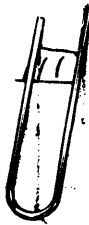


**LDIR#207  
PROBATE  
AND  
GRANT  
ADMINISTRA-  
TION**



Part 1. Probate and Grant of Administration  
Introductory Note to

~~PART B, GENERAL ADMINISTRATION~~

*red:*

<sup>Before</sup> until 1960~~x~~ probate had been within the jurisdiction of the United States Commissioners (Sec. 61-1-1, ACLA 1949). By ~~Art. II~~, Ch. 50, Sec. 17, SLA 1959, the power over probate matters was vested in the Superior Court, a court of general jurisdiction. There are, therefore, no probate courts as such in Alaska.

Much of the law relating to the probate of wills and the administration of decedents' estates, having grown from English roots, has retained anachronistic features, <sup>(seldom)</sup> and ~~no longer~~ provides for the <sup>(most)</sup> efficient and inexpensive redistribution of property of a decedent. It is intended by this <sup>(article)</sup> code to provide law, not only more modern than that now prevailing in the state, but also more complete and flexible.

In England, the power to deal with decedents' estates was divided among three bodies: the ecclesiastical and manorial courts, which acted particularly in this realm; the chancery courts, which dealt with executors and administrators as trustees; and the common law courts, which dealt with other functions of these officers. 1 Woerner, Sec. 141.

In the United States, courts of the first group never got a foothold, but their place was taken by statutorily-created probate courts. Like the ecclesiastical courts, however, their powers have generally been regarded as "special", "limited" or "inferior" compared to those of the courts of general jurisdiction. 1 Woerner, Sec. 143.

The inferior nature of the <sup>(United States Commissioner as the)</sup> probate court has been asserted in Alaska. A party offering or relying upon a judgment of a probate court must establish "not only the fact that the order

Model Sec. 76. TESTIMONY OF SUBSCRIBING WITNESS

Omitted

COMMENT: This section is procedural, and has therefore been omitted. Rule 71, Uniform Rules of Evidence. The matter is not now covered by statute in Alaska, and would probably be dealt with by the common-law rules of evidence.

Model Sec. 77. PROOF OF WRITTEN ATTESTED WILL BY OTHER EVIDENCE.

Omitted

COMMENT: The comment to Model Sec. 77 applies to this section.

Model Sec. 79. PROOF OF HOLOGRAPHIC OR NUNCUPATIVE WILL.

Omitted

COMMENT: This section is a mere reference to another section and is omitted because it seems to add nothing.

Model Sec. 82. CERTIFICATE OF PROBATE.

Omitted

COMMENT: This section prescribed the contents of the certificate, a matter properly procedural and to be promulgated by the court.

Sec. 3.00.5. TERMS USED IN THIS ARTICLE. Unless specifically modified in a particular sentence, the following words are used with the extensions or limitations upon meaning set forth:

(1) "Personal representative" and "administrator" do not mean or include special administrator.

(2) In the provisions concerning filing and notice, "person" includes the "person's" attorney in the proceeding

(3) Masculine pronouns shall be taken to be feminine when appropriate.

(4) An "interested person" is a spouse, close kin, or one having a financial interest. The question whether the degree of relationship or the extent of financial interest is sufficiently great to qualify a person as "interested" is within the discretion of the court in each case.

(5) "Must," used in connection with the contents of statements and documents, has the meaning "is (are) altogether without effect for the purpose intended unless it (they) does (do)...."

(6) "Property" means both real and personal property of all kinds.

SOURCE: New