

First Supplement to Memorandum 89-17

Subject: Study 3007 - In-Law Inheritance

Attached is a letter from Ken Klug (which represents the view of the Executive Committee of the Estate Planning, Trust and Probate Law Section) opposing any change in the existing statutory provisions relating to in-law inheritance.

The letter takes the position that we have a rule that works. Having a rule - any rule - according to Mr. Klug is much more important than the actual content of the rule. Having a stable predictable rule is important according to Mr. Klug.

The problems and confusion under the statutory provisions relating to the in-law inheritance are the subject of extensive law review articles. The articles identify problems but do not provide solutions. Recent cases have pointed out the difficulties of determining the meaning of the existing statute and applying it. All the other states that once had an in-law inheritance statute have repealed the statute. These statutes have been criticized as creating unnecessary complexity in probate procedure and as not being sound in principle. Nevertheless, the Executive Committee takes the position that the existing statute provides a "a stable predictable rule."

The Executive Committee is opposed to revision or repeal of the in-law inheritance statute. This being the case, although it is difficult to believe that the Executive Committee has made a careful study on this matter, the staff recommends that the Commission propose no change in the existing statute. On the other hand, the Commission may wish to distribute a tentative recommendation for review and comment to determine whether the probate bar and judiciary generally share the view of the Executive Committee.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA

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January 9, 1989

REPLY TO:

444 Castro St. Suite 900
Mountain View, CA 94041

John H. DeMouly
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Re: LRC Memo 89-17, In-Law Inheritance

Dear John:

I have enclosed a copy of Ken Klug's report on Memo 89-17, In-Law Inheritance. The report has been reviewed by the Executive Committee and represents the opinion of the Section. The report is to assist in the technical and substantive review of those sections involved.

Very truly yours,

James V. Quillinan
Attorney at Law

JVQ/hl
Encls.

cc: Valerie Merritt
Terry Ross Irv Goldring

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REPLY TO:

P. O. Box 1461
Fresno, CA 93716
December 28, 1988

Mr. James V. Quillinan
Diemer, Schneider,
Luce & Quillinan
444 Castro Street, Suite 900
Mountain View, CA 94041

Re: LRC Memo 89-17, Study L654

Dear Jim:

I have previously observed that the Law Revision Commission's constant tinkering with the Probate Code is a waste of public, private, and natural resources, and does a disservice to the law and the courts, and undermines public confidence in the legal system. Memorandum 89-17 is yet another example of such tinkering.

It would appear that either the staff or the commissioners are attempting to draft a Probate Code which is a utopian model of justice. It seems that whenever a tough case is handed down by the courts, the staff or commissioners respond with a knee jerk and attempt to draft a statute that either codifies or overrules the case (depending upon whether the result was fair). I submit that the courts can better fashion appropriate remedies in tough cases on a case by case basis than can the legislature, which must necessarily utilize a broad brush approach to justice.

The Commission has previously reviewed the ancestral property doctrine. We know that there are political pressures from several sides pushing to expand

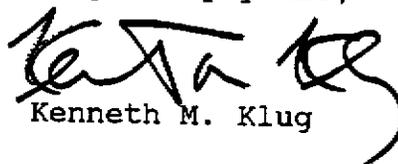
Mr. James V. Quillinan
December 28, 1988
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or restrict the doctrine's application. Although I, personally, am philosophically opposed to the ancestral property doctrine, I am much more opposed to further tinkering. We have a rule that works. It may not work well, but it works just as well as any other rule would. Having a rule - any rule - is much more important than the actual content of the rule. Having a stable, predictable rule is important. Constant changes undermine the structure of the law.

This is not to say that the law should never be changed. Changeability is one of the beauties of the law, as the changes reflect changes in the social conscience and mores. But social conscience and mores don't change overnight - especially concerning the ancestral property doctrine. The ancestral property doctrine is not a major social problem. We are not dealing here with drugs or AIDS. For the Commission to further tinker with a policy which was adopted merely three years ago suggests that either the Commission or the staff is out of touch with the needs and wishes of the public.

I know that all of us have the very highest regard for the individuals who have served as commissioners and staff. The Commission and staff have made great strides in simplifying and improving the Probate Code. Even where we have disagreed with the Commission, we certainly respect their courage and determination in addressing very difficult issues. It is a shame to see the image of the Commission tarnished by unfettered tinkering.

Very truly yours,


Kenneth M. Klug

cc: Irwin D. Goldring