

Second Supplement to Memorandum 92-26

Subject: Study L-659.01 - Parent-Child Relationship for Intestate Succession (Letter From Professor Dukeminier)

Exhibit 1 is a letter from Professor Jesse Dukeminier. He supports the complete substitution rule for inheritance after adoption. This would completely cut off inheritance between an adoptee and natural relatives after all adoptions, including a stepparent adoption.

Exhibit 2 is a letter from Bob Sullivan for the State Bar Probate Section. He proposes to meet in early July with Professor Halbach and others to try to reach a consensus on how Probate Code Section 6408 should be revised. This is consistent with the staff suggestion in the First Supplement to defer consideration of this until the September meeting. We should be able to resolve some issues and narrow others so the Commission can focus on areas of disagreement.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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May 13, 1992

Robert J. Murphy III, Esq.
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California Law Revision Commission
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Dear Bob:

RE: Study L-659.01
Inheritance by Adopted Child

I agree with the Executive Committee of the State Bar Estate Planning, Trust, and Probate Section that all adoptions, including a stepparent adoption, should cut off intestate succession between the adoptee and natural family in both directions.

Adoption occurs in many different kinds of situations, which, for ease of illustration, we can divide into three types: (1) adoption of a child at birth by strangers, severing social relations with the natural family; (2) adoption by a stepparent, which may or may not terminate social relations with the natural parent's family; (3) adoption not for the purpose of establishing a normal parent-child relation but for the purpose of securing the legal consequences of a parent-child relation (examples: adoption by grandparents to get social security payments, adoption to prevent will contest by natural relatives, adoption to pass on to survivor rent-controlled apartment). It is extraordinarily difficult to draft a statute based on the probable intent of an intestate in all these situations. In situation (1) there probably is wide agreement that adoption should sever inheritance rights by or from natural relatives. In the other two situations, there is not wide agreement. So much depends on the particular context of the adoption.

I am struck by the fact that there seems to be little empirical evidence of what the probable intent of intestates is in the many different circumstances where adoption takes place. If I pose hypothetical adoption situations other than type (1), Section 6408 seems to go against my reading of probable intent in as many situations as it carries it out. A small variation in the facts of a hypothetical can bring a different assumption of probable intent. Is there any empirical evidence on probable intent in cases other than adoption

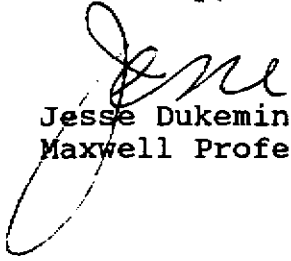
May 13, 1992

at birth? When empirical evidence supporting a complex statute such as we have is lacking or equivocal, I suggest there is a compelling case for a simple rule.

I believe a simple rule that adoption severs inheritance rights with natural relatives in all cases accords with the expectations of a large majority of people. Even in type (3) situations, where social relations with natural relatives are usually maintained, parties should realize that adoption brings a new legal relationship of parent-child into being, for that legal consequence is the very purpose of the adoption. Anyone who wants to avoid the rule in a particular situation can do so by making a will. I think this is far preferable to our complicated statute which lacks supporting empirical evidence.

An advantage of a simple rule is that knowledge of it among the public is far more likely than a complex rule. Lawyers can tell the rule to anyone who inquires, without a moment's thought and without qualification. Nonetheless, the Commission might want to recommend adding to adoption decrees a statement that the decree severs inheritance rights by and from natural relatives. A comparable statement is now put on divorce decrees I believe.

Sincerely,



Jesse Dukeminier
Maxwell Professor of Law

JD:mrk

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PROBATE LAW SECTION
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May 18, 1992

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Re: Memorandum 92-26 (Study #L-659.01)

Dear Bob:

This will confirm our telephone conversation this afternoon concerning the above Memorandum and the entire subject of intestate succession and adoption. After our conversation, I spoke with Ed Halbach who would be available to meet sometime during the first week in July, which, hopefully, will precede the commencement of your teaching responsibilities at Stanford.

After you have had an opportunity to look at your calendar, please give me a call so that we can select a date.

Sincerely,

Robert L. Sullivan, Jr.

RLSjr:adb