case law. See Estate of Berk, 196 Cal. App.2d 278, 16 Cal. Rptr. 492 (1961). Subdivision (b) does not apply if the debtor disclaims the intestate share. See Section 112.280(b).

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§ 220.120. Inheritance by alien

220.120. No person is disqualified to take as an heir because that person or a person through whom he or she claims is or has been an alien.

Comment. Section 220.120 is the same in substance as Section 2-112 of the Uniform Probate Code and is consistent with other provisions of California law. See Cal. Const. Art. 1, § 20; Civil Code § 671.

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§ 220.130. Dower and curtesy not recognized

220.130. The estates of dower and curtesy are not recognized.

Comment. Section 220.130 continues the substance of former Section 5129 of the Civil Code and is the same in substance as Section 2-113 of the Uniform Probate Code.

§ 220.140. Persons related to decedent through two lines

220.140. A person who is related to the decedent 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. Section 220.140 is the same in substance as Section 2-114 of the Uniform Probate Code. Section 220.140 is made necessary by Section 220.090 which creates a possibility that following a stepparent adoption the adopted child could inherit from the same person both as a natural and as an adopted child. See Official Comment to Uniform Probate Code § 2-114.