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Administration of Estates Review of Selected 1970 California Legislation

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Administration of Estates

Probate; establishment of fact of death

Probate Code §§1170, 1172, 1174 (amended); 1173 (repealed).
AB 2209; STATS 1970, Ch 952

The amendment to Section 1170 deletes the provision that if no opposition is received to a petition claiming an interest in a decedent's real or personal property the court may receive such petition in evidence with the same force and effect as if the petitioner were personally present and testified to the facts set forth in the petition.

The amendment to Section 1172 provides that if the person who files the petition pursuant to Section 1170 files an affidavit with the petition stating that he has no reason to believe that there is any opposition to, or contest of the petition, the court may act ex parte.

Prior to this amendment the court was required to have a hearing and give ten days notice of the time and place of such hearing. This requirement still applies, however, where there has been no affidavit stating that the petitioner has no reason to believe that there is any opposition.

The amendment to Section 1174 provides that the petition and affidavit filed pursuant to Section 1170 may be received in evidence and acted upon by the court with the same force and effect as if the petitioner or affiant were personally present and testified to the facts set forth therein. The court may render judgment establishing the fact of the death and such judgment shall be prima facie evidence of the fact of death. The presumption established by this Section is a presumption affecting the burden of providing evidence. (*See Evidence Code Sections 603, 604*).

The amendment also provides for inheritance tax referees to be appointed by the court. Inheritance tax referees replace inheritance tax appraisers. (*See Chapter 1282 for legislation on inheritance tax referees.*)

Disposition Without Administration

Probate Code §§632, 647 (new).

SB 477; STATS 1970, Ch 513

Section 632 is added to expressly exclude from the value of an estate any joint tenancy or any property interest which has terminated at the decedent's death when determining whether the total estate is under three thousand dollars and qualifies for summary probate pursuant to Section 630. These exclusions apply only to personal property as no estate that includes real property is subject to summary probate pursuant to Section 630.

Section 647 is added to expressly exclude from the value of an estate any joint tenancy or any property interest which has terminated at the decedent's death when determining whether the total estate is under five thousand dollars (\$5000) and qualifies for summary probate pursuant to Section 640. The exclusions under Section 647 apply to both real and personal property as any estate meeting the qualifications of Section 640 may qualify for summary probate.

Section 632 applies to the transfer of estates of personal property not exceeding three thousand dollars (\$3000) in value while Section 647 applies to setting aside estates not exceeding five thousand dollars (\$5000) in value. Both Sections are under the general heading of Disposition of Estates Without Administration.

References:

- 1) CAL. VEH. CODE §5910.
- 2) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§312, 313 (7th ed. 1960), (Supp. 1969).
- 3) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1967 CODE LEGISLATION 191.
- 4) Goddard, *Some Legal Effects of Divorce Upon Probate*, 42 L.A.B. BULL. 511 (1967).

Summary Probate

Probate Code §630 (amended).

SB 309; STATS 1970, Ch 97

Chapter 97 provides that a decedent's motor vehicle is no longer to be considered in determining whether the estate is qualified for summary administration.

Under summary administration, a person who has a right to succeed to the property of the decedent, or is the sole beneficiary under the will, need only make an affidavit or declaration showing his right, and pre-

sent it to the one in possession of the goods to which he is entitled. He is then entitled to the property and any indicia of ownership.

An estate is entitled to summary administration if the estate contains no real property or interest in real property located in this state, and the personal property is not valued over \$3,000, excluding 1) any amount due for services in the armed forces, 2) any salary from employment which is not over \$3,000, and 3) excluding any motor vehicle which the decedent owns.

References:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§318, 319 (7th ed. 1960).
- 2) ESTATE ADMINISTRATION 51, CONTINUING EDUCATION OF THE BAR (1959).

Probate; succession, separate property

Probate Code §229 (amended).

SB 267; STATS 1970, Ch 511

This amendment modifies the rules of intestate succession where a portion of an estate came from the separate property of a parent or grandparent.

Pursuant to the change, if a decedent leaves neither issue nor spouse and dies intestate, any portion of his estate which was created by gift, descent, devise or bequest from the separate property of a parent or grandparent will revert to the parent or grandparent who originally gave that portion to the decedent. If the parent or grandparent is dead, the property will go in equal shares to the heirs of the parent or grandparent. Under this change the normal rules of intestate succession (*Sections 220-231*) are modified whenever this special set of circumstances exists.

The purpose of the legislation was to conform the rules to the presumed intent of the parent or grandparent. If a gift is made to a child, and the child later dies, it is assumed that the donor would want the property back to re-distribute to another child, or to put to another use. In addition, the change conforms to the rule stated in *In re Hanson's Estate* [179 Cal. App. 2d 32 (1960)], commenting on Section 229, that the origin or source of the property should control disposition under intestate disposition.

The ancestral property rule (*Section 229, subsection (a)*) remains unchanged by this amendment.

References:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§23, 26, 27, 28,

- 29, 32, 123, 137, 233 (7th ed. 1960).
- 2) Comment, *Descent and Distribution: Applicability of Cal. Prob. Code §229 to Property State By Pre-deceased Spouse and Brought into California By Intestate During His Lifetime*, 28 CAL. L. REV. 96 (1940); Ferrier, *Descent and Distribution: Applicability of California Probate Code Sections 228 and 229 to Property Acquired Under Laws of Jurisdictions Not Recognizing Community Property*, 31 CAL. L. REV. 331 (1943); Agostini, *Descent and Distribution: Applicability of Probate Section 229 to Separate Property Originally Acquired By Gift By Pre-deceased Spouse from Decedent*, 34 CAL. L. REV. 766 (1946); Davis, *Community Property—California Probate Code Section 228—Nacins Source of Acquisition of Property*, 25 S. CAL. L. REV. 464 (1952); Wright, *Wills: Confusion Surrounding the Determination of Heirs By Application of Sections 228 and 229 of the California Probate Code*, 7 HAST. L.J. 336 (1956).

Nonresidents; distribution

Probate Code §§1000, 1040 (amended).

SB 539; STATS 1970, Ch 775

The amendment to Section 1000 provides that (1) if the actual will of a nonresident must be admitted to probate pursuant to Sections 630-631.1 (*concerning probate of foreign wills*) or (2) if the decedent died intestate, and an administrator has been duly appointed and qualified in the state of his residence and if it is necessary that the estate be delivered to the executor or administrator in order that it may be distributed according to the will, or if it is in the best interests of the estate, the executor or administrator may petition the court for an order authorizing such delivery. This Section applies to an estate not ready to be finally closed and distributed and now permits the court to order preliminary distribution to the personal representative in the State of domicile where a nonresident has died intestate.

Prior to the amendment of Section 1000 the petition for distribution could only be allowed if the decedent died testate in which case an authenticated copy of the will was allowed to be admitted to probate in California. If the decedent died intestate the only distribution allowed was that pursuant to Section 1040 (When decedent was a nonresident and an administrator had been duly appointed in the state of his residence).

Section 1040 was amended to be consistent with Section 1000. The actual will must be admitted to probate rather than an authenticated copy.

This legislation was sponsored by the California State Bar (See 1969 Conference Resolution 2-14; Interim Report, December, 1969).

References:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§288, 289 (7th ed. 1960).

- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 185.
- 3) Comment, *Comments on the Probate Code of California*, 19 CAL. L. REV. 602, 621 (1931); Comment, *The Work of the 1937 Legislature*, 11 S. CAL. L. REV. 58 (1937).

Claims for Distribution

Probate Code §1064 (amended).

AB 1086; STATS 1970, Ch 742

Section 1060 requires certain types of property to be deposited with the county treasurer of the county where the administration of an estate takes place. This type of property includes property distributed to 1) an out-of-state resident who has no agent in this state; 2) a distributee who cannot be found or refuses to accept the property; or 3) a minor or incompetent person who has no guardian or conservator.

Section 1064 allows distribution of this deposited property to a claimant if the claimant files a petition in the superior court which made the distribution. If the petition is verified and the court is satisfied, as to claimant's right to the property, the court may issue a certificate for the property. The county auditor must honor this certificate.

Section 1064 also provides a more simple procedure for claiming money or other personal property held by the county. Instead of filing a verified petition, claimants may simply file an affidavit in the superior court. The court may, in its discretion, dispense with filing of a verified petition, and simply grant the certificates requested.

The amendment specifically allows persons who were minors at the time of distribution, but have since attained their majority or had guardians appointed, to utilize this simplified procedure. Rather than go through the longer and more expensive process of filing a petition, only an affidavit need be filed to claim money or personal property.

References:

- 1) 3 OPS. ATTY. GEN. 110 (1944).
- 2) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* § 291 (7th ed. 1960).
- 3) Comment, *Work of the 1945 Legislature*, 19 S. CAL. L. REV. 85, 106 (1945).

Filing of Claims

Probate Code §§709, 720 (amended).

SB 1212; STATS 1970, Ch 591.

Amendments to Sections 709 and 720 are intended to clarify that payments which have been properly made by an executor or adminis-

trator will not be affected by the filing of late claims against the estate.

In certain circumstances, a probate court may permit the filing of a claim against an estate after the expiration of the normal period for the filing of creditor's claims (*see Sections 700-720*). Because distribution of property from the estate may have occurred before these late claims were filed, Sections 709 and 720 specifically provided that the late claim will not affect any earlier distributions (nor require the return of the property to the estate) which have been distributed pursuant to court order.

Each section is amended to clarify that not only property distributed pursuant to court order is protected from late claims, but payments properly made before notice of the claim will also be protected.

References:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §258 (7th ed. 1960); 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§256, 258, 258A, 262 (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 218; CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 189, 787; CONTINUING EDUCATION OF THE BAR, CALIFORNIA ESTATE ADMINISTRATION §10.45-10.46 (1959); CONTINUING EDUCATION OF THE BAR, CALIFORNIA ESTATE ADMINISTRATION §§10.13, 10.42, 10.52, 11.2 (1960).
- 3) Comment, *Selected 1959 Code Legislation*, 34 CAL. S.B.J. 734 (1959).

Estates; debts for funeral expenses

Probate Code §951.1 (amended).

AB 504; STATS 1970, Ch 213

Section 951.1 formerly provided that funeral expenses were to be deemed debts "primarily" payable out of the decedent's separate property, or out of his share of the community property. This was true whether or not the surviving spouse was financially able to pay the expenses, or whether anyone else was also liable for them.

This amendment deletes the word "primarily", and provides that these debts may not be charged to the surviving spouse's share of the community property, regardless of ability to pay.

This Chapter does not effect Health and Safety Code Section 7100, which provides for revolvment of liability for interment expenses. (*See Health and Safety Code Section 2009 for definition of interment expenses*).

Reference:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§269-270 (7th ed. 1960), (Supp. 1969).

Notice of Hearing; heirship proceedings

Probate Code §§328, 1080 (amended).

AB 1663; STATS 1970, Ch 1014.

Section 328 provides that a notice of hearing on the petition for probate must be served upon heirs, devisees, legatees, and all persons named as executors at least 10 days before the hearing. Further, whenever the instrument offered for probate involves or may involve a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state, notice of the hearing a copy of the petition and the will must be served on the Attorney General.

This amendment now requires the above documents be served when there is a bequest or devise for a charitable purpose without an identified legatee, devisee or beneficiary.

Section 1080 allows any person claiming to be an heir of the decedent, or entitled to distribution of the estate or any part thereof, to file a petition requesting the court to determine who is entitled to distribution of the estate.

Previously the petition for determination could be filed after two months had elapsed after the first publication of notice to creditors. It had to be filed, though, prior to the filing of a petition for final distribution. Under this amendment, the petition for determination of heirship may be filed anytime after first publication of notice to creditors as long as it is prior to filing of a petition for final distribution.

The Section is further amended to provide that when an estate involves or may involve a bequest or a devise for a charitable purpose without an identified legatee, devisee, or beneficiary thereof, the Attorney General shall be deemed to be a person entitled to distribution and shall be entitled to file the petition. Previously he could only file when there was a charitable trust without a designated trustee or in an escheat to the State of California.

References:

- 1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 185.
- 2) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§174, 175, 200, 218, 233, 272 (7th ed. 1960); 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§175, 200, 213, 218 (Supp. 1969).
- 3) ESTATE ADMINISTRATION §§26.1-26.48, CONTINUING EDUCATION OF THE BAR (1959).

Public Administrators; deposit of funds

Probate Code §1147 (amended).

AB 1740; STATS 1970, Ch 752

This amendment to Section 1147 establishes procedures for the disposition of funds received by a public administrator from an estate.

The public administrator, upon receipt of the funds, must now deposit the funds with one or more banks authorized to do business in the county, or invest any amount in one or more insured savings and loan associations authorized to do business in his county.

Previously the public administrator could also deposit the funds with the county treasurer of the county in which the proceedings are pending. This provision is deleted and the administrator no longer has this option.

Reference:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §191 (7th ed. 1960).

Guardians and Conservators; powers and duties

Probate Code §§1519, 1862 (new).

AB 885; STATS 1970, Ch 376

Under these new Sections, if a guardian (*Section 1519*) or conservator (*Section 1862*) makes a sale or purchase of property which has not previously been approved or disapproved by a court during administration of the guardianship estate or conservatorship estate, the sale or purchase shall be by the court upon the next succeeding accounting of the guardian or conservator following the sale or purchase made. Upon such accounting, the court may hold the guardian or conservator liable for any violation of his duties. Both Sections provide that they shall not be construed to affect the validity of any such sale or purchase. The Sections simplify the procedure, but it should be noted that other Probate Code Sections requiring approval, such as deferred payment sales (*Section 1532*), and sections dealing with leases and exchanges, have not been amended. Careful practice would require a review of pertinent statutes before following the procedure of the new Sections.

References:

- 1) *In Estate of Mason*, 62 Cal. 2d 213 (1965).
- 2) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §153A (Supp. 1969).

Reports by Public Administrators

Probate Code §1153 (amended).

SB 590; STATS 1970, Ch 276

Section 1153 of the Probate Code requires a public administrator to publish a semi-annual report of the estates handled by his office. This report must be printed in a newspaper of general circulation published in the county (*see Government Code Section 6000 and 6060*).

Prior to this amendment, the public administrator was required to publish this report for *ten* days pursuant to Government Code Section 6062. Now the report need only be published for *three* days in accordance with Government Code Section 6061.3.

Reference:

- 1) Comment, *Selected 1957 Code Legislation* 32 CAL. S.B.J. 587 (1957); Comment, *Administration of Justice*, 27 CAL. S.B.J. 198 (1952).

Trusts; court assistance

Probate Code §§1138-1138.13 (new); 1137-1137.14 (repealed).

SB 850; STATS 1970, Ch 849

(Effective September 3, 1970)

This Chapter adds Article 2.5 to Chapter 19, Division 3 of the Probate Code dealing with a trust, which is defined as "a written voluntary express trust, with additions thereto, whether created by will or other than by will which is entirely administered or to be entirely administered in this state." It is intended to eliminate the need for time consuming plenary suits to invoke court supervision, and substitute an economical and efficient procedure whereby court assistance may be obtained. Jointly sponsored by the State Bar Association and the California Bankers Association, it has been characterized as a more efficacious procedure for obtaining court determination of matters concerning such trusts. Court jurisdiction under this new article is expected to provide an inexpensive forum, comparable to the jurisdiction of the courts over testamentary trusts.

This Chapter also repeals the existing sections of the Probate Code dealing with the administration of inter vivos trusts. These Sections were enacted during the 1969 Regular Session and were not to become operative until November, 1970. The 1969 act was given a late operative date to give time for study and improvements of the proposed Sections. The current Code Sections were an urgency measure and have

been in effect since September 3, 1970.

The 1969 act only applied to irrevocable trusts, where the new statutes apply to revocable trusts as well.

Excluded from this Act are Totten trusts, business trusts taxed as partnerships or corporations, investment trusts, common trust funds, voting trusts, deeds of trust, escrow or debt repayment trusts, and trusts subject to court supervision under Article I commencing with Section 1120 (*testamentary trusts*).

Under Section 1138.1, when an inter vivos trust has been formed, a trustee, beneficiary, or remainderman may petition the court for any of the following purposes:

- (1) Determining to whom the property shall pass or be delivered upon final or partial termination of the trust, to the extent such determination is not concluded by the trust instrument.
- (2) Settling the accounts and passing upon the acts of the trustee.
- (3) Authorizing the trustee to accept additions to the trust when the trust instrument does not prohibit such additions.
- (4) Instructing the trustee.
- (5) Compelling the trustee to submit his accounts and report his acts as trustee to a beneficiary or remainderman when it appears that the trustee has failed to submit an accounting and report within 60 days after written request of a beneficiary or remainderman and no accounting and report has been made within six months preceding such request.
- (6) Granting to the trustee powers not expressly contained in the trust instrument to the extent provided in Section 1110.2.
- (7) Fixing, directing, or allowing payment of compensation to the trustee in accordance with Section 2274 of the Civil Code.
- (8) Appointing a trustee.
- (9) Accepting the resignation of a trustee.
- (10) Removing a trustee.
- (11) Authorizing or directing removal of the trusts or assets of the trust to another jurisdiction.

Section 1138.2 allows the court to make all orders and decrees and take all other action necessary or proper to dispose of the matters presented by the petition.

Section 1138.3 provides that the superior court located in the county wherein the principal place of administration of the trust is located shall have jurisdiction for all proceedings under Article 2.5 except if there are

co-trustees, either the principal place of administration, or if none, the place of business or residence of either co-trustee as agreed by them will be the basis for jurisdiction.

Sections 1138.4 and 1138.6 specify the procedure for filing a petition and for the notices of hearing, dismissal and other matters relating to these trusts such as the resignation or death of the trustee.

The proceedings under this article are to be commenced by filing a verified petition which states facts that illustrate the petition is authorized under this article (*Section 1138.4*). The court can dismiss the petition if it appears that the proceeding "is not reasonably necessary for the protection of the interests of beneficiaries or remainderman" or "that non-disclosure of the terms, assets, management, and administration of the trust is in the best interests of the objects of the trust."

Section 1138.7(a) provides that the court may appoint a guardian ad litem to represent the interests of a minor, an incapacitated, unborn or unascertained person or persons.

Section 1138.7(b) requires special notice to be given as specified in the section, where it appears from the petition that the trustee seeks or is to be given power not conferred upon him in the trust instrument, or the petition relates to determining to whom the property shall pass or be delivered upon final or partial termination.

Section 1138.8 establishes procedures for the resignation of the trustee.

Allowance for an appeal is contained in Section 1138.10.

The article is designated, in Section 1138.13, to apply to all applicable trusts (as defined) unless the trust itself specified or implies that the section shall not apply. It will apply to previously created trusts if they are amended to make the section applicable.

Reference:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Trusts* §3c (Supp. 1969).

Life Insurance and Other Trusts

Probate Code §§175-184 (new).

SB 651; STATS 1970, Ch 835

In general, Sections 175-184 provide for the creation by will, including will pour over, of a trust of life insurance proceeds and certain other benefits. Such trusts will be free from the administration of the de-

cedent's estate and generally from the debts of the decedent except to the extent provided for by the will.

Prior to this act, there was some confusion in the law as to the administration of inter vivos trusts with named trustees or beneficiaries, whose corpus did not arise until the death of the trustor, as in the case of trusts of life insurance proceeds. Since there was no corpus until the death of the trustor, there was a question of whether, for probate proceedings and inheritance taxes, the trust should be treated as an inter vivos or a testamentary trust.

The same was true in the case of a pour over trust, where the trust was established inter vivos but the funds went first to the estate of the decedent, and therefore through probate and inheritance taxes, before pouring over to the trust.

Section 175 provides for the type of interest that may be included: an insurance, annuity, or endowment contract, a pension, retirement benefit, stock bonus, profit-sharing or employee's saving plan, or contract created or entered into by an employer for the benefit of some or all of his employees, and a trust, security or account established or held pursuant to the Self Employed Individuals' Tax Requirement Act of 1962 created inter vivos, with either primary or contingent beneficiaries designated. The designation may be made before or after the execution of the designator's will and shall not be required to comply with the formalities for execution of a will. Section 177 provides that if the trust is valid and the named trustee is capable of performing as a trustee (*Section 179*) the benefits or rights resulting from such designation shall be payable or transferable directly to the trustee at the time the will is admitted to probate without becoming subject to probate administration. This Section also provides that the rights and benefits under the designation may be added to an inter vivos trust or trusts (pour over). Section 178 provides that the designation transferred to the trustee shall not be subject to the debts of the designator except as otherwise provided in the will.

Section 179 provides for jurisdiction for administration of the trust by the court in which proceedings are pending for administration of the estate of the decedent to determine the validity of the trust, its terms, fill vacancies if no trustee, require an undertaking by trustee, grant additional powers and instruct the trustee, fix his compensation, hear adverse claims to the subject of the trust and make such orders as necessary to accomplish the trust. Section 180 incorporates Section 1120-1136 regarding Administration of Trusts to all matters not specifically provided for in Section 179.

Section 183 provides that proceeds of an insurance policy (*defined in Revenue and Taxation Code Sections 13721-13724*) when collected by a trustee under Sections 175-184, shall not be subject to inheritance tax to any greater extent than if such proceeds were the proceeds of an insurance policy payable to the beneficiaries of the trust as named beneficiaries of the policy. At present, such proceeds are exempt from inheritance taxes up to \$50,000 (*Revenue and Taxation Code Section 13724*).

Section 184 provides that the enactment of Sections 175-184 does not invalidate trusts, otherwise valid, not made pursuant to these Sections nor does it affect the construction of inheritance laws in any way.

Conservatorship Hearings

Welfare and Institutions Code §5365 (amended).

SB 127; STATS 1970, Ch 509

The amendment to Section 5365 provides that any petition filed pursuant to Sections 5350 to 5368 must be heard by the superior court within 60 days of its filing.

Sections 5350 to 5368 of the Welfare and Institutions Code establish procedures for appointment of a conservator for any person who is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism.

Previously the court was required to hear the petition within 30 days.

Petitions are required in the following instances:

(1) Section 5352 requires the officer providing conservatorship investigation to petition the court (pursuant to *Probate Code Section 1754*) for conservatorship if as a result of his investigation he determines a conservator is required;

(2) Section 5361 provides that conservatorship automatically terminates after a one year period, however, if the conservator determines his services are still required he may petition the court for reappointment for an additional year;

(3) Section 5363 provides that if a conservator continues in good faith to act after the end of the one year period he may petition and be granted a decree ratifying his acts which occurred after the end of his term;

(4) Section 5364 provides that at any time, but not to exceed more than once each six months; the conservatee may petition for a rehearing

as to his status as a conservatee.

References:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §341 (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 231, 232.

Uniform Anatomical Gift Act

Health and Safety Code §§7150-7157 (new); 7100 (amended); 7150-7158 (repealed).

AB 1455; STATS 1970, Ch 1006

Pursuant to Section 7100 the right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

- (a) The surviving spouse.
- (b) The surviving child or children of the decedent.
- (c) The surviving parent or parents of the decedent.

(d) The person or persons in the next degrees of kindred in the order named by California law to succeed to the estate of the decedent.

(e) The public administrator when the deceased has sufficient assets. As amended, if a donee should accept the entire body of the decedent (donor) as a gift, this action provides that such donee is liable for the reasonable costs of interment. A further amendment to Section 7100 provides that a decedent, prior to death, may direct the preparation for, type of place of interment of his remains either by oral or written instructions; a written contract for funeral services may only be modified in writing. Previously, only written instructions were valid, and in the absence of written instructions, the right to control the disposition vested as provided above.

New Sections 7150 to 7157 are to be known as the Uniform Anatomical Gift Act.

Section 7151 provides that any individual of sound mind and 18 years of age or older may be a donor (one who makes a gift of all or part of his body).

Section 7151.5 lists in order of priority survivors who may make a gift of all or part of a decedent's (a deceased individual, of any age, including a stillborn infant or a fetus body). If any person of the same or higher class objects to such gift and gives actual notice of objection, a person of the same or lower class may not make a gift of the body.

Pursuant to Section 7151.7, if the decedent was a member of any religion, church, sect or denomination which relies solely upon prayer for the healing of disease, only he shall have the authority to donate his body or a part thereof.

Pursuant to Section 7152, if the donee has actual knowledge of opposition by a member of the same or prior class (*Section 7151.5*), he shall not accept the gift.

Section 7153.5 enumerates the possible donees and the purposes for which they may take a body.

There are three important provisions in Section 7154:

(a) If a donor executes a will invalid for testamentary purposes, any gift of his body or a part of his body, to the extent that it has been acted upon in good faith, is still valid and effective. The gift shall become effective without waiting for probate.

(b) If a gift is made by a document other than a will, delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) If no donee is specified, the gift may be accepted by the attending physician as donee upon or following death. However, the donee physician shall not participate in the procedures for removing or transplanting a part.

Section 7154.5 gives the provisions of a gift to a specified donee whether by will, or other document.

Section 7155 makes provisions for revocation (by the donor) of a gift.

Pursuant to Section 7155.5 if the gift is for a part of the body, after removal of the part the custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons specified in Section 7100. This section also frees from civil liability any person who acts in good faith in accord with the Uniform Anatomical Gift Act.

Sections 7156 and 7157 provide that the provisions of this act are subject to state laws of autopsy and the act is to be construed to effectuate its general purpose to make uniform the law of the states which enact it.

References:

- 1) 5 OPS. ATTY. GEN. 65 (1946); 11 OPS. ATTY. GEN. 150 (1948).
- 2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Personal Property* §3 (7th ed. 1960) (Supp. 1969); 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§3, 269 (7th ed. 1960), (Supp. 1969).
- 3) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION 164.