

**LDIR#228**  
**UPC**  
**MATERIAL**

**UNIFORM PROBATE CODE—ILLEGITIMACY—  
Inheritance and the Illegitimate: A Model  
for Probate Reform**

I. INTRODUCTION

On May 20, 1968, the United States Supreme Court handed down landmark decisions in *Levy v. Louisiana*<sup>1</sup> and *Glonn v. American Guarantee & Liability Insurance Company*.<sup>2</sup> In *Levy*, five illegitimate children sued under article 2315 of the Louisiana Civil Code<sup>3</sup> for damages for the wrongful death of their mother. The suit was dismissed by the Louisiana district court, which held that illegitimate children had no cause of action under the Louisiana statute. In *Glonn*, a Texas domiciliary brought a diversity action in federal district court in Texas for the wrongful death of her illegitimate son, caused by an automobile accident in Louisiana. The Texas district court dismissed the suit, holding that under Louisiana law the mother had no cause of action for the death of her illegitimate child. The Supreme Court granted the petition for certiorari in *Glonn*<sup>4</sup> and noted probable jurisdiction in *Levy*.<sup>5</sup> With Justice Douglas writing for a majority of six in each case,<sup>6</sup> the Court reversed both decisions, holding that the Louisiana wrongful-death statute denied equal protection of the law both to illegitimate children and to their parents.

*Levy* and *Glonn*, read narrowly, stand only for the proposition that a state wrongful-death statute cannot discriminate between beneficiaries solely on the basis of legitimacy. Read in their broadest sense, however, the opinions in the two cases condemn generally any classification based on legitimacy. A major problem with the opinions is that Justice Douglas did not specify the grounds on which he based his decision. Thus, the potential scope of the holdings is open to question. Several recent cases<sup>7</sup> have interpreted *Levy* to condemn all classifications based on legitimacy. Similarly,

1. 391 U.S. 68 (1968).

2. 391 U.S. 73 (1968).

3. LA. CIV. CODE ANN. art. 2315 (West Supp. 1969).

4. 389 U.S. 969 (1967).

5. 389 U.S. 925 (1967).

6. Justice Black and Stewart joined Justice Harlan, dissenting, in both cases. 391 U.S. at 76.

7. See *King v. Smith*, 392 U.S. 309 (1968), especially Justice Douglas, concurring, at 392 U.S. at 336 (AFDC payments); *Munn v. Munn*, 450 P.2d 68 (Colo. 1969) (support); *R— v. R—*, 431 S.W.2d 152 (Mo. 1968) (support); *In re Estate of Jensen*, 162 N.W.2d 861 (N.D. 1968) (inheritance). But see *Strahan v. Strahan*, 304 F. Supp. 40 (W.D. La. 1969) (inheritance).

**Some Effects of the Uniform Probate  
Code on Estate Planning**

**Richard V. Wellman**

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THE UNIFORM PROBATE CODE APPROVED:  
A BOLD AND PROGRESSIVE REFORM

By J. PENNINGTON STRAUS, *Philadelphia*  
Member of the Pennsylvania Bar

HISTORICAL BACKGROUND

History in law reform was created at Dallas on August 7, 1969, when the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Probate Code. In the judgment of the writer, this was one of the boldest and one of the most progressive achievements of the National Conference, unsurpassed even by the Uniform Commercial Code. Whereas the Uniform Commercial Code had as a base the old Negotiable Instruments and Sales Acts supported by the commercial motivation of interstate uniformity, the Probate Code cuts into a field of new statutory policy in suggesting that law relating to the transfer of property by death which has heretofore been considered largely a matter of local concern, should be elevated to a platform of national importance with resulting uniformity and predictable simplicity.

In the week following the adoption of the Code by the National Conference of Commissioners, the Section of Real Property, Probate and Trust Law in its sessions held in conjunction with the American Bar Association meeting, approved the Code, and subsequently the

House of Delegates of the American Bar Association likewise approved the Code and directed the Real Property, Probate and Trust Law Section to institute studies of the Code among the various local bar associations of the United States with the end in view that the Code would receive wide attention and adoption.

The first printed version of the Code is now available from Prentice-Hall, and this will be followed at a later date by a publication of the Code with final minor stylistic corrections by the West Publishing Company.

To the Pennsylvania lawyer there is very little in the Uniform Probate Code that will seem new or radical. Taken as a whole, the Code is perhaps the greatest compliment that could be produced for the draftsmen of the Pennsylvania statutory system of probate and estate administration as originally created in the Five Sisters Acts of 1917, and as more recently amended and restated in the series of legislative acts which comprise what is our present Pennsylvania code.

In these two articles we will give a brief summary of the history and contents of the Uniform Probate

THOMAS W. MAPP\*

## The 1969 Oregon Probate Code and Due Process

THE 1969 Oregon Probate Code<sup>1</sup> (hereinafter Code) takes effect on July 1, 1970.<sup>2</sup> The author believes that the dominant objective of the Code is to facilitate the prompt and economical transmission of wealth at death through the administration of decedents' estates. Moreover, it seems an almost self-evident truth that speed and economy are dependent on an efficient legal system.<sup>3</sup> The 1969 Code should facilitate efficient administration of decedents' estates for two basic reasons: codification and independent administration.

*Codification.* Throughout the Code, substantive and procedural law has been clarified. Old statutes and decades of case law have been integrated and restated in modern text.<sup>4</sup> This codification process necessi-

\* Associate Professor of Law, University of Oregon; Visiting Professor of Law, University of North Carolina. Professor Mapp was a member of the Advisory Committee on Probate Law Revision which drafted the 1969 Oregon Probate Code for the Oregon Law Improvement Committee.

<sup>1</sup> Or. Laws 1969, ch. 591, as amended by §§277-280, Or. Laws 1969, ch. 597.

<sup>2</sup> Or. Laws 1969, ch. 591, 306. Hereafter, as all references to Code sections will be to OREGON REVISED STATUTES (1969), the form "ORS §000.000" will be used in text and footnotes.

<sup>3</sup> Unfortunately, one caveat is required at this point. Even a more efficient legal system may not decrease costs during an inflationary period. But at least it should dampen the rising cost spiral.

<sup>4</sup> The following provisions are merely important examples of this process: ORS §111.085. Matters subject to probate court jurisdiction; ORS §§112.015-.115. Intestate succession; ORS §112.385. Nonademption of specific devises in certain cases; ORS §112.045. Pretermitted children; ORS §112.455-.555. Rights of slayer in property of a decedent; ORS §112.675. Renunciation of intestate succession or devise; ORS §114.105-.165. Elective share of surviving spouse; ORS §116.133. Abatement; ORS §116.303-.383. Apportionment of estate taxes; and ORS §117.005-.096. Estates of absentees.

## THE UNIFORM PROBATE CODE: A POSSIBLE ANSWER TO PROBATE AVOIDANCE††

RICHARD V. WELLMAN†

Succession, or probate as it is more likely to be called, is currently quite controversial. This fact, though possibly useful to would-be speech makers, is unfortunate. There should not be any controversy about the rules protecting individual freedom in regard to personal savings. The fundamental principles, *e.g.*, the premise of private property that a decedent's unused savings should go as he indicates in his will, or to his heirs if he leaves no will, are not disputed or disputable. Nor can the troubles of the area be attributed to contentiousness of survivors and other claimants. Wills are rarely challenged, and the occasional challenges are usually unsuccessful.<sup>1</sup> Creditors of decedents, protected in many situations by security or insurance, if not by survivors concerned about family credit ratings, are not a notable source of controversy.<sup>2</sup> Indeed, the controversy arises from the charge that we have more rules than we need.

Perhaps the presence of elaborate rules and procedures causes survivors to forego natural contentiousness. Perhaps we should accept the ponderousness of our system as the price for desirable tranquility. Still, there are other explanations for lack of disputes, which seem particularly applicable to small estates. Inheritance is a family matter. Any economic advantage one set of survivors might gain over another by stirring up trouble would be countered in most cases by displeasure and resentment by relatives or close acquaintances, rather than strangers. And, disappointment in regard to an expectancy is seldom as keen as other economic losses. We are quite accustomed to the idea that an estate owner is free to dispose of his savings as he pleases. Hence, losses of anticipated inheritances can be borne with equanimity and when there is something to inherit, it comes as a happy surprise! In sum, therefore, many of the

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†Professor of Law, University of Michigan; Chief Reporter, Uniform Probate Code project, National Conference of Commissioners on Uniform State Laws.

†† This article is an adaptation of an address delivered at the Institute on Estate Planning and Administration in Indiana, Indiana State Bar Association, October 25, 1968.

1. Of 453 testate estates in a random sample studied in a recent survey of probate records in Cuyahoga County, Cleveland, Ohio, will contests occurred in only six, or 1.3 per cent of the cases. None were wholly successful. The survey was conducted by a sociology-law team at Case-Western Reserve University, Cleveland, Ohio. The results soon will be published. The manuscript from which the information was obtained is entitled *The Family and Inheritance*. Its authors are Marvin B. Sussman, Judith Cates and David Smith.

2. According to the manuscript of the Cleveland survey, "... we do not find that debts constitute a significant problem in the settlement of an estate."

# CONSERVATORSHIP UNDER UNIFORM PROBATE CODE

BY ELMER L. FINGAR\*  
White Plains, New York

## I. INTRODUCTION

Article 5 of the Uniform Probate Code (hereinafter referred to as UPC) relates to minors and other persons under disability. I had contended most vehemently that the problems of minors and those of adult persons under disability were so dissimilar that it was not feasible to draft a statute which would adequately provide for both. I now state publicly that Professor Wellman and his able assistants who drafted the UPC have demonstrated that gasoline and water can indeed mix, provided the mixers have patience and adequate skill.

We have made great progress in protecting the rights of all citizens regardless of race, color or creed. Yet there is little in the press or elsewhere in regard to the rights of *adult* persons under disability. It is stated that about half of all the hospital beds in the United States are occupied by mentally ill persons.<sup>1</sup> Such persons are unable to organize to protect and preserve their property and to exercise freely their civil rights. Therefore, it is the duty of the bar associations, and particularly the American Bar Association, to act on behalf of this unfortunate segment of our society and to sponsor needed legislation. The person under a disability is not a second rate citizen.

As a boy I heard my seniors refer to patients in a state hospital for the mentally ill as lunatics, crazy and the like. The commitment to the hospital was a stigma, something that the family of the patient did not discuss. While there has been some change in the attitude of the public, a residue of such thinking remains with us. We know now, of course, that many of such patients are curable and that during their treatment they are capable of exercising many of their civil rights, such as voting.

In addition to the patient in a hospital for the mentally ill we have the elderly senile person, who makes his home with a son or daughter, and the unfortunate retarded person. In 1968 I probated the will of a retarded man who had the mentality of a boy of 14 and who died in his sixties. There were objections to the will but they were withdrawn.

There is no need here to discuss in detail guardianship of minors or guardians of the *person* of incapacitated adult persons. The provisions of Parts 2 and 3 of Article V of the UPC are clear in these two areas and do not present any particular problems. They are quite similar to existing statutes of most states. My experience is that guardians of the person, whether a minor or adult under disability, fill a rather limited role in any event. If, however, such appointment is needed, I direct your attention to

\*Chairman of the Section's Committee on Problems Relating to Persons under Disability.

<sup>1</sup>ALLEN, FERSTER & WEIHOFEN, *MENTAL IMPAIRMENT AND LEGAL INCOMPETENCY* (1968).

## MULTIPLE-STATE ESTATES UNDER THE UNIFORM PROBATE CODE

ALLAN D. VESTAL\*

### 1. THE UNIFORM PROBATE CODE

On August 7, 1969, the National Conference of Commissioners on Uniform State Laws adopted by a vote of the states the Uniform Probate Code. The following week the House of Delegates of the American Bar Association approved the Code.<sup>1</sup> In these actions a giant step forward was taken toward uniformity in probate law in the United States. Although no state has had the opportunity to consider and adopt the Uniform Code, there is reason to believe that a number of states will give serious consideration to the Code in the near future.

For some time in the post World War II period various segments of the legal profession and the lay public had been dissatisfied with the methods of passing property from one generation to another.<sup>2</sup> This had resulted in a number of probate revisions which have taken place or which have been urged.<sup>3</sup> In the decade of the sixties impetus for re-

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<sup>1</sup>The House of Delegates approved the UNIFORM PROBATE CODE with an amendment which provides:

Resolved, that the Section of Real Property, Probate and Trust Law be authorized to present the views of the American Bar Association regarding the Uniform Probate Code with appropriate recommendations for implementation to state and local Bar Associations to make in-depth studies, including studies of the long-term advantages of uniformity on particular points of probate and related law, customs and practices; and that the National Conference of the Commissioners on Uniform State Laws be urged to continue its Special Drafting Committee.

After the adoption of the UNIFORM PROBATE CODE (hereinafter cited as UPC) by the National Conference and its approval by the House of Delegates of the American Bar Association, a version of the UPC was published by Prentice-Hall under the date of August 27, 1969. In a letter from the Executive Secretary to the Commissioners it was stated:

This edition of the Code was printed by Prentice-Hall, Inc., and contains the changes made at Dallas.

However, it does not contain style changes which will appear in the official draft of the Uniform Probate Code.

<sup>2</sup>See M. BLOOM, *THE TROUBLE WITH LAWYERS*, ch. 11 (1968); *Let's Rewrite the Probate Laws*, *CHANGING TIMES*, Jan. 1969, at 39.

<sup>3</sup>For example, the IOWA PROBATE CODE was revised by a committee of the Iowa Bar Association and submitted to the Iowa General Assembly in 1963. IOWA CODE ch. 633 (1966). This was adopted almost without change by the legislature and became effective on January 1, 1964. On the new IOWA PROBATE CODE, see *Symposium on the New Iowa Probate Code*, 49 IOWA L. REV. 633 (1964) with forward

# UNIFORM PROBATE CODE

## Some Current Comments

BY H. IRVIN LAWRENCE

Vice President and Trust Counsel, Security Pacific National Bank, Los Angeles, Calif.

In August of this year, after several working drafts and seven years of study in cooperation with the Real Property, Probate and Trust Law Section of the American Bar Association, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Probate Code, and the House of Delegates of the American Bar Association approved it.

### Some General Comments

The work of the Conference was conducted in cooperation with an American Bankers Association Trust Division Liaison Committee. The Conference work has also been followed with interest by several groups including the American College of Probate Counsel, which is interested for obvious reasons; the Veterans Administration, which is concerned over veteran guardianships; newspaper groups, which are concerned over the code's minimum requirements for published notice; and insurance groups, which are concerned over the code's minimum requirements for posting bond. These activities are evidence that the code has broad significance, and will be presented to various state legislatures in the very near future.

Professor Richard V. Wellman of the University of Michigan Law School addressed the Midwinter Trust Conference and the Mid-Continent Trust Conference on this subject in 1968. The text of these talks has been printed in *Trusts & Estates* [T&E, Mar. '68, p. 238 and Jan. '69, p. 29] and in *The Trust Bulletin*, thus offering trust men an excellent written overview of the code.

As Chief Reporter for the Uniform Probate Code Project, Professor Wellman speaks to our industry as an advocate—indeed a brilliant advocate—of the code. Today I intend to cover briefly the contents of the code, raise

some questions and indicate some of the code provisions which may have an impact upon the corporate fiduciary. I should also like to speculate briefly upon the probability that the code will be accepted by the several states.

It is clear that legislation of this magnitude will generate controversy. For example, although it has many forward-looking features, it may not meet the required standards of all communities and although it is immensely well integrated, there is something in it to offend everyone.

The code consists of eight articles. Let me outline them briefly.

### General Provisions And Definitions

Article I contains general provisions and definitions. It covers court jurisdiction and notice. Here the purposes and policies of the code are stated. The code expressly encourages simplicity, speed and efficiency in the administration of estates.

The probate court is given subject matter jurisdiction over all trusts, whether created by will or otherwise, as well as jurisdiction over estates of decedents and protected persons.

Article I provides a definite statute of limitations applicable wherever fraud is perpetrated in connection with matters covered in the code. These provisions are intended to replace various existing equitable remedies and limitations, such as the uncertain limitation embodied in the principle of laches. Action must be commenced against the perpetrator of a fraud within two years from discovery of the fraudulent act, and against non-perpetrators within five years from the time the fraud was committed.

For example, if a will known to be a forgery is probated informally—an option provided in the code, under which no notice is required—and the contest period runs, heirs may proceed against the perpetrator within two

years from discovery of the fraud, but may proceed against innocent distributees only if action is commenced within five years from the time of the fraudulent act. The same limitations would apply where a will has been fraudulently concealed.

### Treatment of Fraud

Let me pause here for a general comment. The code concept of fraud is new and reflects a basic approach, repeated in the code, to the effect that persons interested in a decedent's estate should be free to prove a will or not; commence legal proceedings or not; have a personal representative appointed or not—all in terms of whether or not they are willing to assume the risks involved.

The traditional legislative approach to probate administration, in contrast to this, has been one of more formality. And while this very formality has been criticized and even ridiculed, such formality was probably developed in an effort to insure that heirs and creditors, including taxing authorities, would always receive some kind of notice, and to make it clear that all interested persons were protected by the presence of a personal representative, responsible to the court as well as personally responsible in the administration and distribution of an estate.

In very general terms the code would now say: "Injured party, you have your remedy against those who take innocently and against those who perpetrate a fraud, but your rights against an innocent personal representative will be strictly limited. We want personal representatives to act without delay and without fear."

In the same general terms I suggest that innocent distributees whose inheritance is later recovered by a superior claimant, and injured parties who attempt to collect personally either against perpetrators of fraud or in-

# Uniform Probate Code

Probate costs are high because of antiquated procedures lawyers must follow.



By Harrison K. Chauncey, Jr.

*A certain Jarndyce, in an evil hour, made great fortune, and made a great Will. In the question how the trusts under that Will are to be administered, the fortune left by the Will is squandered away; the legatees under the Will are reduced to such a miserable condition that they would be sufficiently punished, if they had committed an enormous crime in having money left them; and the Will itself is made a dead letter.*

CHARLES DICKENS — BLEAK HOUSE 1853

THE SAVAGE CRITICISM of probate practice that Dickens vented in *Bleak House* had little effect in Victorian England, but in our day the public is not so placid. Criticism of our probate courts is increasingly harsh.<sup>1</sup> Indeed, in some Florida counties our judges have warned us that we are killing the goose that lays the golden egg of probate practice.

There is no question that estate administration is costly. But it is arguable that one reason those costs are high is due to the antiquated, time-consuming probate procedures that lawyers must follow. If those procedures could be streamlined the estate would not be overburdened in costs and the attorney would not be forced to spend valuable time in unproductive paper-shuffling.

In 1963 (two years before Norman Dacey came upon the national scene) a group of lawyers in the American Bar Association who were deeply concerned with our probate practice urged and eventually obtained approval for a study of probate practice by the National Conference of Commissioners on Uniform State Laws and the ABA Section of Real Property, Probate and Trust Law. The object of the

study was to suggest reforms to, and update the Model Probate Code which had been completed in 1947.<sup>2</sup> The result was the Uniform Probate Code, promulgated in 1969.<sup>3</sup>

The reporters of the National Conference first endeavored to pinpoint the manner in which our probate laws impeded the efficient administration of estates. They found that the problem was, in some respects, historical.<sup>4</sup> Our probate courts occupy a position uniquely American; that is they are administrative rather than judicial courts. In civil jurisdictions no public agency becomes involved in the administration of a decedent's estate unless disputes arise. The draftsmen also concluded that our 50 jurisdictions have developed a variation of procedures that have unduly complicated the administration of estates, especially in multistate administration.<sup>5</sup>

Also, it is clear that the laborious and expensive procedures adopted by the various states in the name of protecting the beneficiaries and creditors have overburdened the probate courts and unnecessarily postponed distribution to beneficiaries for a period of from two to four years.

The probate practitioner might retort that the procedures developed by the probate courts in America are important. There is need for the protection of creditors, heirs and beneficiaries and the laws that have been developed do these things. Laymen, however, do not agree. They simply say, "I want my wife to get my estate"—and they find a way to do it. For

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# The New Uniform Probate Code

by Richard V. Wellman

The product of a long study and gestation, the new Uniform Probate Code now has been approved by the American Bar Association and is available to the states for study and enactment. The new code modernizes one of the oldest and most creaky institutions of the law—an institution whose shortcomings have been a source of embarrassment for the legal profession.

LAST AUGUST the House of Delegates of the American Bar Association approved the Uniform Probate Code. This action came a few days after the code had been approved by the National Conference of Commissioners on Uniform State Laws, which sponsored the code in a co-operative project with the Real Property, Probate and Trust Law Section of the Association. The completion of the code and its approval mark an extraordinary achievement by the American Bar Association and the National Conference. The accomplishment indicates that lawyers serving these national organizations faced and resolved doubts about the desirability and feasibility of a significant reform of state probate laws. Similar doubts will be entertained by other lawyers as the code is considered for adoption in the several states.

To some lawyers, our tradition of nonuniform, local laws for the administration of decedents' estates, guardianships and trusts is a complete reason for opposing uniformity in probate laws. Others are traditionalists in the sense that the *status quo* will be favored until persuasive reasons for changes required to achieve uniformity become apparent. The negative or skeptical attitudes of many lawyers regarding the project pose a handicap.

The size of the code and the pervasive and complex nature of its concepts present additional difficulties. The printed code with official comments runs to 278 pages.<sup>1</sup> The subject of property rights at death is terribly complex. In many states it is intertwined with community property concepts that will continue to cause interstate diversities affecting succession, though all states adopt a common code of probate. Many of the old rules, al-

though possibly not justified by the current attitudes of laymen, appear suitable to lawyers as points of departure for planning and drafting. Subjects like restrictions on testamentary power, the rights of dependents and creditors of a decedent and the role of formalities in preparing wills pose the trap of interminable debate for anyone advocating abandonment of provincial rules in favor of some national norm. The investment that counselors and estate planners have in an education that enables them to live with the existing complexities seems threatened by change.

Lawyers interested in probate law improvement soon realize that their work will not be much noticed by the public. The development of the new code received little financial or moral support from any but the sponsoring organizations and their members. The work, which forced participants to take a close look at the details as well as the over-all functioning of the nation's elaborate probate institution, attracted little outside attention. Representatives of the Trust Division, American Bankers Association, watched the formative process carefully but, except for a general memorandum of approval issued last summer in regard to the fifth working draft, avoided any assertion of control or influence. The American College of Probate Counsel was interested but provided little leadership or encouragement. Ultimately, hundreds of lawyers and other interested persons acquainted themselves with the major premises of the code, which remained fairly constant through six preliminary drafts. Their familiarity, of vital importance to final approval of the code,

1. See the official text of the code and appended comments prepared by West Publishing Company, which was published in March 1970.

# THE UNIFORM PROBATE CODE: BLUEPRINT FOR REFORM IN THE 70's

Richard V. Wellman\*

## INTRODUCTION

PROBATE law changes slowly. On August 13, 1969, the House of Delegates of the American Bar Association promulgated the Uniform Probate Code, completing a project which began in 1962.<sup>1</sup> The UPC project has been described as a continuation of an earlier effort by elements of the ABA to modernize and unify American probate laws which resulted in preparation of the Model Probate Code.<sup>2</sup> Viewing the two projects as one, the 30 plus years of effort to improve probate law may appear as an exercise in killing an unwanted idea by perpetual debate.<sup>3</sup> The Connecticut story, as told by other contributors to this symposium, is representative of the experience in other states where efforts to improve probate law have been frustrated by foot-dragging tendencies of local elements who derive power or profit from the old rules. An observer might well conclude that national efforts at probate reform would be more of the same.

But there is more to the new Code. Though it may not have been conceived for purpose of reform, the recent project matured in a period of unparalleled public criticism of the existing probate institution.<sup>4</sup> Also, the project was supported by both ABA committees

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1. For a brief discussion of the action by the House of Delegates, see 55 A.B.A.J. 976 (1969).

2. See 4 REAL PROPERTY, PROBATE & TRUST L. J. 206 (1969).

3. The recent motion for final approval also chartered the Real Property, Probate and Trust Law Section of the American Bar Association to engage in continuing "in-depth" studies of the relative merits of uniformity and provincialism in regard to probate laws. The resolution of the House of Delegates authorizing the Section of Real Property, Probate & Trust Law to present the views of the Association followed a resolution of Section Council published in 4 REAL PROPERTY, PROBATE & TRUST L. J. 206 (1969).

4. N. DACEY, HOW TO AVOID PROBATE (1965); Bloom, *The Mess in Our Probate Courts*, READERS DIGEST, Oct., 1966; *Needed: Better Probate Laws*, CHANGING TIMES, Jan., 1969; *Personal Finance: How to Avoid a Costly Probate*, N. Y. Times, Nov. 14, 1966; *Probing the Source of Probate Pains*, Wall St. Journal, May 14, 1968; *The Probate Fuss*, LOOK MAGAZINE, Nov. 29, 1966; *Editorial*, Columbus, Ohio Citizen-Journal, Jan. 18, 1967.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

*yellow*  
POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

MEMORANDUM

September 22, 1971

TO: Members of the Legislative Council  
FROM: Russell E. Mulder, Deputy Director  
SUBJECT: Clarification of various portions of the  
Uniform Probate Code

As you will recall, during the Council's consideration of the Uniform Probate Code in Fairbanks, clarification was asked for a number of sections. I have researched the questions raised and hope that the following discussion will be of assistance in better understanding the code.

- (1) Substitution of existing Alaska law for the presumptive death provision of the Uniform Probate Code.

To clarify this point both sets of procedure are set forth for your consideration and comparison. The Uniform Probate Code (hereinafter referred to as the code) provides:

"(3) a person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; his death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier."

The existing law is comprised of a number of sections and reads:

Sec. 09.55.020. PETITION AND INQUIRY. If a petition is presented by an interested person to a district judge or magistrate alleging that a designated person has disappeared and after diligent search cannot be found, and if it appears to the satisfaction of the judge or magistrate that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person has suffered death from accidental or other violent means, the judge or magistrate shall summon and impanel a jury of six

X- *Robert Studd*

PUBLISHED MATERIALS RELATING TO THE  
UNIFORM PROBATE CODE

Concerning Preliminary Drafts

- Fratcher, "Toward Uniform Succession Legislation", 41 N.Y.U.L. Rev 1037 (1966).
- Fratcher, "Toward Uniform Guardianship Legislation", 64 Mich. L. Rev. 977 (April 1966).
- Fratcher, "Fiduciary Administration in England," 40 N.Y.U.L. Rev 12 (Jan. 1965).
- Shriver, "The Multi-State Estate", 3/3 R.P.P.T. Jnl. (Fall 1968).
- Wellman, "Proposed Uniform Probate Code", 47 The Trust Bulletin 301 (February 1968).
- Wellman, "Proposed Uniform Probate Code", 48 The Trust Bulletin 146 (December 1968).
- Wellman, "Selected Aspects of Uniform Probate Code", 3/3 R.P.P.T. Jnl. 199 (Fall 1968).
- Wellman, "The Uniform Probate Code--Questions and Answers", 3/4 R.P.P.T. Jnl. 388 (Fall 1968).
- Wellman, "The Lawyer's Stake in Probate Reforms", IX Law Office Economics and Management, 415 (February 1969).

Comments About the Approved Code

- ① Hauptfuhrer, "The Uniform Probate Code--A Modern Approach for Pennsylvania", XLI Penn. Bar Assn. Quarterly 79 (October 1969).
- ① Straus, "The Uniform Probate Code Approved; A Bold and Progressive Reform", XLI Penn. Bar Assn. Qtly. 71 (October 1969).
- ① Wellman, "The Uniform Probate Code; A Possible Answer to Probate Avoidance", 44 Ind. L. Jnl. 191 (Winter 1969).
- ✓ Manlin and Martens, "Informal Proceedings Under the Uniform Probate Code: Notice and Due Process", 3 Prospectus (U. of Mich. Law School Student Publication) 39 (December, 1969)
- ✓ Mulder, "Intestate Succession Under the Uniform Probate Code", 3 Prospectus 301 (May, 1970).
- ① Vestal, "Multiple-State Estates Under the Uniform Probate Code", 27 Washington and Lee Law Review 70 (Spring, 1970).

SB 248 and 1

HISTORY OF SENATE BILL

*By Rules Committee  
at request of Legislative  
Counsel*

*Adopting the Uniform Probate Code; to codify  
& amend the state laws relating to decedent's  
estates, guardians, conservators, trusts & probate  
transfers - effective date...*

19 77 SESSION

Mo.	Day	Page	IN THE SENATE	
1	10	1	Introduction; Committee Referral	<i>advisory</i>
1	26	12	Committee Report	<i>d.p. (draft into the Rules)</i>
2	2	130	2nd Reading	<i>Advanced</i>
2	4	140	3rd Reading	<i>passed</i>
2	4	140	Passed	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Failed <input type="checkbox"/> Exc <input type="checkbox"/> Ab
2	4	140	Passed	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Failed <input type="checkbox"/> Exc <input type="checkbox"/> Ab
2	4	140	Effective Date	<i>July 1, 1978</i>
2	4	140	Report	<i>sent to GOVERNOR</i>
2	4	140	Reconsideration	
2	4	140	Sent to HOUSE	