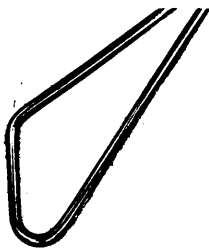


**LDIR#229
UPC LAW
REVIEW
AND
ARTICLES**



September 28, 1970

MEMORANDUM

TO: All Commissioners on Uniform State Laws

FROM: Special Committee, Uniform Probate Code
(prepared by R. V. Wellman)

RE: Information Regarding Status of U.P.C. - Report #1

Introduction

In addition to this brief report about the Uniform Probate Code, this mailing includes (1) a report by the A.B.A.'s Uniform Probate Code Committee with a state by state analysis of developments relating to U.P.C., (2) correspondence relating to efforts of the Veterans Administration to secure several amendments relating to Part 4 of Article V (Protective Proceedings and Conservators), (3) a partial bibliography of published materials relating to the approved Code, (4) a copy of the program of a conference recently held in Ann Arbor called "U.P.C. Key Man Conference".

Legislative Activity Regarding U.P.C.

Most of the study and other activity described in the attached A.B.A. report is occurring under the auspices of state and local bar associations. Official state activity, including that of law revision commissions, legislative counsel, and committees of supreme courts is suggested by the A.B.A. report in relation to Alaska, Alabama, Connecticut, Delaware. In developments occurring since the A.B.A. report was prepared, a joint House-Senate study committee of 14 legislators and a \$20,000 budget was established by the Michigan legislature by action of July 1. Also, the Hawaiian Legislature has acted to direct its Legislative Reference Bureau to study U.P.C. and has appropriated \$5,000 for the purpose.

Enactments

New probate codes in Maryland and Oregon were prepared after the Boulder draft of U.P.C. became available, and bear strong resemblance to the Code. Neither can be said to be enactments

A Flexible System for Administering Decedents' Estates

Richard V. Wellman

American probate procedures rest on assumptions inherited from the English that wills must be proved after death in order to be effective, and that personal property of a decedent passes to a state appointed personal representative who is to collect it and use it to satisfy the decedent's creditors before distributing to successors. Jurisdiction to handle these essential steps has been concentrated, in the main, in a probate court. Over the years procedures in probate have become more and more formal because lawyers and judges have sought to build meaningful protective features into the inherited requirements. Thus, notice requirements have proliferated. Also, the idea that a formal court proceeding, once initiated, should continue to assure valid accomplishment of the purpose of the proceeding has flourished in probate matters. And probate judges and the draftsmen of probate codes have accepted instances of careful practice, in respect to particular estates, as models of procedure from which mandatory statutory routines have evolved.

As a result, in many states, the local code recognizes essentially only one way of handling the various steps or problems relating to settlement of decedents' estates. (Most codes also contain some provisions exempting small estates from the usual routine of a full probate proceeding, but these statutes are keyed to arbitrary dollar ceilings which have tended to become out dated. Moreover, the typical small estate ceiling was unrealistically low in the first instance. This follows from the assumption that full probate is "proper" and that small estates' ceilings should reflect values which are too small to generate disputes or claims.) It is that all facets of administration are part of one continuous court proceeding of which the probate judge has ultimate control. Attorneys counselling executors must take each estate through essentially the same routine without regard for whether the parties are contentious or friendly, or whether the estate is worth \$15,000 or \$150,000. The necessity for the routine is hard to explain; and fees, possibly justified by the required work, are not understood nor accepted by clients.

The "Flexible System for Administering Decedents' Estates" which the attached charts, lists and examples describe was designed by the draftsmen of the Uniform Probate Code to meet the problem of inflexibility of present procedures. It seeks to provide most of the advantages of existing methods of handling decedents' estates. At the same time, by leaving the various procedures available as options, the system is designed to permit great variety in the way particular estates may be handled.

It also proceeds on the assumption that the state code should not attempt to supervise successors in an attempt to prevent persons from taking risks or to protect others who may be injured thereby. Rather, control of these private matters should be like that applicable to other private matters. That is, control should lie in the ability of other interested persons to use clearly stated rights and remedies that they may have to check the risk-taker, or to charge him with the consequences of his conduct.

UNIFORM PROBATE CODE

Bankers and trustmen have an important stake in the new Uniform Probate Code, and are urged to work for its adoption in their respective states.

By RICHARD V. WELLMAN

Professor of Law

University of Michigan Law School

Chief Reporter, Uniform Probate Code

THE Uniform Probate Code, prepared and adopted by the National Conference of Commissioners on Uniform State Laws, and approved by the American Bar Association at its 1969 annual meeting in Dallas, advances the proposition that laws relating to the affairs of decedents and trust proceedings should be modernized and made uniform throughout the country.

The project which finally produced the Code was started in 1962, some years before Norman F. Dacey's best-seller *How To Avoid Probate* made probate law deficiencies a matter of general discussion. Nonetheless, the most intensive work on the project occurred after publication of Dacey's book and during a time of unparalleled public criticism of the probate institution.

The Code was approved by its sponsoring groups only because it offers constructive answers for the many problems presently afflicting the subject area. Indeed, it is designed to meet the many troublesome implications of widespread probate avoidance by making the probate route as uncomplicated as other methods of effecting transfers at death.

The Code as typewritten with double-spaced text and single-spaced comments, was 411 pages long when it was approved in Dallas. Printed in very small type, Prentice-Hall's edition for subscribers to its *Wills, Estates, Trusts Service* runs to 134 pages. This length is not surprising in view of the fact that the Code describes a court, covers the substantive rules of heir-ship, wills, includes a new sub-

code on rights of bankers and parties to two (or more)-name accounts, covers all procedural aspects of decedents' estates, guardianship and conservatorships, and spells out the relationship between trusts, whether testamentary or intervivos, and courts. Only brief mention of some of its major features can be made here.

The Probate Court

The Code proposes use of a full-power court, having the same status in regard to appeals as the state's general trial court, for all matters relating to estates or trusts which require adjudication. It also offers ways of settling decedents' estates which do not involve judicial determinations, but it accepts the proposition that if adjudications become necessary or desirable in particular estates, they should be made by a full-power court which is free of restrictions on the kinds of questions it can consider, and after notice and opportunity to be heard for all interested persons.

The Code also proposes creation of an office called "registrar" for the handling of various functions relating to decedents' estate. As drafted, the registrar is conceived to be a lay employee of the court to which jurisdiction over estates is assigned.

However, the functions described by the Code for court and registrar can be sorted in various ways between existing or new offices in an enacting state without damage to the goal of uniformity of state law. For example, a state's general trial court might receive responsibility for probate adjudications after notice, with

an existing inferior office being assigned the registrar functions.

Another variation would be to increase powers of existing probate courts, and organize the registrar as a new independent office to be located as needed to be easily accessible to the public. In short, there are various ways of receiving the legislation so as to avoid the difficulty of putting existing probate personnel out of work.

Probate Procedures

The heart of the Code is Article III which describes what has been called the "flexible system of administration of decedents' estates". The basic idea here is to offer, as optional procedures to be available in each enacting state, ways of handling the various steps between death and final distribution of a decedent's assets like those existing today if the laws and practices of all 50 states are to be taken into account. Thus, a will may be probated, or a decedent may be determined to have left no will, without necessarily opening an administration.

Probate of a will may be handled informally, meaning that the order of probate may be issued by the registrar on the strength of sworn statements in a written application made to become part of a public office's records, without delay, notice or involvement in a judicial proceeding.

Alternatively, probate may be obtained in formal, adjudicative proceedings before the Code's full-power court. Administration is started by appointment of an executor or administrator and this step may be ac-

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

- ⊙ Hauptfuhrer, "The Uniform Probate Code--A Modern Approach for Pennsylvania", XLI Penn. Bar Assn. Quarterly 79 (October 1969).
- ⊙ Straus, "The Uniform Probate Code Approved; A Bold and Progressive Reform", XLI Penn. Bar Assn. Qtly. 71 (October 1969).
- ⊙ 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).
- ⊙ Vestal, "Multiple-State Estates Under the Uniform Probate Code", 27 Washington and Lee Law Review 70 (Spring, 1970).

Introduced: 3/16/71
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE CONCURRENT RESOLUTION NO. 24

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 Relating to a study of the Uniform
6 Probate Code.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS, due to expression of concern by the Alaska Bar Association
9 and individual members of the Alaska Bar for several years, the legislature
10 passed 1960 House Concurrent Resolution No. 57, requesting the Legislative
11 Council to prepare a revised probate code; and

12 WHEREAS that revision has been repeatedly introduced in the legislature
13 since 1961, it being House Bill No. 5 in the current legislature; and

14 WHEREAS the Uniform Probate Code, approved by the National Conference
15 of Commissioners on Uniform State Laws and the American Bar Association in
16 August 1969, appears to be a more satisfactory alternative to our present
17 law than does House Bill No. 5; and

18 WHEREAS the time remaining in this First Session of the Seventh State
19 Legislature is insufficient to study the matter properly;

20 BE IT RESOLVED that the Legislative Council is requested to study the
21 Uniform Probate Code, comparing it to our present law and to House Bill
22 No. 5; conduct public hearings on the probate code in appropriate locations
23 in the state; solicit analysis and comment from the bar associations in the
24 state; and prepare a report and substitute bill for presentation to the
25 Second Session of the Seventh State Legislature.
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27
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29

UNIFORM TRUSTEES' POWERS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-THIRD YEAR
AT NEW YORK, NEW YORK
AUGUST 3-8, 1964



WITH
PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING
AT NEW YORK, NEW YORK, AUGUST 13, 1964

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8/25/71

Russell:

The July 1, 1960 staff memorandum entitled "The Coordination of Legislative Bill Drafting and Statutory Revision with Judicial Rule-Making in Alaska" contains the following, which you may wish to consider in connection with the current efforts in revising the Probate Code:

"In the preliminary work on the probate code, it was estimated that approximately twenty-five per cent of the code is composed of what might be identified as procedural provisions. Therefore, the first effort in the probate code revision is to identify and separate the substantive from the procedural provisions. The second step is for the substantive provisions to be revised and enacted by the legislature. Lastly, the extracted procedural provisions should be repealed by the legislature and replaced by the probate procedural rules promulgated by the Supreme Court." (Emphasis added.)

This identification and separation no doubt took place when the court rules and the bulk formal revision of Alaska law -- the Alaska Statutes -- were adopted (although there may still be some dispute regarding the placement of specific provisions). And I would assume that the current HB 5, which was actually prepared about 10 years ago, attempted to make this same separation. But since the ^{current} revision of HB 5 seems directed at adoption of the Uniform Probate Code, I wonder how well the uniform commissioners considered constitutional provisions like Alaska's strong assignment of administrative and procedural rule-making powers to the supreme court. (Art. IV, Sec. 15.) Perhaps very well. But if they did, it would seem that there should be a corresponding batch of "uniform court rules for probate" to be adopted. Is there? If not, adoption of the Uniform Probate Code may pose some problems under the Alaska Constitution. Perhaps the court system should be invited to consider the matter along with the council, as was done when the court rules and the Alaska Statutes were prepared.

Art

Citations relating to inheritance by adopted child.

Atkinson on Wills (1953) pp. 86-92

Advanced type of legislation cases

- 1) 76 SW 2d 685 (Mo. 1934)
- 2) 218 NW 89 (Iowa 1928)

One may inherit from both cases

- 1) 257 NW 28 (Wis. 1934)
- 2) 199 NW 581 (Maine 1924)
- 3) 104 So. 163 (Miss. 1925)
- 4) 212 NW 488 (S.D. 1927)
- 5) 291 P. 325 (Wash. 1930)

80 ALR 1398

Contra:

- 1) 65 Cal App. 144, 223 P. 411 (Calif. 1923)
(though adoptive parents are dead).

2 Am Jur. 2d, Adoption, § 103, p. 944.

- 1) 37 ALR 2d 334, 336, §§ 1, 2.
- 2) Re Kay's Estate, 260 P2d 391 (Mont)
- 3) Re Benner's Estate, 166 P2d 257 (Utah)
- 4) Sears v Minchew, 93 SE 2d 746 (Ga)
- 5) Shaver v Mack, 29 SW2d 298, 73 ALR 961
(Ark)
- 6) 37 ALR 2d 340, § 2

1) 2 Am Jur 2d, Adoptions, § 88, p. 930

... Modern adoption statutes contemplate a complete breakoff of the minor child's relationship with his natural parents (*Stanfield v. Welloughy* (Ky) 286 SW2d 908, 53 ALR 2d 925), and legal adoption had in a manner prescribed by statute, severs the child entirely from its own family tree and engrafts it upon that of its new parentage (*Killy v. Falsom* (CA 3 Pa) 238 F2d 699, 60 ALR 2d 1065; *Re Adoption of Harney*, 375 Pa1, 99 A2d 276).

Draft #2

M PROBATE CODE (SB 248)

Work drafts #14#2

seq. the use of a description such as the widow of decedent and for minor children will be confused with the "Home- AS 09.35.090, and the exemption will be confused with the exemption provided for the probate allowances and the homestead exemption and other provisions AS 09.35.080 and AS 09.35.090. The code eliminate the description as, we recommend the description "Personal Property Allowance".

Conformance with the uniform code provisions of claims by creditors. We suggest ways to conform to our present provisions considered sufficient, and will be considered in the proceedings. (Alaska Bar Association)

Power given a foreign personal representative AS 13.21.015, which requires only that the removal of assets of a nonresident

decedent from Alaska upon furnishing a copy of his appointment and an affidavit as to death, Alaska administration, and entitlement to payment. Nothing is said or provided concerning Alaska debts of the nonresident decedent, except that should a creditor in Alaska know of the death and the whereabouts of assets in Alaska, that creditor may object. This is considered inadequate and likely to result in no recovery in most cases. Suit against the foreign representative in the foreign jurisdiction is not a good remedy. We recommend that sec. 13.21.015 be expanded to require some notice to Alaska creditors before removal of the assets from Alaska. We would add the following additional requirement to sec. 13.21.015.

In addition to the foregoing requirements the domiciliary foreign representative shall furnish to any person having possession or control of personal property, or other asset sought to be removed from Alaska, proof that notice has been published in a newspaper of general circulation in the borough or city where such assets are located, at least once a week for three weeks, that such property or other asset will be removed unless objections are made. The notice shall specify the personal property or asset and its location in Alaska.

(Alaska Bar Association)

(4) Sec. 13.11.315 provides for deposit of a will with any court. This should be restricted to the superior courts inasmuch as the inferior courts, particularly in sparsely settled areas will not have the personnel or facilities to administer this provision.

COMPILATION OF VARIOUS NOTES ON THE U.P.C.

- 1.) See AS 09.45.750 - 790 for other probate materials, i.e., notice to unknown heirs, etc.
- 2.) For reference to the UPC 120 hr. survival provision see AS 13.11.020 (Simultaneous Death Act).
- 3.) Re estate tax provision in UPC (AS 13.16.610), p. 107 see existing AS 43.31.011.
- 4.) Eastaugh says he (and I guess the Alaska Bar) want the four month provision and the bond requirements.
- 5.) Ned Kester from Vital Statistics says a provision like AS 20.05.130(b) should be retained. A similar six year provision was deleted from the UPC (see Sec. 1 - 107(3)). If included in SB 248, it would be AS 13.06.035(3).
- 6.) If issue of "procedural provisions" and court rules should arise, remember the almost nonexistent present probate rules and the Seminar provisions on page 189.
- 7.) Remember the Ferguson brought to the attention of the council the possibility that with the passage of the Native Land Claims, which will require guardians to be appointed for Native children without parents before they can receive any compensation which may be forthcoming, that certain provisions of the UPC (SB 248) may need to be altered. Ferguson wants to consider this when bill is taken up in House Judiciary.
- 8.) Make list of suggested changes from the various contributors and be ready to refute them (if possible).

SB 248

House Judiciary Committee (4/24/72)

✓ 1.) Change "Exempt Property" to "Personal Property Allowance"

✓ 2.) no amendment

✓ 3.) adapted w. addition = proof of notice, etc. (all things done property) to Lien, Gov. & then property

- 13.21.015

- monetary limit?
\$ 2,000

✓ 4.) amend to limit only to Superior Ct.

✓ 5.) forget

✓ 6.) amend like HB 722 and also change to ^{*}testate succession

✓ 7.) amend to \$12,000 or whatever they changed ~~any~~ exempt

prop. from execution of
- \$ 2,000 1. 11

226

Name state Probate Code chairmen

Sixteen state chairmen have been named to explain the Uniform Probate Code to legislators and interested citizens of their states and to promote its enactment.

The chairmen were among the more than 100 legislators, lawyers and law professors who participated in a national conference on the probate reform measure held in Denver May 4-6. The conference was designed to provide detailed information on the uniform code to leaders in states where interest in probate law reform is high.

Those registered came from 36 states ranging from Maryland to Hawaii to learn about the code which was drafted by NCCUSL in cooperation with the Section of Real Property, Probate and Trust Law of the American Bar Association.

All or parts of the code have been introduced in legislatures of Arizona, Washington, Michigan, New Jersey and Pennsylvania. The code has been enacted in

Probate Code "Observed"

The National Observer for the week ending March 18, carried an excellent background story on the need for enactment of the Probate Code.

Nina Totenberg gathered most of the material for the article during the midyear meeting of the American Bar Association in New Orleans. After outlining the provisions of the code, quoting Michigan Commissioner Richard V. Wellman extensively, and blaming the "probate bureaucracy" for most of the opposition to the code's enactment, Ms. Totenberg concluded:

"Most of the organized bar has firmly supported probate reform. Many lawyers recognize that the probate process as it now stands is 'nothing short of barbaric,' as one lawyer puts it. Moreover, most lawyers think the uniform code would make their work much simpler.

"But probate is a lackluster, death-oriented subject, and that could be the biggest obstacle to reform in most states. Besides, probate law looks so cumbersome and complicated that most state legislators are terrified of tampering with it."

Ms. Totenberg's article, a background article series by Commissioner Wellman, and complete copies of the Uniform Probate Code are available through NCCUSL.

persons of average means to make wills. It also would offer surviving family members various methods of reducing the control of probate courts over the inheritance process.

The Denver meeting was sponsored by the Association of Continuing Legal Education Administrators (ACLEA), by the ALI-ABA Joint Committee on Continuing Legal Education of the American Law Institute and the ABA, and by the Joint Editorial Board for the Uniform Probate Code which includes both ABA and NCCUSL members.

State chairmen selected were:

Arizona—Robert A. May, Tucson
California—Harley J. Spidler, San Francisco
Florida—A. Obie Stewart, Palm Beach
Hawaii—H. Baird Kidwell, Honolulu
Idaho—Senator Edith M. Klein, Boise
Maryland—J. Nicholas Shriver, Jr., Baltimore
Minnesota—Everett A. Drake, Minneapolis
Mississippi—Donald Roberts, Oxford
Montana—Bjarne Johnson, Great Falls
Nebraska—Howard H. Moldenhauer, Omaha
New Mexico—James P. Saunders, Albuquerque
North Dakota—Lyle W. Selbo, Fargo
Tennessee—Newton P. Allen, Memphis
Utah—Ralph H. Miller, Salt Lake City
Washington—Dan Reaugh, Seattle
Wyoming—Charles G. Kepler, Cody.

Chairmen in other states will be named soon.

Landlord-Tenant Hearing

A public hearing on a projected law which would govern landlord-tenant relationships was scheduled for the Sheraton-Palace Hotel in San Francisco June 9.

The draft would make rental agreements more equal with respect to the responsibilities and rights of tenants. For example, the draft now being considered by the special committee chaired by Edward L. Schwartz of Boston would prohibit rental agreements waiving tenant rights, authorizing tenant "confessions of judgment," calling on tenants to pay attorney fees for landlords, or exempting landlords from their liability under law.

"Both landlords and tenants were invited to present their views on the proposed Uniform Landlord Tenant Relationship Act," said Schwartz. "The special committee has sought the views of members of an advisory committee which has included articulate and informed spokesmen representing both landlords and

Idaho where it becomes effective July 1. The measure has also passed both houses of the Alaska legislature

A M E N D M E N T S

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

TO: SENATE BILL NO. 248

(1) Page 3, between lines 12 and 13 insert:

(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.

(2) Page 6, line 21, delete "18" insert "19"

✓ (3) Page 17, line 11, after "parents" insert:

"except that an adopted child and his issue have the rights of inheritance from the natural parents and their respective kin unless the decree of adoption specifically provides for termination of those rights of inheritance and"

(4) Page 25, line 16, change "EXEMPT PROPERTY" to "HOMESTEAD AND PERSONAL PROPERTY"

(5) Page 25, lines 19 and 21, delete "\$8,000" and insert "\$12,000" in both instances.

✓ (6) Page 25, line 27, after the period add:

A trailer home, mobile home or another dwelling of like nature, which is owned by a family or one of its members and is used as the family's actual abode, is exempt up to \$8,000, whether or not the dwelling is affixed to the land, and whether or not the land is held in fee simple or by a leasehold or some other interest in land.

(7) Page 25, line 28, change "EXEMPT PROPERTY" to "PERSONAL PROPERTY ALLOWANCE"

(8) Page 26, lines 6, 8, 10, 11 and 13, add "personal" after "exempt" in each instance

(9) Page 26, line 20 and Page 27, lines 14, 17 and 23, change "exempt property" to "personal property allowance" in each instance

(10) Page 28, line 6, delete "18" and insert "19"

✓ (11) Page 30, between lines 12 and 13, add a new section to the read: ~~or has received the consent of the person, he may pay the debt or deliver the property to the domiciliary~~ ~~Sec. 13.11.173. PROOF OF WILLS. Wills other than self-proving wills under sec. 165 of this chapter may be proven by the affidavits of the two witnesses to the will or, if one witness is deceased or cannot be located, by the testimony of one subscribing witness.~~

UNIFORM PROBATE CODE TABLE

In Title 13 (Decedent's Estates), chapters 6 - 36 constitute the Uniform Probate Code, but the Alaska Statutes numbering system is not the same as that in the Uniform Probate Code. The following table provides a cross-reference from the Alaska Statutes to the proper section in the Uniform Probate Code.

<u>AS</u>	<u>UPC</u>	<u>AS</u>	<u>UPC</u>
13.06.005	1-101	13.11.115	2-302
13.06.010	1-102	13.11.125	2-401
13.06.015	1-103	13.11.130	2-402
13.06.020	1-104	13.11.135	2-403
13.06.025	1-105	13.11.140	2-404
13.06.030	1-106	13.11.150	2-501
13.06.035	1-107	13.11.155	2-502
13.06.040	1-108	13.11.158	none
13.06.050	1-201	13.11.160	2-503
13.06.060	1-301	13.11.165	2-504
13.06.065	1-302	13.11.170	2-505
13.06.070	1-303	13.11.173	none
13.06.080	1-305	13.11.175	2-506
13.06.085	1-306	13.11.180	2-507
13.06.090	1-307	13.11.185	2-508
13.06.100	1-310	13.11.190	2-509
13.06.110	1-401	13.11.195	2-510
13.06.115	1-402	13.11.200	2-511
13.06.120	1-403	13.11.205	2-512
13.11.005	2-101	13.11.210	2-513
13.11.010	2-102	13.11.220	2-601
13.11.015	2-103	13.11.225	2-602
13.11.020	2-104	13.11.230	2-603
13.11.025	2-105	13.11.235	2-604
13.11.030	2-106	13.11.240	2-605
13.11.035	2-107	13.11.245	2-606
13.11.040	2-108	13.11.250	2-607
13.11.045	2-109	13.11.255	2-608
13.11.050	2-110	13.11.260	2-609
13.11.055	2-111	13.11.265	2-610
13.11.060	2-112	13.11.270	2-611
13.11.070	2-201	13.11.275	2-612
13.11.075	2-202	13.11.285	2-701
13.11.080	2-203	13.11.295	2-801
13.11.085	2-204	13.11.300	2-802
13.11.090	2-205	13.11.305	2-803
13.11.095	2-206	13.11.315	2-901
13.11.100	2-207	13.11.320	2-902
13.11.110	2-301		

A M E N D M E N T S

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

TO: SENATE BILL NO. 248

- (1) Page 3, between lines 12 and 13 insert:

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- (10) Page 28, line 6, delete "18" and insert "19"

- (11) Page 30, between lines 12 and 13, add a new section to read:
 "If, or has received the consent of the person, he may pay the debt or deliver the property to the domiciliary for Sec. 13.11.173. PROOF OF WILLS. Wills other than self-proving wills under sec. 165 of this chapter may be proven by the affidavits of the two witnesses to the will or, if one witness is deceased or cannot be located, by the testimony of one subscribing witness and other proof satisfactory to the court.

Alaska

RULES OF PROBATE PROCEDURE

Alaska

**Illustrative Forms
for Use With the
Rules of Probate Procedure**

The following forms are intended for illustration only. Only the substance of the form is set out and reference should be made to form No. 1 for a sample of the proper caption. The form of pleadings and other papers is governed by Civil Rule 76.

Oregon

TITLE 12

PROBATE LAW

- Chapter 111. General Provisions
112. Intestate Succession and Wills
113. Initiation of Estate Proceedings
114. Administration of Estates Generally
115. Claims; Actions and Suits
116. Accounting, Distribution and Closing
117. Estates of Absentees
~~118.~~ Inheritance Tax
~~119.~~ Gift Tax

Chapter 111

1969 REPLACEMENT PART

General Provisions

DEFINITIONS AND APPLICATION OF PROBATE LAW

- 111.005 Definitions for Probate Law
111.015 Application of chapter 591, Oregon Laws
1969

PROBATE COURTS AND COMMISSIONERS

- 111.055 Transfer of probate jurisdiction
111.065 Transfer of pending proceedings; contested
matters; appeals
111.075 Probate jurisdiction vested
111.085 Probate jurisdiction described
111.095 Powers of probate court
111.105 Appeals from probate court; reexamination
of issues

- 111.115 Transfer of estate proceeding from county
court to circuit court
111.165 District court judge acting as probate court
judge
111.175 Appointment of probate commissioner
111.185 Powers of probate commissioner

PROBATE PROCEDURE GENERALLY

- 111.205 Pleadings and mode of procedure
111.215 Notice; method and time of giving
111.225 Waiver of notice
111.235 Filing objections to petition
111.245 Proof of documents; certification
111.255 Translation of documents
111.265 Stenographic record

Oregon

Chapter 114

1969 REPLACEMENT PART

Administration of Estates Generally

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- 114.015 Support of spouse and children
- 114.025 Petition for support and answer
- 114.035 Temporary support
- 114.045 Modification or termination of support
- 114.055 Nature of support
- 114.065 Limitations on support
- 114.075 Priority of support; treated as administration expense
- 114.085 Setting apart whole estate for support; termination of administration

ELECTIVE SHARE OF SURVIVING SPOUSE

- 114.105 Right to elective share; effect of election
- 114.115 Election barred by agreement
- 114.125 Elective share limited by total property received
- 114.135 Denial of election or share reduction when decedent and surviving spouse living apart
- 114.145 What constitutes election
- 114.155 Election by guardian of surviving spouse
- 114.165 Payment of elective share

TITLE AND POSSESSION OF PROPERTY

- 114.205 No distinction between real and personal property
- 114.215 Devolution of and title to property
- 114.225 Possession and control of decedent's estate

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

- 114.255 Commencement of duties and powers of personal representative; prior acts
- 114.265 General duties of personal representative
- 114.275 Personal representative to proceed without court order; application for authority, approval or instructions
- 114.285 Naming or appointment of personal representative does not discharge claim against him
- 114.295 Discharge or devise in will of claim of testator
- 114.305 Transactions authorized for personal representative
- 114.315 Right to perfect lien or security interest
- 114.325 Power to sell, mortgage, lease and deal with property
- 114.335 Court order for sale, mortgage or lease
- 114.345 Title conveyed free of claims of creditors
- 114.355 Sale or encumbrance to personal representative voidable; exceptions
- 114.365 Validation of certain sales
- 114.375 Nonliability of transfer agents
- 114.385 Persons dealing with personal representative; protection
- 114.395 Improper exercise of power; breach of fiduciary duty
- 114.405 Personal liability of personal representative
- 114.415 Co-personal representatives; when joint action required
- 114.425 Discovery of property, writings and information
- 114.435 Power to avoid transfer

CROSS REFERENCES

Claims, generally, 115.005 to 115.215
Definitions, 111.005

114.205

Conveyance by reversioners and remaindermen to life tenant vests fee, 93.160, 93.810
Person feloniously causing death shall not take by decedent's will, 112.465

Registered land, power of personal representative to deal with, 94.410 to 94.445

Tenancy in common, devise to two or more construed to be, 93.180

Transfer of ward's property not an ademption, 126.495

Words of inheritance unnecessary to convey fee, 93.120

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

Richard V. Wellman

Reprinted from The 4th Annual Institute on Estate Planning

UNIVERSITY OF MIAMI LAW CENTER

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NOTES

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*¹ and *Glona v. American Guarantee & Liability Insurance Company*.² In *Levy*, five illegitimate children sued under article 2315 of the Louisiana Civil Code³ 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 *Glona*, 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 *Glona*⁴ and noted probable jurisdiction in *Levy*.⁵ With Justice Douglas writing for a majority of six in each case,⁶ 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 *Glona*, 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 cases⁷ 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. Justices Black and Stewart joined Justice Harlan, dissenting, in both cases. 391 U.S. at 76.

7. See *Kirg v. Smith*, 392 U.S. 309 (1968), especially Justice Douglas, concurring, at 392 U.S. at 316 (AFDC payments); *Munn v. Munn*, 450 P.2d 68 (Colo. 1969) (support); *R— v. R—*, 481 S.W.2d 152 (Mo. 1968) (support); *In re Estate of Jensen*, 162 N.W.2d 861 (N.D. 1958) (inheritance). *But see Strahan v. Strahan*, 304 F. Supp. 40 (W.D. La. 1969) (inheritance).

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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.¹ 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.

¹ALLEN, FERSTER & WEIHOFEN, MENTAL IMPAIRMENT AND LEGAL INCOMPETENCY (1968).

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

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.¹ 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.² 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

†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."

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.¹ 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.

UNIFORM PROBATE CODE

Some Current Comments

BY H. IRVIN LAWRANCE

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 as 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-

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 1962.¹ 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.² 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.³ 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.⁴ Also, the project was supported by both ABA committees

*Professor of Law, University of Michigan Law School; Chief Reporter, Uniform Probate Code.

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.

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The Uniform Probate Code: A Possible Answer to Probate Avoidance, 44 ILL. L.J. 191 (1969).

PROBATE IN ENGLAND: A BLUEPRINT FOR THE FUTURE?

Robert L. Fletcher*

PROBATE CAN BE QUICK AND CHEAP: TRUSTS AND ESTATES IN ENGLAND By William F. Fratcher. New York: Pageant Press, Inc., 1968. Pp. 106. \$3.50.**

Despite its *Reader's Digest* title, this book is not a folksy polemic of dramatic atypical examples. Rather, it is a painstaking detailed description of the English system of trust and estate administration. Its conclusion, that "probate can be quick and cheap," is surely accurate, for the English do handle probate much better than we do. While they have improved upon their seventeenth century procedure, most United States jurisdictions have not. We simply adopted the English procedure as of that distant time and have done little or nothing about it since. Fortunately, in the early 1960's when drafting of the Uniform Probate Code began, the leaders of that effort were at least aware of English practice. Although the drafters drew heavily upon the Model Probate Code of 1946 for the substantive law of wills and intestacy, they turned for the procedural aspects to the English practice and to the practices of Texas and Washington.

Having spent a year abroad studying and observing the English practice, Professor Fratcher brought to the Uniform Code reporters, of whom he was one, a thorough appreciation and documentation of the English system. The most important characteristic of that system, so different from most American jurisdictions, is the complete separation of contentious from non-contentious probate, and its correlative feature of involving judges only in contentious matters. Finding a somewhat similar procedure in the "independent" and "non-interven-

* Professor of Law, University of Washington. A.B., 1939, LL.B., 1947, Stanford University.

** As the author acknowledges in his preface, "most of the contents of this book were published originally in the New York University Law Review." The book in fact is a nearly verbatim reproduction of the original article, *Fiduciary Administration in England*, 40 N.Y.U.L. REV. 12 (1965). The fact of re-publishing is not a criticism but a compliment. Dressed up with a catchy title, the book will perhaps reach a lay audience ready to be persuaded that probate reform is feasible, and, as this reviewer sees the matter, that reform can come by the enthusiastic adoption of the Uniform Probate Code, which in its procedural article strongly resembles the English system. See text accompanying notes 1, 2, 15, *infra*.

Law Quadrangle Notes

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24-21-00 Uniform Probate Code

This is an act promulgated by the National Conference of Commissioners on Uniform State Laws at its 1969 annual meeting. The Committee on Suggested State Legislation has not considered the substance of this proposal, but includes it in this volume as an informational service to the States.

Introduction

The Uniform Probate Code is designed to improve state laws relating to the affairs of decedents and the settlement of decedents' estates, the designation and control of guardians and conservators for minors and other disabled persons, and the relationship between family trusts and courts. It is also designed to encourage uniformity of these laws.

The code is the product of a collaborative effort of the Real Property, Probate and Trust Law Section of the American Bar Association and of the National Conference of Commissioners on Uniform State Laws which began in 1962. Resting on earlier work of the Bar Association which resulted in publication of the Model Probate Code in 1946, the current project achieved an officially approved uniform law in 1969. The final product reflects the critical judgment of many hundreds of lawyers who served the National Conference and the ABA throughout the drafting process or who gave the project their reactions to preliminary drafts which were widely circulated among bar organizations, law teachers and others. Also, reactions and suggestions from a review committee of the Trust Division, American Bankers Association, and representatives of the federal government (Internal Revenue Service, Veterans Administration) and credit union, life insurance, corporate surety, legal publication, land title insurance and other service industries affected by the subject matter, were received and considered by the controlling organizations.

Major Objectives

The major objectives of the code may be summarized as follows:

(1) To relieve married persons with children of the necessity to make wills in order to prevent unwanted inheritance by children of fractions of property and savings which most prefer to pass to the surviving spouse, and to provide a satisfactory, statutory estate plan for these persons.

(2) To reduce procedural requirements relating to all inheritances to the end of shortening the time during which heirs must wait to receive assets, and lowering the expense of probate, in small and trouble-free estates.

(3) To modernize the law of guardianship by reducing the need for court-appointed guardians of minors, and simplifying procedures relating to appointments which may still be necessary or desirable.

(4) To provide modern and efficient proceedings, possibly leading to court appointment of conservators who may function like private trustees, for the

world, with authority to local changes to accommodate local needs. The

A Probate Law Reform That Works

by Murray Teigh Bloom

BOISE, IDAHO.

In the spring of 1971 Rep. Mel Hammond helped persuade the Idaho Legislature to be first in adopting the most thorough probate-reform legislation ever devised in the United States. He gave details of two outrageous Idaho estate settlements he had investigated:

- The McCutchen estate started out as a simple \$181,000 bequest by a man to his widow. Before it was finally settled, it had been nicked for 13 percent of its value—some \$24,000—in quite legal attorney and bank-executor fees and other expenses.

- After 11 years the Spencer estate still wasn't settled. And in that time the lawyers and bank-executors had managed to extract more than \$48,000 in fees—with no settlement in sight.

Partly as a result of these cases—and many more described at hearings by angry Idaho voters—the Legislature voted to adopt the new Uniform Probate Code. It simplifies, hastens and drastically reduces the cost of passing on estates from husband to widow, or from one generation to the next. After eight years of thorough deliberation and drafting by many of the nation's leading probate authorities, the new Code has recently been put into effect by Alaska and is now getting favorable consideration by legislatures in several other states, including Arizona, Hawaii, Colorado, Pennsylvania and Washington.

Probate reform is long overdue. "There is now increasing evidence," says Professor Richard V. Wellman of the University of Michigan Law School who helped draft the new Code, "that most Americans distrust our rules for inheritance and are suspicious of courts and lawyers who must deal with probate law. Public support for law suffers when law supports useless institutions."

Our present probate laws differ greatly from state to state. What they do have in common are inbuilt factors of long delay, uncertainty, voluminous red tape and high legal costs. They haven't been changed because they have a sizable group of staunch supporters, including (1) lawyers who fear a sharp cut in their probate-law income; (2) probate judges who foresee a loss of power because under the new Code they will have little to do with most estates; (3) bonding companies, because expensive bonds will no longer have to be posted in most estate cases, particularly where the money goes mainly from husband to widow. And (4) legal and weekly newspapers because the new probate Code makes it possible to reduce the need for the presently mandatory legal notices in connection with the probate of a will and the notification of creditors.

With such a powerful group of lobbying antagonists the passage of the new probate Code by the Idaho Legislature in 1971 was all the more remarkable. Behind it were the persuasive powers and political savvy of Edith Miller Klein, Idaho's only woman senator and chairman of the judiciary committee. An attractive, coppery-haired Boise widow, Mrs. Klein knew probate problems from her 25 years of law practice.

Lawyers warned

When she sponsored the Uniform Probate Code for adoption in the State Senate she knew there would be opposition from many lawyers throughout the state. "As lawyers, we have to quit kidding ourselves," she said. "A new approach to probate and probate costs is necessary. As a profession we have a duty to work in the public interest to improve the law."

She enlisted the help of Philip E. Peterson, a 49-year-old professor of law



Flexible System for Administering Decedents' Estates

Table I

Major Procedural Techniques

**FORMAL
PROCEEDINGS**

- . Notice, hearing, order by judge, final subject to vacation and appeal
- . Initiated by petition
- . Interested persons determined by question raised

**INFORMAL
PROCEEDINGS**

- . Involves statement under penalty of perjury to non-judicial official
- . Statement and easily proved facts support admin. order of probate and app't. of rep.
- . No notice; no delay; no adjudication

FILINGS

- . Statement under penalty of perjury
- . No official response except receipt and filing
- . Starts statute of limitations only

**TRUSTEE STATUS
OF REPRESENTATIVE**

- . Follows app'c. of executor or administrator
- . Confers power over assets like that of an inter vivos trustee
- . Statute prescribes duties

**STATUTES OF
LIMITATION**

- . May run from death, publication or filing
- . Short periods
- . Integral part of state's system of succession

**SUPERVISED
ADMINISTRATION**

- . Like bankruptcy or today's probate system
- . Rep. is officer of court
- . Required reports and closing

- . All judicial, administrative and filing activity occurs in probate court having jurisdiction under present law
- . Probate court conceived to include lawyer-judge, to be a court of record, and to be fully competent to handle any question arising incident to settlement of estate
- . Probate court also conceived to include an officer to whom administrative and filing jobs are routed