

#L-1033

0055b
12/17/85

First Supplement to Memorandum 85-89

Subject: Study L-1033 - Estates and Trusts Code (Establishing
Identity of Heirs)

The Executive Committee of the Estate Planning, Trust, and Probate Law Section of the California State Bar has considered Memorandum 85-89, relating to establishing the identity of heirs; their comments are contained in the letter attached as Exhibit 1. The letter generally approves the new draft of the provisions governing establishment of the identity of heirs.

One point raised by the staff is whether the statute should be limited, as it is now, to property that vests in persons "other than by the laws of succession." The State Bar letter suggests that intestate succession may already be covered by Probate Code Sections 1080-1082 (determination of heirship). But those provisions only apply in the context of a probate proceeding--they do not provide a remedy in the nature of quiet title where a person has succeeded to property and there is no court order of distribution of the property. The staff believes it could be useful to extend the provisions on establishing the identity of heirs to cover this situation. We have been able to find no reason for excluding such coverage.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

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November 12, 1985

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Re: LRC MEMO 85-89
 ESTABLISHING IDENTITY OF HEIRS

Dear Jim:

This letter is in response to your letter dated October 28, 1985 to me and the other members of Study Team 1 in regard to the above Memo. It will serve as a written report on that Memo. As you requested I am submitting copies to Irv Goldring, Jim Opel, Jim Devine and Chuck Collier. In the preparation of this report I did talk, as you suggested, to Jim Goodwin who you state developed the Memo together with Len Pollard and the LRC staff. I was not, however, successful in contacting every member of my Study Team. Chuck Collier is out of town on vacation, and I was informed that he would not be returning to the office until Monday, November 18, 1985.

Generally we feel that the five new proposed sections (§§320, 321, 322, 323 and 324) are fine, and we see nothing seriously wrong with them. As you know these sections basically replace existing Probate Code §§1190, 1191 and 1192. We are happy that the new proposed sections generally adopt the language of the existing sections without substantive change, and to a large extent they

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adopt the language of the existing sections verbatim. It seems to us that this is to be commended. The changes in the language in my opinion result generally in an improvement in the language and style. For example, existing §1190 is one very long sentence. The proposed legislation basically says the same thing in several much shorter, succinct sentences.

As you may know, the reference in the existing sections to "heirs, heirs of the body, issue or children of a person" are replaced in the new proposed legislation by reference to a "class". The term "class" includes other forms of vesting in addition to those stated in existing law, but we see no objection to this.

The Memo has a "Query" under proposed §320 of why intestate succession should be excluded from the old section as well as the new section. I assume, without really knowing, that the answer to this is that existing Probate Code §§1080, 1081 and 1082 seemingly cover the situation where a court will make an order vesting title to property in intestate heirs.

I trust that this letter is sufficient for your purposes. Generally we feel that the proposed legislation stated in the Memo is fine.

Please feel free to contact me if you have any questions.

Very truly yours,

RUTAN & TUCKER



WILLIAM V. SCHMIDT

WVS/ptL

cc: James C. Opel
James D. Devine
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