

First Supplement to Memorandum 83-55

Subject: Study L-651 - Simultaneous Deaths and Survival

The Commission's Tentative Recommendation Relating to Simultaneous Death and Survival was distributed to interested persons and organizations for review and comment. A copy of the tentative recommendation is attached to Memorandum 83-55 (sent August 9, 1983).

We received comments from (1) the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, (2) Charles A. Dunkel, Vice President and Trust Officer, Crocker National Bank, (3) Professor Gail Boreman Bird, our consultant, and (4) Henry Angerbauer, a private citizen. All approved the tentative recommendation without qualification.

The staff recommends that this tentative recommendation be approved for printing and submission to the 1984 legislative session.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Probate and Trust Law Section

Mailing address:
P.O. Box 55020
Los Angeles, California 90055



September 6, 1983

Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: Tentative Recommendations L-641, L-651,
L-653, L-810 and L-826; July 22, 1983
Request for Survey of Views

Dear Sirs:

Speaking on behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we wish to comment on these Tentative Recommendations and respond to the Request for Survey of Views as follows:

L-651, Simultaneous Death and Survival

These provisions regarding simultaneous death and survival which change the period of survivorship from "an instant" as demonstrated by clear and convincing evidence to 120 hours are a definite improvement over prior law. As a matter of good drafting, most estate planners currently put a survivorship provision into their documents. To avoid unjust results in a case of intestate succession or succession by operation of law, the imposition of a 120-hour survivorship period is desirable. Since the proposed legislation also clarifies that the surviving joint depositor of an account in a banking institution may withdraw funds during the 120-hour period, it eliminates the one practical problem of imposing such a survivorship provision.

We would like you to carefully examine our comments when revising your recommendations. Our comments represent the practical experience of probate practitioners who regularly deal with the probate courts. We support those changes we believe to

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be true improvements. We can not support those changes we believe would adversely affect the rights of estate beneficiaries or that would make the probate process worse rather than better.

Executive Committee

By

Valerie J. Merritt
Secretary - Treasurer



The Crocker Bank

Charles A. Dunkel
Vice President
Trust Officer

August 19, 1983

California Law Revision
Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

Re: L-641: Garnishment of Amounts Payable to
Trust Beneficiary
L-651: Simultaneous Death and Survival

Gentlemen:

Your tentative recommendation relating to the above two subjects meets with my approval in its present form.

Sincerely,

Charles A. Dunkel
Vice President &
Trust Officer
(415) 477-2756

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HASTINGS COLLEGE OF THE LAW

200 McALLISTER STREET
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September 3, 1983

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear John:

Unfortunately my teaching commitments will prevent my attending the September meeting of the Commission. I am in the process of reviewing the materials relating to the September agenda items, and have a few comments on some of the proposals.

Simultaneous Death (Memorandum 83-55)

I am in favor of the 120 hour survival rule for the reasons discussed at previous Commission meetings and outlined in the memorandum. I prefer using the 120 hour period (rather than some other time period) primarily because that is the time period adopted in the Uniform Probate Code and by a number of other jurisdictions, and I think uniformity is an appropriate factor to consider when setting a fairly arbitrary time limit.

I will continue to review the probate materials, and if I have any further comments, I will send them to you before the meeting.

Very truly yours,



Gail Boreman Bird

GBB/dbv

HENRY ANGERBAUER, CPA
#401 WILLOW GLEN CT.
CONCORD, CA 94521

California Law Revision Commission

8/22/83

gentlemen:

I agree with your tentative
recommendation on Simultaneous Death
and Survival and your proposal.

Best Regards

